IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FLORIDA CARRY, INC.,

Appellant,

v.

UNIVERSITY OF FLORIDA,
BERNIE MACHEN,

Appellees.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D14-4614

Opinion filed October 30, 2015.

An appeal from the Circuit Court for Alachua County.
Toby S. Monaco, Judge.

Eric J. Friday of Fletcher & Phillips, Jacksonville; Lesley McKinney of McKinney, Wilkes & Mee, PLLC, Jacksonville, for Appellant.

Barry Richard of Greenberg, Traurig, P.A., Tallahassee, for Appellees.

LEWIS, J.

Appellant, Florida Carry, Inc., appeals the trial court's "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." Appellant raises three issues on appeal: (1) the trial court erred

in granting summary judgment in favor of Appellees, the University of Florida ("UF") and Bernie Machen, UF's President at the time Appellant's lawsuit was filed, on the basis that Appellees are not violating Florida law by prohibiting the possession of firearms in housing located on university property; (2) the trial court erred in granting summary judgment in Appellees' favor on the basis that there was no actual case or controversy in need of adjudication with respect to Appellant's claim that UF's policies as to the possession of firearms in vehicles located on university property violated our opinion in Florida Carry, Inc. v. University of North Florida, 133 So. 3d 966 (Fla. 1st DCA 2013) (en banc) ("UNF decision")[1]; and (3) the trial court erred in granting in part Appellee Machen's motion to dismiss on the basis that Appellee Machen is immune from liability for damages pursuant to sections 768.28(9)(a) and 790.33, Florida Statutes (2013). As for the second issue, we agree with the trial court's determination that no case or controversy existed with respect to Appellant's motor vehicle claim as there was no evidence that UF attempted to enforce or enact any policy or regulation contrary to our interpretation of law in the UNF decision, but instead added language to its regulation concerning firearms on campus, stating that UF would comply with Florida law governing firearms in vehicles. We, therefore, affirm as to that issue without further comment.

[1] In the en banc decision, the majority held that UNF's policies and regulations, to the extent they prohibited possession of securely encased firearms in motor vehicles, were illegal and unenforceable. See 133 So. 3d at 977.

For the following reasons, we also reject Appellant's first and third arguments and affirm as to those issues as well.

Factual History

On January 10, 2014, Appellant, a nonprofit corporation whose members "seek to protect and exercise their right to keep and bear arms," filed a Complaint against Appellees, challenging UF's prohibition of firearms in university housing and certain policies which, according to Appellant, prohibited firearms in vehicles parked on UF's property. On February 21, 2014, Appellant filed a First Amended Complaint against Appellees, alleging five counts. In Count I, Appellant alleged that UF violated section 790.33, Florida Statutes, in which the Legislature declared its occupation of the "whole field of regulation of firearms and ammunition" in Florida. Appellant further alleged that the Florida Constitution reserves to the Legislature the exclusive authority to regulate the manner of bearing arms, that UF had passed rules or regulations expressly prohibited by section 790.33, that section 790.25(3)(n), Florida Statutes (2013), provides that a person may possess a firearm in his or her home or place of business, and that section 790.115, Florida Statutes (2013), which prohibits firearms on school property with certain exceptions, is in conflict with section 790.25(3)(n). Appellant sought an award of damages, an injunction against the enforcement of any firearms rules or regulations by UF other than those contained in chapter 790, an order to remove any university rule or

regulation regarding firearms from any university publication except as specifically provided for employees by chapter 790, an order repealing all preempted and unauthorized Florida Administrative Code regulations regarding the possession of firearms on campus, and attorney's fees and costs.

In Count II, Appellant asserted a violation of section 790.33 by Appellee Machen, alleging that Machen, as the chief administrative officer of UF, passed, authorized, and/or allowed the passage of rules or regulations expressly prohibited by section 790.33. Appellant sought essentially the same relief as it sought in Count I.

In Count III, Appellant sought a declaratory judgment, alleging that UF's rules, regulations, and/or policies that prohibit the possession of arms in university housing "negate[d] the very purpose of the Constitutional right guaranteed by Florida's Constitution." Appellant further alleged that nothing in the Florida Constitution or the laws enacted by the Legislature regarding the manner of bearing arms allows a state agency to prohibit the possession of arms in a person's home. Appellant requested that the trial court find that UF's rules, policies, and regulations violated the constitutional rights of persons living in UF-owned housing, declare that UF's rules, policies, and regulations were unconstitutional, and require the repeal of all rules, policies, and regulations prohibiting arms or rendering them useless for purposes of self-defense.

In Count IV, Appellant sought a declaratory judgment, requesting a ruling that UF's rules and regulations, authorized and/or allowed by Appellee Machen, regarding firearms and weapons were expressly and impliedly preempted. Appellant further requested in part an order finding that UF's rules and regulations regarding firearms were null and void and that persons residing in UF-owned housing had the right to possess, carry, and store firearms and weapons without the threat of criminal prosecution or administrative punishment.

In Count V, Appellant sought an injunction and writ of mandamus. It alleged that the "Constitution and the laws of the state of Florida, protect the rights of the people to keep and bear operable arms within their homes, regardless of ownership by a public entity." Appellant again sought the repeal of "enjoined rules and regulations."

Appellees subsequently moved for summary judgment. As to Appellant's housing claim, Appellees relied upon section 790.115, Florida Statutes, and the Legislature's prohibition of firearms on school grounds. Appellee Machen also filed a motion to dismiss, arguing that he was immune from suit pursuant to section 768.28, Florida Statutes. During the hearing on the motions, Appellees' counsel argued that although Appellant cited District of Columbia v. Heller, 554 U.S. 570 (2008), a United States Supreme Court case addressing a firearm prohibition in homes, in its memorandum filed in opposition to the summary judgment motion, it

had not alleged a Second Amendment violation under the United States Constitution. While noting that Appellees were not disputing "whether or not campus housing includes a home within the meaning" of section 790.25(3)(n), Appellees' counsel argued that section 790.115 governed the issue at hand and clearly prohibited firearms anywhere on school property with the limited exceptions set forth in the statute.

In the order at issue on appeal, the trial court first addressed Appellee Machen's motion to dismiss and concluded that Machen was immune from Appellant's damages claim under section 768.28(9)(a), Florida Statutes. It further determined that 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." As for whether Machen had immunity from a claim for civil fines under section 790.33, the trial court determined that that issue was not ripe for determination because a proper claim for such damages had not been made. It concluded that neither section 768.28 nor organic law provided Machen with immunity from declaratory and injunctive relief.

As for Appellant's claim that UF's policies and regulations pertaining to firearms in vehicles parked on university property violated our interpretation of the law as set forth in the UNF decision, the trial court found that there existed no actual case or controversy in need of adjudication and granted summary judgment in favor

of Appellees. As for Appellant's claim that UF's prohibition of firearms in university housing violated Florida law, the trial court recognized that the issue raised the interplay between sections 790.25(3)(n) and 790.115, Florida Statutes. The trial court set forth in part:

> It is [] 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.

Appellant moved for reconsideration and rehearing. In its Order Denying

Plaintiff's Motions for Rehearing and Reconsideration with Clarification, the trial court set forth in part that its order on summary judgment:

> is hereby clarified with respect to the "housing claims" to add that the summary judgment in favor of the Defendants resolves Plaintiff's claims based on the Florida Constitution, as well as Florida statutory law, to the extent such are raised in Plaintiff's amended complaint. No distinct claims under the United States Constitution were raised in Plaintiff's amended complaint. Thus, the summary judgment entered in favor of Defendants with respect to Plaintiff's "housing claims" includes Count III.

This appeal followed.

Standard of Review

Summary judgment is proper when there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000). Summary judgment is reviewed de novo. Id. Statutory construction is a question of law also subject to de novo review. W. Fla. Reg'l Med. Ctr., Inc. v. See, 79 So. 3d 1, 8 (Fla. 2012); Randazzo v. Fayer, 120 So. 3d 164, 165 (Fla. 1st DCA 2013). The Florida Supreme Court has instructed that "[w]here possible, it is the duty of the courts to adopt that construction of a statutory provision which harmonizes and reconciles it with other provisions of the same act." Knowles v. Beverly Enters.-Fla., Inc., 898 So. 2d 1, 8 (Fla. 2004) (citing Woodgate Dev. Corp. v. Hamilton Inv. Tr., 351 So. 2d 14, 16 (Fla. 1977)).

Prohibition of Firearms in University Housing

Appellant first argues that the trial court erred in granting summary judgment in Appellees' favor as to its claim that UF's prohibition of firearms in university housing violates the Legislature's preemption of the field of regulation of firearms and ammunition as set forth in section 790.33, Florida Statutes. That statute provides in part:

> (1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.
>
> (2) POLICY AND INTENT.—
>
> (a) It is the intent of this section 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.

§ 790.33(1), (2), Fla. Stat. (2013).

Article I, Section 8(a) of the Florida Constitution provides, "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." As we have explained, "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." Fla. Carry, Inc., 133 So. 3d at 972. This first issue involves the alleged conflict between section 790.25(3)(n) and section 790.115(2)(a), Florida Statutes.

Section 790.25, Florida Statutes (2013), which is entitled, "Lawful ownership, possession, and use of firearms and other weapons," provides in part as follows:

> (1) DECLARATION OF POLICY.—The Legislature finds 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.
>
> (2) **USES NOT AUTHORIZED**.—
>
> (a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02.
>
> (b) The protections of this section do not apply to the following:
> 1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, **or a person using weapons or firearms in violation of ss. 790.07-790.115,** 790.145-790.19, 790.22-790.24;

. . .

(3) **LAWFUL USES**.—The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

. . .

(n) A person possessing arms at his or her home or place of business;

. . .

(4) CONSTRUCTION.—This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

(5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. . . .

(Emphasis added). The statute was enacted in 1965. See Ch. 65-410, § 1, Laws of Fla.

Section 790.115, Florida Statutes (2013), which is entitled "Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions," provides in part as follows:

> **(2)(a) A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop; however, a person may carry a firearm:**
> 1. In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
> 2. In a case to a career center having a firearms training range; or
> 3. In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.
>
> For the purposes of this section, **"school" means any** preschool, elementary school, middle school, junior high school, secondary school, career center, or **postsecondary school, whether public or nonpublic.**

(Emphasis added). The statute was enacted in 1992. See 92-130, § 4, Laws of Fla.

In attempting to reconcile section 790.25(3)(n) with section 790.115(2)(a), we are guided by the fact that the Legislature, based upon the plain language of section 790.115(2)(a), clearly intended to make it unlawful for individuals to possess firearms and other weapons "on the property of any school," including "postsecondary school[s], whether public or nonpublic." In enacting section 790.115 twenty-seven years after the enactment of section 790.25, the Legislature chose to include in subsection (2)(a) three exceptions to the prohibition on firearms on campus, thereby permitting the carrying of firearms in a case to a firearms program, class or function, in a case to a career center having a firearms training

range, or in a vehicle. It is significant to our conclusion in this case that the Legislature cited and relied upon section 790.25(5), the provision allowing for firearms in private conveyances, in section 790.115(2)(a)3. when it made an exception for vehicles on school property. Had the Legislature viewed section 790.25 as preempting section 790.115 based on the "supersede" language in section 790.25(4), the exception as to vehicles in section 790.115 would have been unnecessary. More significant is the fact that the Legislature made no such exception for university housing in section 790.115. Had the Legislature wished to do so, it could have included a subparagraph 4 with language such as "in student housing pursuant to section 790.25(3)(n)." The fact that it did not do so supports the trial court's ruling and Appellees' position as to this issue. Under Appellant's interpretation, the Legislature intended, without specifically stating so, to prohibit firearms on school property except for any place that might be considered a student's home while on school property. Reaching that result, however, requires a strained interpretation of the statutes involved.

Another important consideration in this case is that the Legislature amended section 790.25 in 2006. Prior to 2006, the statute listed under "[u]ses not authorized" "a person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19., 790.22-790.24." In 2006, the Legislature deleted the reference to sections 790.07-790.12 and 790.14-790.19 and added the reference to sections 790.07-

790.115 and sections 790.145-790.19. See Ch.06-103, § 2, Laws of Fla. (emphasis added). Thus, while section 790.25(3)(n) provides that possession of firearms in a home is a lawful use, the statute also now provides that possession of firearms on school property is not authorized. While Appellant is correct that the primary basis for the amendment was to address the prohibition on carrying firearms in national forests, the fact remains that section 790.115 was specifically included under the section detailing unauthorized uses.[2]

Our conclusion as to this issue is further buttressed by our UNF decision, where, in an en banc opinion, we held that a state university may not prohibit the carrying of a securely encased firearm within a motor vehicle that is parked in university campus parking. See Fla. Carry, Inc., 133 So. 3d at 968. In reaching this decision, we relied upon the exception provided for in section 790.115(2)(a)3., and

[2] The name of the pertinent bill was "Carrying of Firearms in National Forests." A legislative staff analysis noted that the "bill repeals the statutes prohibiting persons from carrying firearms in national forests, authorizes special permits for the carrying of firearms in national forests, and providing penalties for violations." See Fla. H.R. Comm. on Crim. Just., HB 1029 (2006) Staff Analysis (April 4, 2006). It was also noted that section 2 of the law "[a]mends s. 790.25, F.S., correcting cross-references." Id. A legislative staff analysis for the companion Senate bill explained that section 2 of the law "[a]mends s. 790.25, F.S. to clarify that the protections provided for lawful ownership, possession and use of firearms and other weapons do not apply for persons violating ss. 790.07-790.115, F.S. and ss. 790.145-790.19, F.S." See Fla. S. Comm. on Crim. Just., SB 1546 (2006) Staff Analysis (Mar. 22, 2006).

we concluded that a college is not a "school district" as that term is used in the exception. Id. at 970. The majority opinion reasoned in part:

> If the issue in this case involved the right of a student to carry a firearm in the classroom or at a sporting event, our analysis would be different. There are certain places where firearms can be legally prohibited, but the legislature has recognized that a citizen who is going to be in one of these places should be able to keep a firearm securely encased within his or her vehicle.

Id. at 975-76. Here, as stated, the Legislature made no exception in section 790.115 pertaining to university housing. The majority in the UNF decision also recognized that section 1001.706(7)(b), Florida Statutes, gives the board of governors "the authority to restrict the use of firearms, food, tobacco, and alcoholic beverages, among other things."[3] Id. After noting that the board of governors has delegated the responsibility for "campus safety" to the various boards of trustees, the majority

[3] Section 1001.706(7)(b), Florida Statutes (2013), provides as follows:

> The Board of Governors shall develop guidelines for university boards of trustees relating to the use, maintenance, protection, and control of university-owned or university-controlled buildings and grounds, property and equipment, name, trademarks and other proprietary marks, and the financial and other resources of the university. **Such authority may include placing restrictions on activities and on access to facilities, firearms, food, tobacco, alcoholic beverages, distribution of printed materials, commercial solicitation, animals, and sound**. The authority provided the board of trustees in this subsection includes the prioritization of the use of space, property, equipment, and resources and the imposition of charges for those items.

(Emphasis added).

explained that "[s]uch a delegation would be a sufficient grant of power to enact the regulation at issue, which clearly relates to campus safety, regardless of whether one believes disarming students actually makes university campuses more or less safe." Id. at 977. UF's rules and regulations prohibiting firearms in university housing, which are not in conflict with the statutes at issue or the Florida Constitution, also clearly relate to campus safety.

Appellant argues that we must reconcile sections 790.25(3)(n) and 790.115(2)(a) by concluding that section 790.25(3)(n) controls the issue of whether individuals in university housing may possess firearms based upon the language contained in section 790.25(4) that "[t]his act shall supersede any law, ordinance, or regulation in conflict herewith." We reject Appellant's argument for two reasons. First, section 790.25 was enacted in 1965, and we find no indication in the statute or other authority that the Legislature, at that time, intended to make it lawful for those living in university housing to possess firearms therein. To the extent that the Legislature at that time did intend to include university housing within the definition of "home," "[a] legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law." Neu v. Miami Herald Publ'g Co., 462 So. 2d 821, 824 (Fla. 1985); see also Scott v. Williams, 107 So. 3d 379, 389 (Fla. 2013) (holding that the preservation of rights statute, which provided in part that "[a]s of July 1, 1974, the rights of members of the retirement system established by

this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way," was not intended to bind future legislatures from prospectively altering benefits for future service performed by all members of the FRS); R.J. Reynolds Tobacco Co. v. Townsend, 160 So. 3d 570, 575 (Fla. 1st DCA 2015) ("[T]he default rule is in accord with the principle that one legislature cannot bind the hands of a future legislature."). Moreover, it is well-established that when reconciling statutes that may appear to conflict, "a more recently enacted statute will control over older statutes." Fla. Virtual Sch. v. K12, Inc., 148 So. 3d 97, 102 (Fla. 2014). "'The more recently enacted provision may be viewed as the clearest and most recent expression of legislative intent.'" Id. (citation omitted). As we stated, section 790.115(2)(a), the later-enacted statute in this case, clearly prohibits firearms on university property and makes no exception for firearms in university housing.

While the crux of Appellant's First Amended Complaint was its argument that UF's prohibition against firearms in university housing violated the Legislature's preemption of the field of firearms, it also contended below that the prohibition is in conflict with the United States Supreme Court's opinion in District of Columbia v. Heller, 554 U.S. 570 (2008), where the Court addressed whether a District of Columbia prohibition on the possession of usable handguns in the home violated the

Second Amendment to the United States Constitution, which provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Court held that the ban on handgun possession in the home violated the Second Amendment as did its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Id. at 635; see also McDonald v. City of Chicago, Ill., 561 U.S. 742, 750 (2010) (holding that the Second Amendment right as expressed in Heller is fully applicable to the states).

We find Appellant's reliance upon Heller to be misplaced given that the Court wrote in part:

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, **nothing in our opinion should be taken to cast doubt on** longstanding prohibitions on the possession of firearms by felons and the mentally ill, or **laws forbidding the carrying of firearms in sensitive places such as schools and government buildings**, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626-27 (emphasis added). The Court repeated its "assurance" that Heller did not cast doubt on these types of laws in McDonald. See 561 U.S. at 786. It is noteworthy that a Virginia regulation, 8 VAC 35-60-20, provides in part that "[p]ossession or carrying of any weapon by any person, except a police officer, is

prohibited on university property in academic buildings, administrative office buildings, **student residence buildings**, dining facilities, or while attending sporting, entertainment or educational events." (Emphasis added). The Virginia Supreme Court held that the regulation did not violate either the state or federal Constitutions and relied upon the Supreme Court's statement in Heller that the opinion did not cast doubt on laws forbidding the carrying of firearms in sensitive places such as schools. See DiGiacinto v. Rector & Visitors of George Mason Univ., 704 S.E.2d 365, 367 (Va. 2011). Based upon such, we find Appellant's reliance upon Heller to be misplaced.

Appellant also makes the argument that "[u]nder the current law," students who pay for their home are given less constitutional protections than persons who receive subsidized housing at taxpayer expense. Appellant cites Doe v. Wilmington Housing Authority, 88 A.3d 654, 657 (Del. 2014), where the Delaware Supreme Court answered in the negative the certified questions of (1) whether, under the Delaware Constitution, a public housing agency such as the Wilmington Housing Authority may adopt a policy prohibiting its residents, household members, and guests from displaying or carrying a firearm or other weapon in a common area except when the firearm or other weapon is being transported to or from a resident's housing unit or is being used in self-defense and (2) whether, under the Delaware Constitution, a public housing agency may require its residents, household members,

and guests to have available for inspection a copy of any permit, license, or other documentation required by law for the ownership, possession, or transportation of any firearm or weapon where there is reasonable cause to believe that the law or policies have been violated.

The problem with Appellant's reliance upon Doe is that its fairness-type argument in relation to Doe is the type that should be made to the Legislature, not to a court. While the Legislature may choose to one day amend the current law to permit firearms in university housing, our interpretation of the pertinent statutes leads us to the conclusion that it has not yet done so. To read section 790.25(3)(n) to include university housing would, in our opinion, result in an improper judicially-created exception to section 790.115. We, therefore, affirm the trial court's summary judgment entered in favor of Appellees as to Appellant's housing claim based upon our conclusion that UF's policy prohibiting firearms in university housing is authorized by law and does not violate section 790.33 or the Florida Constitution. In doing so, we reject Judge Makar's opinion that there is a lack of a clear, justiciable controversy in this case. As correctly recognized by Judge Osterhaus, the primary issue before us relating to the housing claim is Appellant's contention that UF's prohibition of firearms in university housing violates the Legislature's preemption of the field of firearms regulation. This issue can and should be addressed in this appeal notwithstanding the fact that we are unaware of

Appellant's members' specific housing situations.

Appellee Machen's Immunity from Suit

In its third and final issue, Appellant contends that the trial court erred in granting in part Appellee Machen's motion to dismiss. In ruling on a motion to dismiss, a trial court must accept as true all well-pled allegations and limit its consideration of facts to the four corners of the complaint. Medberry v. McCallister, 937 So. 2d 808, 813 (Fla. 1st DCA 2006). Appellate courts "operate under the same standard and constraints in reviewing a dismissal order." Id. An order granting a motion to dismiss is reviewable on appeal de novo. Randazzo, 120 So. 3d at 165.

In granting Appellee Machen's motion, the trial court accepted Machen's argument that he was immune from Appellant's suit by virtue of section 768.28, which is entitled "Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs" and provides in part:

> (1) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability **for torts**, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages **in tort** for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the **negligent or wrongful act or omission** of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the

> general laws of this state, may be prosecuted subject to the limitations specified in this act.. . .
>
> (2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.
>
> . . .
>
> (9)(a) **No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.** However, such officer, employee, or agent shall be considered an adverse witness in a **tort action** for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. . . .

(Emphasis added).

We agree with Appellant that the trial court erred in granting the motion to dismiss on the basis of section 768.28(9)(a). As the supreme court has set forth, "[S]ection 768.28 . . . applies only when the governmental entity is being sued in tort." Provident Mgmt. Corp. v. City of Treasure Island, 796 So. 2d 481, 486 (Fla. 2001); see also Doe ex rel. Doe's Mother v. Sinrod, 90 So. 3d 852, 854 (Fla. 4th DCA 2012) ("[S]ection 768.28 applies to negligent torts committed by the state or one of its agencies."); M.S. v. Nova Se. Univ., Inc., 881 So. 2d 614, 617 (Fla. 4th

DCA 2004) ("Section 768.28 sets out the waiver of sovereign immunity in tort actions and the relevant limitations on damages."). While the trial court relied upon the language "or named as a party defendant in any action for any injury or damage" in reaching its conclusion, that provision does not extend the immunity provided in the statute to non-tort actions. Instead, the language relied upon by the trial court means, as the Fourth District has reasoned, "'[T]he immunity provided by section 768.28(9)(a) is both an immunity from liability *and* an immunity from suit, and the benefit of this immunity is effectively lost if the person entitled to assert it is required to go to trial." Furtado v. Yun Chung Law, 51 So. 3d 1269, 1277 (Fla. 4th DCA 2011) (emphasis in original) (citation omitted).

We also note that section 790.33 makes no mention or citation to section 768.28. The supreme court has explained that "[w]hen the Legislature has intended particular statutory causes of action to be subject to the requirements of section 768.28(6), it has made its intent clear by enacting provisions explicitly stating that section 768.28 applies." See Bifulco v. Patient Bus. & Fin. Servs., Inc., 39 So. 3d 1255, 1258 (Fla. 2010) ("*See, e.g.*, § 556.106(2)(a), Fla. Stat. (2004) ('Any liability of the state and its agencies and its subdivisions which arises out of this chapter shall be subject to the provisions of s. 768.28.'); § 45.061(5), Fla. Stat. (2004) ('This section shall not be construed to waive the limits of sovereign immunity set forth in s. 768.28.')"). Thus, even if Appellant's cause of action against Appellee Machen

was characterized as being tortious in nature, the fact that section 790.33 makes no mention of section 768.28 supports Appellant's position and our determination that section 768.28 does not apply in this case. See Bifulco, 39 So. 3d at 1258 ("Because the Legislature did not refer to section 768.28 or its subsections within chapter 440, and explicitly authorized retaliatory discharge actions when the State is the employer, it is apparent that the Legislature intended to waive sovereign immunity in retaliatory discharge actions, independent of the waiver and notice provisions contained in section 768.28."); see also Bd. of Trs. of Fla. State Univ. v. Esposito, 991 So. 2d 924, 926-27 (Fla. 1st DCA 2008) (holding that the express reference in the Florida Civil Rights Act to section 768.28(5), but not to section 768.28(8), indicated that the Legislature did not intend for section 768.28(8) to apply to actions brought under the Act); Fla. Dep't of Educ. v. Garrison, 954 So. 2d 84, 85 (Fla. 1st DCA 2007) (holding that section 768.28 has no application in connection with a claim under the Public Whistle-blower's Act where the Act makes no specific reference to section 768.28).

As for whether Appellee Machen could be found liable for damages under section 790.33, we agree with the trial court's determination that damages under the statute may not be awarded against an individual. Section 790.33, as previously explained herein, provides for the Legislature's preemption of the field of regulation of firearms and ammunition. The pertinent provisions for purposes of our analysis

as to this issue provide in part:

> (3) PROHIBITIONS; PENALTIES.—
>
> **(a) Any person, county, agency, municipality, district, or other entity** that violates the Legislature's occupation of the whole field of regulation of firearms and ammunition, as declared in subsection (1), by enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field shall be liable as set forth herein.
>
> . . .
>
> (c) If the court determines that a violation was knowing and willful, the court shall assess a civil fine of up to $5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred.
>
> . . .
>
> (e) A knowing and willful violation of any provision of this section by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.
>
> (f) A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against **any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages,** as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:
>
> 1. Reasonable attorney's fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and
>
> 2. The actual damages incurred, but not more than $100,000.

§ 790.33, Fla. Stat. (2013) (emphasis added).

It is true, as Appellant contends, that subsection (3)(a) speaks to "any person,

county, agency, municipality, district, or other entity" that violates the Legislature's occupation of the whole field of regulation of firearms and ammunition and that it states "shall be liable as set forth herein." However, section 790.33(3)(c) allows for civil fines up to $5,000 against the "elected or appointed local government official or officials or administration head" under whose jurisdiction the violation occurred. Section 790.33(3)(e) addresses cause for termination of employment "by a person acting in an official capacity for any entity" enacting or causing to be enforced prohibited ordinances or rules. Those two subsections clearly apply to people. While Appellant argues that Appellee Machen can be sued for damages under subsection (3)(f), that provision allows for declaratory and injunctive relief and for actual damages against "any county, agency, municipality, district, or other entity." Had the Legislature wished to include the term "any person" as it did in subsection (3)(a), it could have done so. Yet, instead of using the same phrase "[a]ny person, county, agency, municipality, district, or other entity," it excluded "any person" and used "county, agency, municipality, district, or other entity" in subsection (3)(f). Courts are not at liberty to add words to statutes that were not placed there by the Legislature. See Caceres v. Sedano's Supermarkets, 138 So. 3d 1224, 1225 (Fla. 1st DCA 2014); see also Esposito, 991 So. 2d at 926 ("'[W]hen the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally.'")

(Citation omitted).

Appellant offers no support for the proposition that "any entity" includes individuals. Indeed, the Florida Statutes contain several instances where the Legislature differentiated between "person" and "entity." See, e.g., § 17.0416, Fla. Stat. ("The Chief Financial Officer, through the Department of Financial Services, may provide accounting and payroll services on a fee basis under contractual agreement with eligible entities, including, but not limited to, state universities, community colleges, units of local government, constitutional officers, and any other **person or entity** having received any property, funds, or moneys from the state.") (Emphasis added); § 17.65, Fla. Stat. ("The Chief Financial Officer may prescribe the forms, and the manner of keeping the same, for all receipts, credit advices, abstracts, reports, and other papers furnished the Chief Financial Officer by the officers of this state or other **persons or entities** as a result of their having, or depositing, state moneys.") (Emphasis added); § 20.055(1)(b), Fla. Stat. (defining "**Entities contracting with the state**" to mean "for-profit and not-for-profit ***organizations or businesses that have a legal existence, such as corporations or partnerships, as opposed to natural persons*** . . . .") (Emphasis added); § 39.00145(2)(c), Fla. Stat. ("If a child or the child's caregiver, guardian ad litem, or attorney requests access to the child's case record, any **person or entity** that fails to provide any record in the case record under assertion of a claim of exemption from

the public records requirements of chapter 119, or fails to provide access within a reasonable time, is subject to sanctions and penalties under s. 119.10.") (Emphasis added). Based upon such, Appellee Machen is not liable for actual damages under section 790.33.[4]

Accordingly, we affirm the trial court's order granting summary judgment in Appellees' favor on both the housing and motor vehicle claims, and we affirm the trial court's order granting in part Appellee Machen's motion to dismiss on the basis of section 790.33, not section 768.28.

AFFIRMED.

MAKAR, J., CONCURS IN PART AND CONCURS IN RESULT WITH OPINION; OSTERHAUS, J., CONCURS IN PART AND IN RESULT WITH OPINION.

[4] We note that Appellee Machen did not file a cross-appeal as to the trial court's determination that he could be sued under section 790.33 for declaratory and injunctive relief.

MAKAR, J., concurring in part and concurring in result with opinion.

Florida Carry, Inc., challenges the University of Florida's policy that prohibits firearms anywhere on its campus or other properties under the University's control including in motor vehicles or housing. For simplicity, these two claims are referred to as the motor vehicle claim and the housing claim, respectively. The trial court entered judgment against Florida Carry as to both claims. I concur with affirmance as to the motor vehicle claim and the result as to the housing claim for the reasons that follow. I concur, but without comment, on the immunity claim.

Motor Vehicle Claim

The gist of Florida Carry's motor vehicle claim is that the University's changes to its firearms policy did not adequately comply with applicable statutes upheld in this Court's decision in Florida Carry, Inc. v. UNF, 133 So. 3d 966 (Fla. 1st DCA 2013) (en banc) (hereinafter UNF). The trial court concluded that the motor vehicle claim was not justiciable due to the lack of any "actual case or controversy in need of adjudication" because the University had taken steps before Florida Carry filed suit to change its firearms policy to comply with UNF. As explained in that case, it has been lawful for many decades in the State of Florida for persons in lawful possession of firearms to have them in their motor vehicles if securely encased. Our decision recognized the validity of this long-standing right as it applies to universities and colleges.

Prior to our decision in UNF, and like many other universities and colleges, the University prohibited firearms anywhere on its "campus or any land or property occupied by the [University]," except in six circumstances described by the administrative regulation at issue, 2.001, entitled "Possession and Use of Firearms." Regulation 2.001, along with the six exceptions in subsections (3)(a)-(f), is set out in full in the Appendix as it appears to those who consult it online (this version includes the disputed postscript the University added). See Regulations of the University of Florida UF-2.001, http://regulations.ufl.edu/wp-content/uploads/2012/09/2001.pdf (last visited October 13, 2015).

Based on the parties' submissions, the trial court concluded that the University had rapidly complied with the statutes upheld in UNF because it had "expeditiously footnoted" Regulation 2.001 "to make clear that it would not be used to disallow securely encased firearms in vehicles on campus." Indeed, a postscript[5] was added at the end of the regulation, stating (underlined portions were added later) in full:

> Intent/application: As University regulations and their implementation are subject to applicable law, the University will comply with Florida law governing firearms in vehicles under Section 790.25(5), Florida Statutes, including firearms that are securely encased or otherwise not readily accessible for immediate use in vehicles by individuals 18 years old and older, as decided by the First District Court of Appeal on December 10,

[5] Like this footnote, there is typically a number, letter, or symbol of some sort in the primary text that notifies readers to look for a footnote (at the bottom of the page) or endnote (at the end of the applicable section). The University did not use a footnote in its conventional sense, perhaps because it sought to provide notice more expeditiously than a formal change to the regulation would necessitate.

2013 (Case No. 1D12-2174).

The latter date was when UNF was first released, the mandate not issuing until March 31, 2014. And, as indicated, the underlined portions were added after Florida Carry had already filed suit.

Affirmance of the motor vehicle claim is appropriate based on the evidence presented to the trial court, which concluded that "clear and undisputed" facts show the University acted quickly to modify Regulation 2.001 to comply with UNF and that Florida Carry was "well aware" of the University's action. Whatever sentiment a University official may have expressed does not change the fact that additional information was appended to Regulation 2.001 promptly. And the changes to the regulation after Florida Carry filed suit, reflected in the underlined portions of the postscript, were de minimis. The addition of the word "application," the citation to section 790.25(5), and the inclusion of the case number of UNF are insufficient to raise a genuine issue of material fact on the motor vehicle claim.

All this said, a few points merit discussion. First, it is unclear why the University did not simply add a new subsection—3(g)—to the list of exceptions in Regulation 2.001 to make clear that "firearms are permitted" in motor vehicles on University property consistent with section 790.25(5) which allows "a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license,

if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use." § 790.25(5), Fla. Stat.; see § 790.115(2)(a)(3), Fla. Stat. ("[A] person may carry a firearm: . . . In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges."). Doing so would better inform those to whom the Regulation applies, and take the guesswork out of what the University meant by including its "Intent" at the end of the Regulation where it could be overlooked or misunderstood. Florida Carry, however, does not quibble with the format of the Regulation, only with whether the University took action swiftly and broadly enough. The record shows it did.

Second, related to the first point, one of Regulation 2.001's exceptions, set out in subsection 3(a), appears to violate sections 790.25(5) and 790.115(2)(a)(3) by prohibiting campus residents from possessing secured firearms in their motor vehicles. It states as follows:

> (3)(a) Campus residents are permitted to store firearms in an area designated by the University Police at the University Police Station only. Firearms in transit to the Police Station for storage shall enter the campus at the intersection of 13th Street and Museum Road and be taken directly and immediately to the Police Station. Firearms in transit from the Police Station shall be removed from the campus directly and immediately along the same route. Firearms must be unloaded when on the University campus, whether in storage or in transit to or from storage. Authorization must be acquired from the University Police for possession of the firearms while traveling between the storage facility

> and the campus perimeter. *Possession of a firearm anywhere else on campus is prohibited*.

§ 2.001(3)(a) (emphasis added). As indicated, possession of firearms on campus by campus residents is prohibited, excepting only a strict means of transporting to, and storing firearms at, the campus police station. At the time of oral argument, counsel for the University informed the panel that although subsection 3(a) was still on the books, the University no longer enforces it in light of the UNF decision. No footnote or other notice draws the reader's attention to the University's non-enforcement policy, but Florida Carry has not made it a feature of this appeal, focusing instead on other aspects of the University's response.

As to both these points, it may be that the University believes that if it formally modifies Regulation 2.001, as opposed to adding a postscript or adopting an unwritten non-enforcement policy as to subsection 3(a), it will avoid running afoul of preemption issues under section 790.33, which Florida Carry believes prohibits the University from enacting policies even if they "tracked perfectly" with state firearms law. Given the broad preemptive scope of the statute, and the penalties that can apply if missteps are made in the promulgation of policies in this field, this apprehension is understandable.

On the record presented and putting the University's actions in context, the trial court found that no "unlawful enactment or enforcement was imminent" by the University thereby presenting no justiciable controversy. Absent something more,

the lack of evidence that the University was poised to act adversely against those who lawfully have firearms secured in their motor vehicles in compliance with Florida law supports this conclusion. Prospective relief may be appropriate where it is shown that a recalcitrant defendant, despite ceasing its illegal action, is likely to return to its former ways. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000) ("It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. . . . [I]f it did, the courts would be compelled to leave [t]he defendant . . . free to return to his old ways.'") (alterations in original) (citations omitted). But no allegation or any showing has been made that the University has or is likely to ignore applicable statutory or caselaw, thereby making affirmance proper.

Housing Claim

Turning to Florida Carry's housing claim, which it asserted in its representative capacity of student-members who allegedly "reside in UF owned housing," it becomes apparent that the lack of any identifiable plaintiffs and their housing situations makes adjudication of this claim unworkable. The essence of the housing claim is that students who live in University housing (on- or off-campus) are entitled to the same constitutional right, here the right to keep and bear arms, that any other persons would have in their homes. The Fourth Amendment applies

equally to everyone in their own homes, and so should the Second Amendment and Florida's counterpart, says Florida Carry.

But attempting to adjudicate the individual claims of student-members—without knowing anything about their specific housing situations or the context of their living arrangements—would amount to rendering a declaratory judgment where the necessary facts are unknown.

> [I]t is well-settled that courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, and rest in the future.

Martinez v. Scanlan, 582 So. 2d 1167, 1174 (Fla. 1991); see also LaBella v. Food Fair, Inc., 406 So. 2d 1216, 1217 (Fla. 3d DCA 1981). Individuals "seeking declaratory relief must show that 'there is a bona fide, actual, present practical need for the declaration [and] the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.'" Martinez, 582 So. 2d at 1170 (citations omitted). Absent these and other foundational requirements, the controversy lacks the necessary elements to establish a justiciable matter that is within a court's constitutional powers. Id. That Florida Carry and the University agree that there exists a justiciable controversy does not control: "Even if both parties have no objection to the court entertaining such an action, mere mutual agreement between parties cannot confer subject-matter jurisdiction upon a court."

Id. at 1171, n.2.

Such is the case here. Too little is known factually to make what is essentially an as-applied adjudication of how the complex web of Florida's firearms laws, with an evolving state and federal overlay of constitutional rights as to keeping and bearing firearms, operates in actual practice as to a specific housing situation. The statutory framework at issue may be constitutional as applied to certain portions of the University's property, such as classrooms, offices, and other similar sensitive areas. The Supreme Court in Heller noted that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, *or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings*, or laws imposing conditions and qualifications on the commercial sale of arms." D.C. v. Heller, 554 U.S. 570, 626-27 (2008) (emphasis added). Longstanding prohibitions of these types have existed for good reasons; few question the good judgment of limiting those who may keep and bear firearms in public town council meetings, elementary school cafeterias, and high school algebra classes.

But Heller's list involved places where people don't typically reside; it did not include what is traditionally considered the "home," which has explicit protection in Florida. § 790.25(3)(n), Fla. Stat. (lawful uses include a "person possessing arms at his or her home or place of business"). Accommodation thereby is justified on a

case-by-case basis for those situations involving the "home" for purposes of the statute. For example, those who may reside even temporarily at the University's Institute of Food and Agricultural Science Research and Education Centers, which are located throughout the State (typically in low population, rural areas), have specified firearms rights. § 2.001(3)(d), Fla. Stat. But is the President's home not entitled to protection, even though it is on the campus? What about guests at a hotel on University property or under its control? These are wholly different contexts requiring more detailed information to pass judgment on which rights are permissible or may be restricted. Our supreme court made clear almost forty-five years ago that the right to keep and bear arms is not absolute and that statutes placing certain restrictions on the right are not "per se unconstitutional." Rinzler v. Carson, 262 So. 2d 661, 667 (Fla. 1972). The University's firearms policy is not per se unconstitutional, but a set of facts may exist where its specific *application* raises concerns. Id. at 666-67 (strictly interpreting statute forbidding possession of a "machine gun" nonetheless to permit ownership of those lawfully registered under federal laws, and holding that Florida's Declaration of Rights as to firearms was modified "to bring the protection in line with the phraseology used in the Second Amendment to the Constitution of the United States.") The analysis in Rinzler was based on a highly detailed set of facts, enabling the supreme court to make an informed judgment.

In this vein, the question of whether a student's housing arrangement can be considered a "home" and thereby receive the right to keep and bear arms therein requires more detailed facts than have been presented in this case. Factual context matters. "All too often, facts that are important to a sensible decision are missing from the briefs, and indeed from the judicial record." Richard A. Posner, Reflections on Judging, 131 (2013). Are cramped dormitory rooms, where up to four students (who may not know each other) are housed temporarily during portions of their college careers, to be considered a "home" in its traditional sense? Do students who live in marital housing on the edge of campus or in housing located off-campus but operated by the University (or owned by the University but privately-operated) reside in homes deserving of protection? Nothing is known about the nature of any plaintiff's individual living arrangement, making a judicial assessment highly problematic.

Given the factual nuances that can exist in the firearms-on-campus debate, and the lack of a clear, justiciable controversy on the sparse record presented, judgment in favor of the University is the correct result and would thereby avoid the difficult statutory interpretation questions for which no clear construction exists. This result also avoids having to make abstract judgments about how those statutes might fare under constitutional scrutiny.

REGULATIONS OF THE

UNIVERSITY OF FLORIDA

2.001 Possession and Use of Firearms.

(1) The possession of firearms on the University campus or any land or property occupied by the University of Florida is prohibited.

(2) Definitions

(a) The University "campus" is defined for purposes of this regulation to include those lands located in Alachua County, Florida, occupied or controlled by the University of Florida, including premises occupied by fraternities and sororities officially recognized by the University.

(b) The term "firearm" is defined for the purposes of this regulation to have the same meaning set forth in Section 790.001(6), Fla. Stat., provided "firearm" shall also include antique firearms.

(3) Notwithstanding the foregoing, firearms are permitted under the following limited circumstances:

(a) Campus residents are permitted to store firearms in an area designated by the University Police at the University Police Station only. Firearms in transit to the Police Station for storage shall enter the campus at the intersection of 13th Street and Museum Road and be taken directly and immediately to the Police Station. Firearms in transit from the Police Station shall be removed from the campus directly and immediately along the same route. Firearms must be unloaded when on the University campus, whether in storage or in transit to or from storage. Authorization must be acquired from the University Police for possession of the firearm while

traveling between the storage facility and the campus perimeter. Possession of a firearm anywhere else on campus is prohibited.

(b) Those presently authorized to possess firearms on the campus are law enforcement members of governmental agencies who are authorized by law to possess firearms, the University Police, the University's armored car vendor, and the staff of the Florida Museum of Natural History when the firearms are a part of the museum collection and are for the exhibit purposes or used in a specimen collection.

(c) ROTC cadets may drill with unloaded rifles which have the firing pin removed when under the supervision of ROTC officers and cadre. .

(d) The following persons are authorized to possess firearms at Institute of Food and Agricultural Sciences Research and Education Centers:

1. Deputized law enforcement officers living at a center who are issued a firearm as part of their employment;

2. Employees engaged in properly permitted wildlife depredation activities carried out to protect research projects being conducted at a center; and

3. Employees temporarily residing at a center, provided the firearm is kept unloaded, equipped with a trigger lock, and locked in a secured location in the residence. In addition to any specific requirements set forth above, firearms shall be handled, used and stored in a safe and responsible manner and in accordance with all applicable laws, rules and regulations. A Center director shall be notified prior to any firearm being brought onto Center property and shall have the right to prohibit or limit the use, handling or storage of firearms at the Center for the safety of persons at the Center.

(e) Individuals participating in approved firearms education programs conducted on properties designated for 4-H use may utilize firearms on the property, provided firearms shall be handled, used and stored in a safe and responsible manner and in accordance with all applicable laws, rules and regulations. The program coordinator or property manager shall have the right to prohibit or limit the use, handling or storage of firearms on properties designated for 4-H use for the safety of persons on the property.

(f) Should it be necessary or desirable for the use of firearms in any of the academic programs of the University, then permission for such use must be applied for and granted by the Provost or designee, Vice President for Business Affairs and the Chief of Police of the University Police Department.

(5) Any student or employee, including faculty, administration, and staff members, shall be immediately suspended for violation of this regulation. When required under applicable university disciplinary regulations or provisions of the applicable collective bargaining agreement, such a suspension shall be interim in nature until a proper hearing can be held by the appropriate hearing body to determine the facts and circumstances of the violation.

Authority: BOG Regulation 1.001.

History--New 9-29-75, Formerly 6C1-2.01, Amended 9-16-99, 3-31-06, 3-14-08, Formerly 6C1-2.001, Amended 3-16-10.

Intent: As University regulations and their implementation are subject to applicable law, the University will comply with Florida law governing firearms that are securely encased or otherwise not readily accessible for immediate use in vehicles by individuals 18 years old and older, as decided by the First District Court of Appeal on December 10, 2013.

OSTERHAUS, J., concurring in part and in result with opinion.

I agree with the results reached by my colleagues. I think first that the text of Florida's Constitution and laws, as interpreted by our court's prior University of North Florida decision, resolves the housing-related field preemption claims raised here. See Art. I, § 8, Fla. Const. (authorizing the legislature to regulate in the area of firearms); § 790.115(2)(a), Fla. Stat. ("A person shall not possess any firearm . . . on the property of any school."); § 790.25, Fla. Stat. ("The protections of this section do not apply to . . . a person using . . . firearms in violation of [§ 790.115].").

Florida Carry alleged very broad, state law-based field preemption claims in this case, requesting that the University of Florida be enjoined from enforcing any and all firearms-related regulations. Its preemption claims do not stand up under the provisions of state law cited above, nor under our court's opinion in Florida Carry, Inc. v. University of North Florida, 133 So. 3d 966 (Fla. 1st DCA 2013) (en banc) (UNF). In UNF, our court recognized the law to provide universities some level of authority to regulate in the area of firearms. The decision cited § 1001.706(7)(b), for example, in which the legislature defined the powers and duties of the Board of Governors by requiring them to develop guidelines for university boards of trustees relating to the use, maintenance, protection of university-owned buildings and property, including the option of "placing restrictions on . . . firearms." Our UNF decision interpreted this text to delegate a measure of firearms-related regulatory

authority to the universities: "We recognize that section 1001.706(7)(b), Florida Statutes (2011), gives the board of governors the authority to restrict the use of firearms . . . among other things." UNF, 133 So. 3d at 975-76. Id. at 977 (noting that "[t]he board of governors has . . . delegated the responsibility for 'campus safety' to the various boards of trustees"). As such, state law does not wholly preempt the University of Florida from regulating firearms on its campus.

I also agree with my colleagues conclusions on the immunity- and vehicles-related issues. According to the record, the University of Florida conformed its policies to this court's UNF decision and has not enforced a conflicting regulation against anyone.