CASE NO. SC21-917
L.T. No.: 1D19-2819

IN THE SUPREME COURT OF FLORIDA
NICOLE "NIKKI" FRIED, FLORIDA COMISSIONER OF AGRICULTURE AND CONSUMER SERVICES, ET. AL.,
Petitioners,
v.

STATE OF FLORIDA, ET. AL.,
Respondents.

On Discretionary Review from the First District Court of Appeal

AMENDED BRIEF OF AMICUS CURIAE, FLORIDA CARRY, INC., IN SUPPORT OF RESPONDENTS

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IDENTITY AND INTEREST OF AMICUS CURIAE

Florida Carry, Inc. is a statewide grassroots organization, chartered under the laws of Florida as a not-for-profit corporation, to act in the public interest, to protect the individual freedom of law-abiding persons to keep and bear arms for lawful purposes as guaranteed by the U.S. and Florida constitutions and laws. These purposes include self-defense, recreational and sporting use, and all other lawful use of firearms.

Florida Carry, Inc. has over 30,000 registered members and supporters. Florida Carry represents the interest of nearly 2.5 million Florida concealed weapon firearm license holders, and the estimated eight million firearm owners in Florida, as well as visitors to the state who seek to exercise their right to keep and bear arms in a lawful manner.

The issues that movant seeks to address are the need of law-abiding firearm owners and carriers to be free from a patchwork of laws unique to the various jurisdictions of local governmental entities of Florida, and constitutional principles related to the regulation of firearms in Florida.

Movant can assist the Court based on its specialized knowledge and experience in this area of the law as well as its extensive knowledge of the legislative history of Chapter 790 Florida Statutes, and the development Sec. 790.33, Fla. Stat. Movant is the only organization or association that has successfully sought to enforce the provisions of Sec. 790.33 since it was amended in 2011.

This case will have a direct impact on law abiding Floridians who choose to exercise their right to possess and use firearms in accordance with state and federal law, free from interference by local government.

INTRODUCTION

Lost in the minutia of the parties' arguments are what this case is really about. Sec. 790.33 was passed so that citizens of and visitors to the State of Florida, would not be required to learn the laws of 477 different cities and counties, in order to exercise a fundamental, individual, God-given right without fear of arrest and financial hardship. A patchwork of laws serves no purpose, as the Legislature is well equipped to exercise the police power necessary to regulate firearms, within constitutional limitations, throughout the

state. Interference from local governments serves no purpose other than to virtue signal to their local voters.

Prior to the enactment of the 2011 amendments to Sec. 790.33, Fla. Stat., Florida Carry undertook an extensive review of local county and municipal ordinances throughout Florida. Of the approximately 477 local jurisdictions in Florida, Florida Carry identified that just over 300 or almost 63% of the jurisdictions had ordinances that facially violated Sec. 790.33. Over 200 of these jurisdictions, including some of the Petitioners herein, amended or repealed their illegal ordinances regulating firearms.

This case is not really about preemption in general or the authority of the state to subject local officials to suit or penalties, it is about firearms.

Without a mechanism of enforcement, Sec. 790.33, would return to what it was before 2011, a virtually unenforceable statute ignored by local governments due to the costs of litigating claims against those governments and their officials.[1] While these claims

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[1] In the experience of this Amicus, almost all cases are lost at the trial

are generally small monetarily, they are the only means available to protect one of our most fundamental and precious liberties from abuse by local officials. These officials disagree with the U.S. Supreme Court's determination that possession, bearing, and use of a firearm is a fundamental right retained by the individual. These officials also disagree with the Florida Legislature's determination and finding that the firearms laws of the state should be uniform, and that an armed and trained citizenry is in the best interests of the state of Florida, and is good public policy

Numerous counties and municipalities throughout the state were unable to restrain themselves from the limitations imposed by Art. I, Sec. 8 of the Florida constitution which vests all authority to regulate the manner of bearing arms in the Florida Legislature. Undeterred, these local governments chose to violate Florida law.

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court level due to the reluctance of local judges to rule against officials elected by the same voters as the judges themselves. Furthermore, unless the case settles quickly, appellate review is virtually certain at some point in the case. Generally speaking, and excluding those case that settle quickly, most preemption enforcement cases take over two years and over 100 hours of attorney time, at a minimum.

In 1987, the Florida Legislature passed Sec. 790.33, to make clear that the regulation of firearms throughout the state was exclusively within the authority of the Legislature.

Despite being the law of the state for twenty-four years, local governments, and the officials who ran them, continued to violate the law by enacting and enforcing local ordinances regarding firearms. These included restrictions on where firearms were carried, how they were stored, where firearm-related businesses could operate, and numerous other restrictions.

In 2011 the Legislature chose, within its constitutional authority, to impose penalties on the local governments who continued to violate the laws of the state, and to personally penalize those government officials who allowed knowing and willful violations to occur under their jurisdiction.

Importantly, the Legislature did not impose this new regime without notice. The passage of Sec. 790.33 did not become effective for four months after passage, giving local governments and officials ample time to comply without fear of being sued.

Many local governments chose to follow the law. Others did

not, or took the position that because their ordinance predated 2011, or 1987, they were not required to repeal the illegal ordinances as long as the prohibited ordinances were not enforced.

SUMMARY OF ARGUMENT

It is well within the power of the Legislature, and its policy-making and decision-making authority, to create penalties to enforce the laws of the state. This enforcement can include civil or criminal penalties, or both, such as already exists in Chapter 119, Fla. Stat. Nothing in the constitution grants local officials freedom from penalties for violating the laws of this state, especially when those laws flow directly from the constitution's delegation of power to one branch to the exclusion of other branches or levels of government.

The real complaint of Petitioners is that they would make different policy choices regarding firearms than the Legislature has made. Petitioners assert that as local officials they want the ability to make contrary policy choices, enforceable by arrest, incarceration, and fines, and to face no liability or penalty for their actions consistent therewith. According to the local officials, the fear of the penalties has kept them from taking actions that they and their constituents believe

necessary and proper in the interest of public safety.

Petitioners do not challenge that the Legislature is empowered to and has in fact, denied Petitioners the authority to pass ordinances or make the policy choices that the Petitioners would like to make. Rather, Petitioners contend that without the penalty provisions, they would ignore the Legislative primacy in this area on an experimental basis. Petitioners would leave it to affected individuals, unlikely to have a city's resources, to expend significant sums of money to enforce the individual's rights, with little likelihood of recovering the sums expended. Few individuals have such resources to expend on hopes of invalidating unconstitutional restrictions on their fundamental rights.

Despite their officials' alleged fear of the preemption penalties, numerous Petitioner entities herein continue to violate Sec. 790.33, as well as other constitutional and statutory rights regarding the bearing of arms. They do so by a variety of means including, but not limited to, zoning ordinances, posting of "NO WEAPONS" signs (as opposed to "NO FIREARMS" signs), or otherwise restricting or misleading citizens and visitors regarding their right to bear arms.

They engage in conduct such as refusing good faith attempts to resolve disputes over preempted ordinances until after suit is filed. They then repeal or amend the ordinance and claim that the case is moot, and no damages or attorneys' fees are owed. They litigate cases for years, only to then claim that the case outcome was known from the outset, so contingency fee multipliers are inappropriate.

There is nothing unclear about Sec. 790.33, nor do the exceptions therein leave these officials unclear about the limits of their authority. Nothing in the statute requires insight into the officials' motives, only their knowledge that they did not have authority to regulate firearms and ammunition and did so anyway, or knowingly and willfully allowed the violation to occur within their jurisdiction.

The sole means for the average individual to enforce their constitutional rights against these abusive local officials is through associational relations, such as this Amicus or other such organizations. Without the penalty and attorneys' fee provisions Petitioners will be free to violate the constitutional rights of their residents and visitors, who will be forced to learn the laws of 477 jurisdictions in order to lawfully exercise their constitutional rights

statewide.

ARGUMENT

The parties agree that the statutory preemption of firearm regulation by local governments is valid, but Petitioner's claim that various constitutional principles prevent them from being held liable for conduct that is illegal under the laws and constitution of the state.

To use an example, if local governments or officials attempted en masse, at a rate of 63%, to violate the uniformity and preemptive provisions of Chapter 316, Fla. Stat., no court would seriously question the authority of the Legislature to amend the statute to impose penalties on local officials. See, Sec. 316.007, Fla. Stat. In fact, such a suit by local officials claiming a right to ignore state law without penalty would likely result in sanctions. Similarly, despite this Court having recently waded once again into the red-light camera debate, no local government has claimed that the exceptions of Sec. 316.008, Fla. Stat. (powers of local authorities), renders them unclear about where they may or may not regulate in the context of traffic laws, which are also preempted to the state by statute.

It is only the politicization of the firearm debate that has allowed

this case to progress to this stage. It is only the polarized position of those who refuse to recognize that arms, whether firearms or other weapons, are the only tangible product expressly protected by the U.S. Constitution and the Constitution of most states.

Because this preemption statute relates to the polarizing issue of firearm policy, Petitioners have done what would be illegal in the context of defending against a 790.33 suit. They have used public funds to bring this action, in an attempt to avoid the consequences of their conduct. See, Sec. 790.33(3)(d), Fla. Stat.

I. Constitutional principles cannot and should not protect government officials from the consequences of illegal actions in violation of that same constitution.

Any authority or protection the Petitioners claim under the Florida Constitution is belied by the express language of that same Constitution, that Petitioners have no authority to regulate firearms, even if Sec. 790.33 did not exist.

Neither party's brief addresses nor cites to the preemptive effect of the Florida Constitution, which states:

> The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be

> infringed, **except that the manner of bearing arms may be regulated by law.**

Art. I, Sec. 8, Fla. Const. (emphasis added).

The First DCA found that this language meant that "the Legislature's primacy in firearms regulation derives directly from the Florida Constitution." *Florida Carry, Inc. v. Univ. of N. Fla.*, 133 So.3d 966, 972 (Fla. 1st DCA 2013). According to that court:

> the phrase "by law" indicates that the regulation of the state right to keep and bear arms is assigned to the legislature and must be enacted by statute. *Cf.* *Grapeland Heights Civic Ass'n v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972) (considering the enactment clause language of article III, section 6, of the Florida Constitution and interpreting the constitutional term "law" in the phrase "authorized by law" to mean an enactment by the legislature not by a city commission or any other political body)

Id.

As the Legislature made clear in its 2011 amendment to Sec. 790.33, the purpose of the statute and the penalties is not just to enforce the will of the Legislature, but to:

> provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless

> specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.
>
> (b) It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority.

Sec. 790.33 (2), Fla. Stat.

Petitioners' challenge to the penalty provisions claims that because they were elected by a local constituency, they have the authority to violate citizens' constitutional rights to keep and to bear arms, as well as statutory rights related to bearing arms, free from any consequence for their actions.

According to Petitioners, their election has granted them authority to not just ignore the constitutional rights of their citizens, but of any traveler who passes through their jurisdiction. They further argue that the plenary police powers of the Legislature to pass laws does not extend to imposing penalties on abusive and encroaching local government and officials, who violate citizen's constitutional rights. Such a position is in direct contradiction with Arts. I and III of the Florida Constitution.

Over a century ago this Court recognized that the Legislature has plenary powers in matters of stated policy and law making, subject only to the Constitution of the state of Florida and of the United States. See, *Fla. House of Representatives v. Florigrown, LLC*, 278 So. 3d 935, 939 (Fla. 1st DCA 2019) (citing *Charlotte Harbor & N. Ry. Co. v. Welles*, 82 So. 770 (Fla. 1919) and Art. III, Sec. 1, Fla. Const.).

The people of this state (Art. I, Sec. 1, Fla. Const.) have spoken through their Constitution (Art. I, Sec. 8, Fla. Const.), and their Legislature (Art. III, Sec. 1, Fla. Const.), that uniform firearm laws are a good public policy. See, Sec. 790.33 (1) and (2), Fla. Stat. Those same authorities allow for the Legislative declaration of policy that:

> as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

Sec. 790.25(1), Fla. Stat.

Petitioners ask this Court to allow Petitioners to ignore these

declarations of policy and the authority reserved to the people and the Legislature by the Florida Constitution. Petitioners' sole basis for their request is that they were elected by a local constituency, and their constituency disagrees with the Legislature's policy decisions regarding the utility of firearms or how firearms should be regulated.

Nothing in the four constitutional provisions citied by Petitioners (Pet. Br. at vii) supports Petitioners' claim that by virtue of being elected, local officials are privileged to violate state law and do so without consequence or penalty. The is especially true when that same constitution has so clearly delegated the exclusive right to regulate firearms to the Legislature alone.

II. The only conduct penalized by Sec. 790.33, is conduct taken in violation of the constitutional right to bear arms as that right is interpreted by the Legislature in statutes, with the agreement of the Executive.

Sec. 790.33, only penalizes local officials when they act ultra vires. By definition, conduct outside scope of authority, cannot be within their discretionary functions. Therefore, no discretionary judgment of the local officials is implicated by the statute or its penalty provisions.

While elections have consequences, winning an election to a local governing body does not elevate an individual above their obligation to comply with the laws of the state. Nor does it free them from the consequences of their actions.

III. Ongoing violations of Sec. 790.33[2]

Despite the penalty provisions which they attack, some of the Petitioners continue to ignore the Legislature's primacy, that they contend they take no issue with. (Pet. Br. at 1). Contrary to this claim of fear, (Pet. Br. at 5 and R. 575-76), Petitioners are not repealing preempted ordinances or stopping enforcement of their ordinances. Rather they wait until they are sued, and then attempt to

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[2] While not expressly a violation of Sec. 790.33, several of the Petitioners are also violating Art. I, Sec., 8's exclusive delegation of regulating the bearing of arms to the Legislature in other ways. While the Legislature made a policy decision not to include non-firearm weapons, such as knives or stun guns in Sec. 790.33, several Petitioners changed signage in their community to prohibit the carrying of weapons. This had two benefits to Petitioners. First, because 790.33 only covers firearm regulations, challenges those policies have been non-existent. Second, Petitioners were able to confuse concealed carry licensees regarding their ability to carry a concealed firearm or other weapon on the premises.

repeal the ordinance and claim that the case is moot, in an attempt to avoid liability and attorneys' fees for necessitating a lawsuit. This repeated conduct resulted in a new amendment to Sec. 790.33, in 2021 providing that the repeal of the ordinance after a complaint was filed resulted in plaintiff being a prevailing party for purposes of the statute. See, Sec. 790.33(3)(f)(2), Fla. Stat.

Far from fear, this amendment indicates an awareness by the Legislature that despite their claims of fear of liability and impairment of their job performance, local officials are not nearly scared enough to actually comply with the law of the state.

IV. Petitioners' arguments regarding the exceptions in Sec. 790.33(4), are unavailing and do not grant Petitioners any authority to pass ordinances that regulate firearms use or possession by residents or visitors.

In an attempt to justify their argument, Petitioners point to three of the five exceptions within the statute, which they claim renders the statute vague, poorly worded and subject to genuine disagreements. (Per. Br. at 3, 39, 46 FN 18, and 48), citing to *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002). There is nothing vague about the limitations on Petitioners' authority. They

are not permitted to regulate firearms or ammunition. Any vagueness in the statute is a matter of the Petitioners wanting to exhaust the thesaurus.[3]

The exceptions do not grant regulatory authority over firearm use or possession to the Petitioners in the areas their own Motion for Summary Judgment claimed they wish to regulate. For example, Petitioners claimed they would regulate in the areas of purchase procedures by requiring additional documentation and reporting requirements and prohibiting the sale of magazines they did not like, as well as restricting locations where concealed carry licensees could carry. None of these are even close to the exceptions argued by Petitioners.

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[3] Accepting the City's argument would require the legislature to list every possible label for a legislative act before we could conclude that its intention was to withdraw from a municipality the authority to regulate a particular subject. And it would further require that the legislature amend the statute every time a municipality conceived of a new label for its legislative acts. But this is law-making as comedy, with a hapless legislature chasing about a wily municipality as it first enacts an ordinance on a forbidden subject, and then a policy, then a rule, then a standard, and on and on until one of them wearies of the pursuit or the other exhausts the thesaurus. *Wis. Carry, Inc. v. City of Madison*, 2017 WI 19, 46 (Wis. 2017).

These exceptions are easily explained and understood.[4]

A. The Zoning Exception

The arguments of Petitioners regarding the zoning exception, particularly their interpretation set forth in their brief, demonstrates the need for the penalty provisions more clearly than any argument that could be offered by an amicus or an opposing party. (Pet. Br. at 3)

The statute does allow:

> (a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;

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[4] The last two exceptions are constitutionally based and inapplicable to Petitioners' arguments. One provides for the independence of a co-equal branch, the judiciary, as well as administrative law judge to hear matters within their jurisdiction. The second recognizes the constitutional powers of the Florida Fish and Wildlife Conservation Commission (Art. IV, Sec. 9, Fla. Const.) to regulate the use of firearms in taking wildlife and managing its shooting ranges. Notably, this provision also prohibits, as a matter of constitutional law and rights, the authority of local governments, and to some extent the legislature, in regulating hunting and fishing.

Sec. 790.33(4)(a), Fla. Stat. According to Petitioners, the exception gives them "considerable authority and discretion to enact regulations that are related to firearms and ammunition, but that are not preempted". (Pet. Br. at 46 FN 18). At least two Petitioners have interpreted this as allowing them to prohibit any firearms business except by the approval of the city manager upon application for a special waiver.[5] Those petitioner specifically targeted gun stores in a variety of ways throughout their zoning ordinances. The net effect of their regulations was that gun stores were a disfavored business that should be relegated to the same (bad) part of town as other disfavored businesses, if allowed to exist at all.

The exception does not provide Petitioners with the "considerable authority" they claim. Rather, it allows Petitioners to pass zoning ordinances that encompass firearm business, such as gun stores, along with other retail businesses. For example, a zoning

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[5] One petitioner settled immediately after suit was filed. The case against the other petitioner is pending before the trial court. In the case of the first petitioner, the city specifically stated to the business owner that the city's police powers superseded Sec. 790.33, and that similar zoning ordinances existed in all surrounding cities.

ordinance that only retail stores of less than 2,500 square feet may operate in a particular zoning district, encompasses a too large firearm retailer, along with any other retailer that is too large. It does not regulate firearm businesses.

On the other hand, a zoning ordinance that specifically encompasses firearm business as a category, along with other traditionally disfavored businesses such as tattoo parlors, adult entertainment businesses, and pawn shops, and relegate firearms business to the least desirable part of town, do violate Sec. 790.33. Similarly, ordinances that subject the firearm business to special waiver requirements are an attempt at "restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition" and are not within the statutory exception of the subsection.

B. The Employee Exceptions

The latter two exceptions at subsection (4)(b) and (c), do not implicate the rights of citizens in their possession and use of firearms in the conduct of their daily life. They are limited to the employment status of the individuals, as public employees in the course of their

official duties (subsection (c)), and firearms issued to or used by "peace officers in the course of their official duties" (subsection(b)). These sections were included consistent with the First DCA's decision in *Pelt v. Department of Transp.*, 664 So. 2d 320 (Fla. 1st DCA 1995), and the longstanding principle that a government is not necessarily acting in a governmental capacity when it regulates the conduct of employees in their official duties. In those cases, government actions are generally analyzed similar to any other employer/employee relationship.

Neither of these exceptions in any way indicates that Petitioners may pass an ordinance generally applicable to the public at large. The fact that Petitioners would like to have regulatory power is not enough. The fact that they disagree with the Legislature's policy choices is not enough. The fact that they disagree with the Legislature's interpretation of what the rights to keep and to bear arms means is not enough.

Sec. 790.33 is simple, it prohibits firearm and ammunition regulations by Petitioners, and punishes violations. If Petitioners' predecessors had the ability to control their baser instincts and desire

for power, the 2011 amendments might not have happened. However, a 63% violation rate is clear indication that without penalties, local officials would not comply with the law.

V. Inquiry into validity

Contrary to Petitioner's claims that the statute requires an inquiry into the motives of local officials (Pet. Br. at 15, 25-27, and 32-35), or require local officials to explain why voted a particular way (Pet. Br. at 18, 25-26), motives and rationale of local officials are irrelevant.[6] Why a local official voted in favor of a preempted ordinance, or their motive for so doing, is in not implicated by Sec. 790.33.

The statute only requires a court to make two determinations. The first is whether the ordinance is preempted. If so, the local government, **not an individual official**, is liable for damages and

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[6] Subsection (4)(a), might require a court to determine if a particular zoning provision has as its purpose or motive, impairment of firearms related businesses, but this can be discerned from the overall regulatory scheme of the zoning ordinances themselves. Such analysis does not require an inquiry into the motive or purpose of the voting official.

attorneys' fees. The second inquiry, which is applicable to individual officials and only after a finding that the ordinance or policy is preempted, asks whether the relevant official acted knowingly and willfully in enacting or allowing enforcement of the preempted ordinance or policy. Only then does any fine get assessed. Importantly, advice of counsel is available as a defense to the local officials.[7]

Preemption is not about inquiring into motives or rationales. It is about stating that certain areas should be governed by laws that are uniform throughout the state. While 790.33 is unique in that it has penalty provisions, it is also unique in that it protects a fundamental enumerated right and relates to an area of regulation-- firearms-- a hot button topic involving significant policy disputes.

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[7] An example is the case of *City of Daytona Beach v. A.B.*, 304 So. 3d 395 (Fla. 5th DCA 2020). The trial court found that the Chief of Police was not liable as an agency head, based on the advice of counsel and that other departments and Sheriffs had a similar policy. Consistent with the plain reading of the statute, the trial court found that the advice of counsel exclusion applied only to the entity, not the individual official or agency head.

VI. The need and basis for private enforcement and penalties, including attorneys' fees.

Despite the extensive violations of Sec. 790.33 by local governments, only one action to enforce its provisions was brought between 1987 and the inclusion of penalties in 2011. In that case the plaintiff spent over $250,000 in attorneys' fees to obtain a declaratory judgment that the defendant could not enforce a local ordinance regulating the storage of firearms. *Nra of Am. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).[8] Some of those fees were incurred when the trial court, at the city's request required the NRA to provide a list of all members residing in the city, necessitating an appeal to the Third DCA. The case the Third DCA cited to in reversing the trial court's order was significant. See, *NRA of Am., Inc. v. City of S. Miami*, 774 So. 2d 815 (Fla. 3d DCA 2000) citing *National Ass'n for Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958).

Just as local officials once claimed their position allowed them to shut down the NAACP, the officials here contend their positions

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[8] South Miami is one of the municipal petitioners in this case.

allow them to shut down the right to bear arms in their cities.

Petitioners cite the South Miami case as an example of how preemption claims should be handled, without the penalty and fee provisions. Petitioners argue that the city there would have been at great risk of an award of damages and attorney's fees even though the city was acting in accordance with an attorney general opinion.

Petitioners cite the South Miami case as an example of what could have happened. (Pet. Br. at 39, FN 16). Petitioners ignore more recent examples of what has happened in preemption enforcement actions, including by this Amicus. These actions resulted in attorneys' fees awards that are not merely speculative, but actual. However, citing to those cases would expose the reality that the Petitioners' own actions are the reason for damages and fee awards under Sec. 790.33.

Just one example is *City of Daytona Beach v. A.B.*, 304 So. 3d 395 (Fla. 5th DCA 2020). An attorney general opinion that local law enforcement could not retain an individual's firearms after the individual was released from an involuntary mental health examination was ignored by the city. Instead, the city imposed

numerous, onerous requirements on the firearm owner as a precondition to receiving the return of his property.

Despite the attorney general opinion, the city refused to concede that its policy and that of its police chief was preempted and illegal. During the attorneys' fee hearing the city then argued that because of preemption the outcome of the case was a foregone conclusion, and that a multiplier was inappropriate because the outcome of the case was never in doubt.

On appeal, the city contended that because it was only challenging the account and method of the fee calculation no attorney's fees could be awarded in the appeal. This successful argument by the city resulted in effectively eliminating the multiplier by the time the case was concluded.

To date, amicus is unaware of a single official being held personally responsible and being fined by any Court pursuant to the statute. Amicus suggests that the demonstrable bad conduct of the local governments in those cases to litigate that which they plainly knew was wrong.

It is the local officials themselves who choose whether to

comply with the law or alternatively adopt illegal ordinances, regulations, and policies, then engage in extensive litigation efforts. All that is necessary for Petitioners to avoid any of the penalty provisions, is to follow the laws of the state.

CONCLUSION

Florida Carry asks this Court to recognize that only through the enforcement and penalty provisions of Sec. 790.33 can that statute have any effect in protecting the fundamental individual rights to keep and to bear arms that have been guaranteed in this country and in this state since their founding. Any limitations on the penalty and enforcement provisions would weaken these rights.

The passage of Sec. 790.33 and each amendment to it was a careful policy decision by the Legislature. Each amendment to the statute was crafted in direct reaction to local officials' failure to follow the law or their tactics to avoid liability for their actions.

Furthermore, the argument that local officials can, with impunity, ignore the laws of the state and the rights of the people, should never be adopted by the courts. The courts are the last resort against overreach by any level of government.

Amicus asks this Court to uphold all provisions of Sec. 790.33, and specifically the penalty provisions protect law abiding Floridians.

CERTIFICATE OF SERVICE

I HERE BY CERTIFY that a copy of the foregoing was served via eService this 28th day of February to the attached service list:

CERTIFICATE OF COMPLIANCE

I hereby certifying that this brief complies with the font requirements of Rule 9.210 Fla. R. App. P., is in Arial 14 point type and contains 4,741 words.

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