

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA

FLORIDA CARRY, INC., a  
Florida non-profit corporation,

Plaintiffs,

v.

UNIVERSITY OF FLORIDA, a state  
University; and BERNIE MACHEN,  
An individual,

Defendants.

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CASE NUMBER: 01-2014-CA-0104

DIVISION: J

**ORDER PARTIALLY GRANTING AND PARTIALLY DENYING MOTION TO DISMISS;  
SUMMARY JUDGMENT OF DISMISSAL OF MOTOR VEHICLE CLAIMS; AND  
SUMMARY JUDGMENT FOR DEFENDANTS ON HOUSING CLAIMS**

THIS CASE came before the Court for hearing on Defendant Bernie Machen's motion to dismiss and Defendants Machen and the University of Florida's motion for summary judgment.

Plaintiff, Florida Carry, Inc., has filed suit against the University of Florida and its President, Bernie Machen. The complaint seeks declaratory, injunctive and other relief based on assertions that the Defendants are unlawfully attempting to prohibit Plaintiff's members from exercising their gun rights at the University of Florida. Plaintiff's contentions fall into two main categories: 1) that Defendants seek to unlawfully restrict possession of firearms in motor vehicles on university property (the motor vehicle claim); and, 2) that Defendants seek to unlawfully prohibit possession of firearms in housing located on university property (the housing claim). As to the motor vehicle claim, Defendants seek summary judgment due to the absence of an actual controversy. As to both the motor vehicle and housing claims, Defendants claim entitlement to judgment on the merits in their favor as a matter of law. Additionally, Machen seeks dismissal based on immunity from suit pursuant to § 768.28, Florida Statutes.

### Immunity from Suit

Section 768.28(9)(a), Florida Statutes, as part of the legislature's waiver of the State's sovereign immunity in tort actions, grants immunity from suit to state employees in any action for "injury or damage" resulting from acts or omissions within the scope of employment. The present suit does, in fact, seek damages against Machen. See, *First Amended Complaint*, p. 14, sub. (a) of the *ad damnum* clause. There is no dispute that Machen fits within the category of state officers or employees who would possess the immunity set forth in § 768.28(9)(a), and his alleged liability is predicated upon acts within the scope of his employment. Thus, to the extent Plaintiff's suit seeks damages against Machen, he would have immunity from suit. Contrary to Plaintiff's contention, Section 790.33 would not alter Machen's immunity from a damages claim since it only permits limited damages claims against the agency itself, not against the agency head. § 790.33(3)(f).

Section 790.33(3)(c) gives a court the right to impose a civil fine against an individual agency head, and would appear to necessarily authorize a suit against the agency head to do so. But, although Count II of Plaintiff's complaint against Machen states that it is, in part, a case for civil fines against Machen (paragraph 45), it does not actually ask for civil fines in the *ad damnum* (pp. 14-15). The question of whether Machen does or does not have immunity for a claim for civil fines is actually not ripe for determination until such a claim is properly made.

However, Plaintiff also seeks, through declaratory and injunctive relief, to compel Machen to comply with Florida law, and to that extent neither § 768.28 or organic law provide immunity. § 768.28; *Hampton v. State Board of Education*, 105 So. 323 (Fla. 1925); See also, *Bradsheer v. Florida Department of Highway Safety and Motor Vehicles*, 20 So.3d 915 (Fla. 1DCA 2009) (recognizing availability of declaratory and injunctive relief against department and its executive director, though monetary relief unavailable).

### Motor Vehicle Claim

The clear and factually undisputed record in this case establishes that the University of Florida's Regulation 2.001 (Exhibit A to Plaintiff's First Amended Complaint) regarding firearms has been expeditiously footnoted to make clear that it would not be used to disallow securely encased firearms in vehicles on campus. This was done in rapid compliance with the opinion in *Florida Carry, Inc. v. University of North Florida*, 133 So. 3d 966 (Fla. 1<sup>st</sup> DCA 2013)(hereinafter referred to as *Florida Carry/UNF*). The modification of the subject regulation and other steps taken to conform University policy to Florida law were initiated before this suit was filed, and Plaintiff was well aware of them. The record is clear that the Defendants are not attempting to enact or enforce any regulation that would violate Florida law as interpreted by the *Florida Carry/UNF* decision. The only dispute is the extent to which all references to the previous version of Regulation 2.001 have been corrected in various documents or on-line publications. Whether Defendants had acted fast enough to please Plaintiff in this regard as of the time Plaintiff filed suit is not materially relevant to whether Defendants were violating § 790.33, particularly given the Defendants' efforts to conform to law as outlined by UF's general counsel's affidavit in the short time between the *Florida Carry/UNF* decision on December 10, 2013, and the filing of suit on January 10, 2014. Importantly, § 790.33(3)(a) prohibits the enactment and enforcement of regulations which impinge on the legislature's preemption of the field of firearm regulation. Existing local ordinances or agency regulations which tread on this preempted field are declared null and void. § 790.33(1). The relevant issue is whether the University seeks to enact or enforce a regulation concerning firearms in vehicles which impinges upon the legislative domain, and on this material issue there is no genuine dispute that, prior to suit being filed, no such unlawful enactment or enforcement was imminent. Quite the opposite was true. Thus, consistent with Defendants' position, there was no actual case or controversy in need of adjudication as to this point when suit was filed seeking declaratory and injunctive relief.

Defendants are entitled to summary judgment of dismissal for lack of jurisdiction with respect to the motor vehicle claim.

#### Housing Claim

Plaintiff's remaining claim raises the interplay between § 790.115 and § 790.25. Section 790.25(n) makes it lawful to possess a firearm at home regardless of the "open carry" and "licensing" laws in §§ 790.053 and 790.06. From this Plaintiff distills a right to possess a firearm at home consistent with the Constitution of the State of Florida, Article I, Section 8, which prohibits infringement on the "right of the people to keep and bear arms in defense of themselves". It is then argued that a dormitory or residence hall is in essence a home for students, and the University is, therefore, not authorized to prohibit students from having firearms in residence hall rooms on university property without violating their right to bear arms at home. Plaintiff acknowledges that § 790.115 prohibits firearms on university property, but contends that the right to have a firearm at home supersedes this prohibition.

Defendants argue the opposite conclusion, that is, the prohibition against firearms on campus governs even if a residence hall room is considered a home. It is difficult to argue with Plaintiff's characterization of a residence hall room as a type of home, and Defendants do not take issue with this characterization in their motion for summary judgment. However, the Court finds Defendants' arguments persuasive with respect to how the subject statutes should be reconciled. The Section 790.115(2)(a) prohibition against firearms on school property includes university property as recognized by *Florida Carry/UNF*. But, unlike the right to have a firearm in a vehicle, the legislature's recognition of a person's right to possess a firearm in a home does not extend to a residence hall on a university campus. There is no exception in § 790.115(2) for a residence hall like there is for a vehicle. The distinction in treatment between vehicles and residence halls indicates that the legislature did not intend to make an exception for residence halls. In the context of the

issues raised in this case, Defendants' regulation doesn't violate preemption by stating that firearms are not permitted on campus, but simply recognizes what the legislature has enacted. Thus, Defendants are entitled to summary judgment with respect to Plaintiff's claim that Defendants are violating Florida law by prohibiting the possession of firearms in housing located on university property.

Wherefore, it is hereby ORDERED AND ADJUDGED:

1. Any and all claims for damages against Defendant Machen are STRICKEN due to Machen's immunity from suit for such claims. There are presently no claims for relief in the nature of civil fines against Machen. Defendant Machen's motion to dismiss is otherwise denied.
2. Plaintiff's "Motor Vehicle" claims against Defendants are DISMISSED due to the absence of any present "case or controversy" invoking this Court's jurisdiction.
3. Summary judgment is hereby entered in favor of Defendants with respect to Plaintiff's "Housing Claims". Defendants are not violating Florida law by recognizing the legislature's prohibition against firearms in housing located on university property pursuant to § 790.115(2)(a).

DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida, on July 30, 2014.



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TOBY S. MONACO, Circuit Judge

I HEREBY CERTIFY that copies have been furnished by e-mail delivery on July 30, 2014, to the following:

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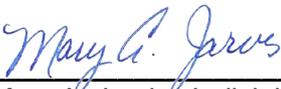
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