

IN THE CIRCUIT COURT, FOR THE  
EIGHTH JUDICIAL CIRCUIT, IN AND  
FOR BREVARD COUNTY, FLORIDA

CASE NO.:  
DIVISION:

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

Plaintiff,

v.

EASTERN FLORIDA STATE COLLEGE,  
a college of the State of Florida; and  
DR. JAMES H. RICHEY, an individual.

Defendants.

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### **COMPLAINT**

COMES NOW Plaintiff, Florida Carry, Inc., by and through its undersigned attorneys and  
sues Defendants Eastern Florida State College and Dr. James H. Richey and says:

#### **GENERAL ALLEGATIONS**

1. This is an action for damages in excess of \$15,000.00 and/or for statutory fines, declaratory judgment, and injunctive relief.
2. Plaintiff Florida Carry, Inc. is non-profit corporation, chartered under the laws of the State of Florida, in the public interest.
3. Plaintiff's membership consists of individuals, who seek to protect and exercise their rights to keep and to bear arms, including but not limited to firearms, and protect the right

of self-defense pursuant to the Constitution and laws of the State of Florida.

4. Plaintiff's members desire to carry a firearm while traveling to and from Eastern Florida State College as lawful method of self defense, and to store the firearm while on campus.

5. Defendant Eastern Florida State College ("EFSC"), is an entity of the State of Florida, operating a public college, located within the state of Florida.

6. Defendant Dr. James H. Richey ("Richey") is the president of EFSC, and as such is the chief administrative officer of EFSC, responsible for the operation and administration of EFSC and is ultimately responsible for all rules and regulations of EFSC, and is a public employee, and signed the EFSC Student Handbook. (Exhibit A).

7. All actions, rules and regulations of EFSC in regards to the issues herein may be imputed to Richey as the agency head with the ultimate authority, to enact and promulgate rules and regulations on behalf of EFSC, as its president and chief administrative officer, and as the party with administrative authority over the employees and agents of EFSC in its day-to-day operations.

8. Plaintiff's members include several individuals who are either students or employees of EFSC.

9. Plaintiff's membership lists are confidential and protected by the right of associational privacy.

10. Many members are fearful of reprisal if identified.

11. All conditions precedent to the filing of this suit have occurred or have been waived.

12. Sec. 768.28, Fla. Stat., is not applicable to this action as it only waives sovereign

immunity for the purposes of a tort action.

13. The legislature has specifically authorized this action by the passage of amendments to Sec. 790.33, Fla. Stat., without requiring notice pursuant to Sec. 768.28, Fla. Stat or any other statute.

14. There are no administrative remedies which must be resorted to prior to bringing suit pursuant to Sec. 790.33, Fla. Stat.

15. Plaintiff has retained the undersigned law firm to represent them in this matter and have paid or become obligated to pay a fee for the services of the firm.

**COUNT I- VIOLATION OF SEC. 790.33, FLA. STAT. BY EFSC**

Plaintiff re-alleges paragraphs 1-15 as if set forth in full and further says:

16. This is an action for damages, statutory fines and injunctive relief.

17. Pursuant to Sec. 790.33, Fla. Stat., the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

18. Additionally, the Legislature has expressly preempted the carrying of both firearms and weapons, in regards to persons with a concealed weapon or firearm license pursuant to Sec. 790.06 Fla. Stat.

19. Article I , Sec. 8 of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

20. EFSC has passed rules or regulations expressly prohibited by Fla. Stat. 790.33 by:

a. Promulgating a Student Code of Conduct which prohibits the possession

of weapons, including firearms on “College property.” (Exhibit B).

- b. Attempting to impose administrative penalties for violation of their preempted regulations.

21. EFSC has further threatened to punish a student who recently used a firearm on campus in self defense, if the firearm was brought onto campus in the student’s private vehicle.

22. Such a threat is a further violation of preemption and an attempt to prevent lawful possession of firearms in vehicles by Plaintiff’s members.

23. Upon information and belief, EFSC has previously punished and/or referred individuals for criminal prosecution for lawful possession or storage of a firearm in a private conveyance on campus.

24. The rules and regulations provided to students at the time of enrollment prohibit them from exercising their right to possess firearms in their vehicle.

25. Sec. 790.06(12)(b), Fla. Stat., specifically allows licensed persons to carry or store firearms in a vehicle for lawful purposes.

26. Sec. 790.25, Fla. Stat., specifically allows a person without a concealed weapon or firearm license to carry a firearm other than a handgun anywhere in a private vehicle or a “securely encased” concealed firearm in their vehicle.

27. Furthermore, Sec. 790.25, Fla. Stat., specifically provides that a person may possess a weapon in their home or place of business, and that the provisions of Sec. 790.25 are to be liberally construed in favor of the right to bear arms, and “shall supersede any law, ordinance, or regulation in conflict herewith.”

28. Despite the enactment of amendments to Sec. 790.33, Fla. Stat., on June 2, 2011,

to create an enforcement mechanism to the longstanding preemption of firearms law, EFSC continues to promulgate its preempted regulations and has made no effort to correct its misstatements of the law to students by university wide communication.

29. EFSC's failure to correct these inaccurate statements, repeal the regulations, or notify students of the inaccurate information being promulgated, is an unlawful attempt to continue to enact, enforce, and promulgate rules and regulations in violation of Sec. 790.33, Fla. Stat.

30. This blatant attempt to continue to regulate the use and possession of firearms in light of recent court decisions is a willful and knowing violation of the statute by EFSC.

31. If plaintiff prevails in this matter, plaintiff is entitled to attorney's fees and costs pursuant to Sec. 790.33, Fla. Stat.

WHEREFORE, Plaintiff seeks

- a. An award of actual and statutory damages;
- b. An injunction against the enforcement of any firearms rules or regulations, by EFSC other than those contained in chapter 790, Fla. Stat., and against any disciplinary action against any student for possession of a firearm in a private conveyance, use of a firearm in lawful self defense, or possession of an operable firearm or weapon in EFSC owned housing;
- c. An order to remove any university rules and regulations regarding firearms from any university publication except as specifically provided for employees by Chapter 790, Fla. Stat.;
- d. Ordering the repeal of all preempted and unauthorized Florida Administrative Code regulations regarding the possession of firearms on public university campuses;

e. An award of attorneys fees and costs and all other relief deemed just and equitable.

**COUNT II- VIOLATION OF SEC. 790.33, FLA. STAT. BY RICHEY**

Plaintiff re-alleges paragraphs 1-15 as if set forth in full and further says:

32. This is an action for damages, statutory fines and injunctive relief.

33. Pursuant to Sec. 790.33, Fla. Stat., the Legislature has expressly preempted the entire field of firearms and ammunition regulation, including but not limited to, the definition of firearms, the method and place of carry, the manner of use, and who may possess firearms where firearms may be possessed.

34. Article I , Sec. 8, of the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms.

35. Richey, as the chief administrative officer of EFSC has passed, authorized, and/or allowed the passage of rules or regulations expressly prohibited by Fla. Stat. 790.33 by:

- a. Promulgating a Student Code of Conduct which prohibits the possession of weapons, including firearms on “College property.” (Exhibit B).
- b. Attempting to impose administrative penalties for violation of their preempted regulations.

36. Upon information and belief, Richey, or his agents have previously punished and/or referred individuals for criminal prosecution for lawful possession or storage of a firearm in a private conveyance on campus.

37. The rules and regulations provided to students at the time of enrollment prohibit them from exercising their right to possess firearms in their vehicle.

38. Sec. 790.06(12)(b), Fla. Stat., specifically allows licensed persons to carry or store firearms in a vehicle for lawful purposes.

39. Sec. 790.25, Fla. Stat., specifically allows a person without a concealed weapon or firearm license to carry a firearm other than a handgun anywhere in a private vehicle or a “securely encased” concealed firearm in their vehicle.

40. Despite the enactment of amendments to Sec. 790.33, Fla. Stat., on June 2, 2011, to create an enforcement mechanism to the longstanding preemption of firearms law, EFSC continues to promulgate its preempted regulations and has made no effort to correct its misstatements of the law to students by university wide communication.

41. EFSC’s failure to correct these inaccurate statements, repeal the regulations, or notify students of the inaccurate information being promulgated, is an unlawful attempt to continue to enact, enforce, and promulgate rules and regulations in violation of Sec. 790.33, Fla. Stat.

42. This blatant attempt to continue to regulate the use and possession of firearms in light of recent court decisions is a willful and knowing violation of the statute by EFSC.

43. Despite the enactment of amendments to Sec. 790.33, Fla. Stat., on June 2, 2011, to create an enforcement mechanism to the longstanding preemption of firearms law, Richey continues authorize and allow the promulgation of EFSC’s illegal rules.

44. Richey’s failure to correct these inaccurate statements, repeal the regulations, or notify students of the inaccurate information being promulgated, is an unlawful attempt to continue to enact and enforce rules and regulations in violation of Sec. 790.33, Fla. Stat.

45. There is no basis for any rule or regulation regarding firearms by Richey no matter

how well intentioned or reasonable where the legislature has expressly preempted such rules and regulations.

46. If plaintiff prevails in this matter, plaintiff is entitled to the statutory fine, attorney's fees and costs pursuant to Sec. 790.33, Fla. Stat.

WHEREFORE, Plaintiff seeks:

- a. An award of actual and statutory damages and/or fine;
- b. An injunction against the enforcement of any firearms rules or regulations, by Richey or his subordinates other than those contained in chapter 790, Fla. Stat., and against any disciplinary action against any student for possession of a firearm in a private conveyance, use of a firearm in lawful self defense, or possession of an operable firearm or weapon in EFSC owned housing;
- c. An order to remove any university rules and regulations regarding firearms from any university publication except as specifically provided for employees by Chapter 790, Fla. Stat.;
- d. Ordering the repeal of all preempted and unauthorized regulations and policies regarding the possession of firearms on public university campuses;
- e. An award of attorneys fees and costs and all other relief deemed just and equitable.

**COUNT III- DECLARATORY JUDGMENT PURSUANT TO SEC. 790.33, FLA. STAT.**

Plaintiff re-alleges the allegations in paragraphs 1 through 46 as if set forth in full, and further says:

47. This is an action for declaratory relief pursuant to Fla. Stat. 790.33.

48. Plaintiff seeks a ruling of the Court on behalf of its membership, that EFSC's rules and regulations, authorized and/or allowed by Richey, regarding firearms and weapons are expressly and impliedly preempted.

49. Plaintiffs will suffer material harm without a declaratory judgment as they will be denied the exercise of their right to bear arms as specifically authorized by Florida law.

50. Sec. 790.33, Fla. Stat. Specifically authorizes Plaintiffs to seek a declaratory judgment in this matter.

51. EFSC and Richey's continued promulgation of rules prohibiting all firearms and weapons, which EFSC and Richey have failed to repeal, along with their failure to issue any communication to students which would clarify their intent to not enforce and to repeal or discontinue promulgating these rules and regulations leaves plaintiff with no clear remedy other than a declaratory judgment that EFSC and Richey are in violation of the preemption statute, and an order requiring EFSC and Richey to take corrective action to remedy their illegal and misleading actions.

WHEREFORE, Plaintiff requests an order finding:

- a. All EFSC rules and administrative regulations regarding firearms are null and void.
- b. EFSC students and lawful visitors have the right to carry and store lawfully possessed firearms in their vehicle while present on the EFSC campus without threat of criminal prosecution or administrative punishment.
- c. An award of attorneys fees and costs and all other relief deemed just and

equitable.

### **COUNT V- INJUNCTION AND WRIT OF MANDAMUS**

Plaintiff re-alleges the allegations in paragraphs 1 through 51 as if set forth in full and further says:

52. The Legislature has declared all regulation of firearms to be preempted by the Legislature, and has determined that students should be allowed to possess and/or store firearms in private automobiles on university campuses, and that there is no need or authorization for additional regulation of firearms by EFSC or Richey.

53. EFSC and Richey continued regulation of firearms in the face of express preemption is continually harming the members of Plaintiff Florida Carry, Inc.

54. The risk of assault or other physical force against the members of Florida Carry and the lack of any duty by EFSC or Richey to protect them is a harm which cannot be compensated solely by an award of money damages.

55. EFSC and Richey have no reasonable basis for their enactment of rules regarding firearms and are unlikely to prevail on the merits.

56. The continued promulgation of mis-information regarding EFSC's regulation of firearms by EFSC and Richey in violation of state law leaves its students and visitors without clear guidance as to their conduct and as to whether their rights under Florida law end when crossing the EFSC property line.

57. The denial of the fundamental right to possess arms in one's home is a serious violation of the rights of the people of Florida who reside in housing owned by EFSC.

WHEREFORE, Plaintiff seeks an injunction against EFSC and Richey prohibiting any enforcement of any EFSC rules or regulations regarding the possession of firearms and weapons on campus, an injunction allowing persons residing in EFSC owned housing to possess operable firearms for self-defense in their homes, and an injunction and/or a writ of mandamus, ordering EFSC to repeal all enjoined rules and regulations, and ordering EFSC to take steps to replace all student handbooks and student codes of conduct, to eliminate any rule, regulation, or provision regarding the possession and/or use of firearms in all publications, and all other relief deemed just and equitable.

**Demand for Jury Trial**

58. Plaintiff demands trial by jury on all issues.

Dated this 3<sup>rd</sup> day of February 2014

/s/ Eric J. Friday

Eric J. Friday

**FLETCHER & PHILLIPS**

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# **EXHIBIT A**

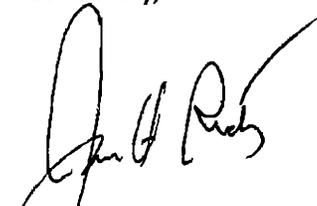
# Welcome



Welcome to Eastern Florida State College. Our student-centered approach provides you with a wealth of career options and ensures that you'll receive personalized instruction from our faculty and staff to help you succeed.

Good luck in your pursuit of higher education. You have made a wise choice in selecting Eastern Florida.

Sincerely,



Dr. Jim Richey  
President

# **EXHIBIT B**

## **STUDENT CODE OF CONDUCT – CONTINUED**

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**15. Disruption** – In accordance with F.S. 1006.61 (1): *“Any person who accepts the privilege extended by the laws of this state of attendance at any public postsecondary educational institution shall, by attending such institution, be deemed to have given his or her consent to the policies of that institution, the State Board of Education, and the laws of this state. Such policies shall include prohibition against disruptive activities at public postsecondary educational institutions.”*

Students who intentionally act to impair, interfere with or obstruct the orderly conduct, process and functions of the College, either on or off campus, shall be subject to appropriate disciplinary action by College authorities.

Disruptive conduct shall include, but not be limited to, the following:

- a. Violence against or endangerment of any member or guest of the College community.
- b. Deliberate interference with academic freedom and freedom of speech (including not only disruption of a class but also interference with the freedom of any speaker invited by any section of the college community to express his/her views).
- c. Theft or willful destruction of College property.
- d. Forcible interference with the freedom of movement of any member or guest of the College.
- e. Obstruction of the normal process and activities essential to the college community.  
Orderly demonstrations of points of view by signs, etc., which are neither vulgar nor profane are not considered disorders.

**16. Distribution or Sale of Literature or Goods** – Distribution or sale of literature or goods on the campuses must be approved by the Associate Provost or Provost.

**17. Dress and Appearance** – Students are expected to maintain standards of personal appearance and dress which are conducive and appropriate to the maintenance of health, welfare and safety for themselves and for their associates in the community. Dress worn by students must be of sufficient quality and quantity to properly cover and protect the body, including shirt and shoes.

**18. Duplication of Keys** – Duplication of College keys is prohibited.

**19. Failure to Pay Financial Obligations** – The College may initiate disciplinary proceedings against a student who has allegedly refused to pay or failed to pay a debt he/she owes to the College. If a student fails to pay the College an amount due, disciplinary action may be initiated. College transcripts will not be issued to any student who has not satisfied all financial obligations to the College.

**20. Falsification of Records** – Falsification of College records, including, but not limited to, admission, registration, disciplinary and health records, by forgery or other means of deception, is prohibited.

**21. Firearms, Weapons, Fireworks, Explosives** – Students may not possess weapons while on College property. (Law enforcement officers who are identified as law enforcement officers are excluded.) Weapons are defined as firearms, knives, explosives, flammable materials or any other items that may cause bodily injury or damage to property.

**22. Gambling** – Gambling is prohibited on the campuses of Eastern Florida State College.