DISTRICT COURT OF APPEALS, FIRST DISTRICT

DCA CASE NO.: 1D12-2174
L.T. CASE No. : 16-2011-CA-008012

FLORIDA CARRY, INC., and
ALEXANDRIA LAINEZ

Plaintiffs,

v.

UNIVERSITY OF NORTH FLORIDA,
JOHN DELANEY.

Defendants.
_____/

**Appeal from the Circuit Court,
Fourth Judicial Circuit, in and for
Duval County, Florida**

APPELLANT'S INITIAL BRIEF

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Citations

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Statement of the Case

This action was filed as an original action in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, and was assigned to the Honorable Lawrence Haddock. After the filing of a motion to dismiss, Plaintiffs filed an amended complaint. (R. 7). The Defendants filed a motion to dismiss the amended complaint. (R. 32). Plaintiffs also filed a request for a temporary injunction to prevent the continued denial of plaintiffs' rights under the US and Florida Constitutions. (R. 1).

A hearing was held on the temporary injunction, which was denied by the

lower tribunal. (R. 37). A hearing was subsequently held on the amended motion to dismiss, which was granted on essentially the same basis as the denial of the injunction. The order of dismissal attached the order denying the injunction and stated that it was based on consideration of the legal issues already presented to the Court by the motion for a temporary injunction as well as the additional arguments made at the hearing on the motion to dismiss. (R. 59).

The primary grounds for the denial of the injunction and the granting of the dismissal, was a finding that Defendant's could regulate firearms as a school district under Sec. 790.115, Fla. Stat., and pursuant to the exception for schools in Sec. 790.251, Fla. Stat. The trial court also stated that it was the clearly stated intent of the legislature to cover all schools whether public or private in its prohibition of guns in cars on campuses. (R. 61-63).

Plaintiffs took this appeal.

Statement of Facts

Because this is an appeal of an order granting a motion to dismiss, all factual allegations in the Plaintiffs' complaint must be taken as true. Plaintiff Alexandria Lainez is a single mother with a pre-school age son. (R. 7). She travels from her home, to work and school, and is often on the road late, and carries a firearm for her protection. Ms. Lainez has a concealed weapon firearm license

issued by the state of Florida, and has engaged in extensive training regarding the use of her firearm. (R. 8).

Defendant UNF, is a four year university organized under the laws of Florida. (R. 8). UNF prohibits the possession of firearms on its campus, including those locked in students' private vehicles. (R. 9 & 20-31). Defendant John Delaney is the President of UNF and is the official ultimately responsible for the promulgation and enforcement of UNF's rules and regulations. (R. 8).

Plaintiff, Florida Carry, Inc., is a not for profit organization organized under the laws of the state of Florida. Florida Carry, supports the right of individuals to keep and bear arms throughout Florida. Florida Carry educates and lobbies for firearms rights as well as bringing actions such as this to enforce the rights of gun owners. (R. 7).

Plaintiff Lainez and the members of Florida Carry, seek to exercise their right to store a firearm in their vehicle while parked on Defendant UNF's campus. (R. 7). Lainez must travel to and from campus and work, often without going home. When she does go home or to other places before arriving or after leaving UNF, she seeks to exercise her right to carry a concealed firearm for her personal protection. Other members of Florida Carry experience a similar difficult when they have to conduct business that requires them to travel to UNF's campus, and

they must go about unarmed, or return home before and after their visit to UNF's campus.

UNF's student handbook specifically prohibits the possession of firearms on campus, including in student's vehicles. (R. 20-31). Plaintiff Lainez and Plaintiff Florida Carry, filed this action seeking a ruling that the she and their members could store firearms in their car while parked on campus pursuant to Sec. 790.25, Fla. Stat. (R. 7). At no time, prior to this litigation, did the Defendant's claim a right to prohibit firearms from campus pursuant to Sec. 790.251. The only statute cited in the student handbook or code of conduct as Defendant's authority to ban firearms from campus is Sec. 790.115 (Student Handbook Page 51). (R. 20).

Summary of Argument

The legislature has the authority to pass laws to preempt any area of law within the state of Florida. The Florida Legislature has exercised its power to preempt any local or subordinate agency's regulation of the possession, use, or storage of firearms. Because the legislature has preempted this area of law, Defendants, a state agency and officer of that agency, have no authority to enact any rule or regulation regarding firearms unless specifically authorized by the legislature.

Despite the legislature's express preemption, Defendants have attempted,

through convoluted reasoning, to argue that a grant of authority to elected school boards also applies to un-elected university presidents. Defendants argue that because the legislature chose to give school districts a limited authority to regulate firearms at K-12 schools, the same rule should apply to a university, despite the fact that its students are adults attempting to exercise a constitutional right.

Defendants seek to apply legislation meant to limit the violation of citizen's rights by private and public employers, to take away those same citizen's rights, claiming that it grants authority to a public university to create a crime out of whole cloth against any person who enters its premises. Defendants seek to utilize this legislation meant to protect citizens, to avoid the legislature's express preemption of the field of firearms regulation so that they can prohibit firearms from being stored in vehicles on campus.

Defendants rely on statements of individual state senators, but ignore the full history of the bill creating the section they rely on, as well as ignoring the history of the statute itself. Defendants read what they want the statutory language to say rather than what it actually says.

This action is the first time Defendants have attempted to rely on Sec. 790.251, Fla. Stat., to support their unlawful rules. Their published rule only claims support from Sec. 790.115, Fla. Stat. This is because Defendants are well

aware that while 790.115, Fla. Stat., does grant authority to school districts to publish a waiver, no school or business is granted affirmative rights under Sec. 790.251, Fla. Stat.

Additionally, Defendants regulation in its student handbook specifically states that a student violating the rule will be subject to arrest. Since Sec. 790.251, Fla. Stat., does not create any crime and a violation of a rule pursuant to Sec 790.251, Fla. Stat., would not constitute a basis for arrest, the only possible basis for the Defendants' illegal regulation is the statute it cites in the regulation itself.

Defendants' unlawful rule is preempted by the intent of the legislature and the language in the statute. The motion to dismiss should have been denied, and the rules enacted and promulgated by Defendants declared unlawful and in violation of Sec. 790.33, Fla. Stat.

The temporary injunction sought by Plaintiffs was improperly denied by the lower court. The right to keep and bear arms in a vehicle in Florida is constitutionally protected as well as recognized by statute. The continued denial of the exercise of this right to plaintiffs is resulting in daily irreparable injury and should be cured.

Defendant UNF is a public university which is preempted from enacting or causing to be enforced any local ordinance or administrative rule or

regulation impinging upon the legislature's exclusive occupation of the field of firearms regulation.

Standard of Review

The review of an order granting a motion to dismiss is de novo and accepts the factual allegations of the complaint as true. *Scovell v. Delco Oil Co.*, 798 So. 2d 844, 846 (Fla. 5th DCA 2001). An issue of preemption of a local or agency rule is a legal issue involving the interpretation and application of statutory language and is therefore subject to a de novo review as well. *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1241 (Fla. 2006).

Preemption is a well established legal doctrine in Florida. Once the legislature has decided to preempt an area of law or regulation that is generally the end of the issue. *See Generally, Santa Rosa County v. Gulf Power Co.*, 635 So. 2d 96 (Fla. 1st DCA 1994). In the case of firearms, the legislature did leave a few narrowly tailored exceptions to preemption. Two are at issue in this case. First, the legislature has exempted from preemption the right of a public employer to regulate whether an employee may carry a firearm while at work. Secondly the legislature has given school **districts** limited authority to regulate the possession of firearms in a vehicle on campus for the purpose of "student and campus parking privileges." Sec. 790.115. Fla. Stat.

In 1987 the Florida legislature passed the Joe Carlucci Uniform Firearms Act. Sec. 790.33, Fla. Stat. The stated purpose of the act was to make firearms laws and regulations uniform throughout the state and to prevent a variety of laws from county to county. The legislature expressly preempted the entire field of regulation of the use, possession and storage of firearms. Sec. 790.33, Fla. Stat.

Apparently operating under the naive, assumption that state agencies and local governments would never directly violate the expressed goal of the legislature, much less the letter of the law, the legislature did not create any enforcement mechanism in conjunction with preemption. Almost twenty-five years later, various municipalities and agencies, including Defendants, continued to regulate firearms despite the legislature's express preemption.

In 2011, in response to numerous violations throughout the state, the legislature amended Sec. 790.33, Fla. Stat., to provide for enforcement penalties if agencies and other entities which had violated the law for nearly 25 years, continued to do so. The new provisions did not become effective until October 1, 2011, to allow any entity violating preemption to correct its laws or rules. Most did. A few, such as the Defendants here, defiantly ignored the law and/or claimed some exemption under the law that would allow them to continue to regulate firearms despite preemption.

Sec. 790.33 provides,

> (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.

Despite this clear statement of legislative intent and law, Defendants raised claims below to try and justify their unlawful conduct, and their denial of Floridian's basic right to keep and bear arms. They claimed that:

1. Defendants have authority under general law pursuant to Sec. 790.115, to prohibit firearms from private vehicles on their campus;

2. Sec. 790.251, as a general law, permits all schools to regulate and prohibit firearms on their campus.

Sec 790.25 Fla. Stat. is superior over any conflicting statute and the clearly stated legislative purpose and construction of Sec. 790.25 shows that any question regarding conflicts between the various statutes should be construed in favor of the right to keep and bear arms as provided for by the legislature.

Standard of Review

Interpretation of a statute is a legal issue involving the interpretation and application of statutory language and is therefore subject to a de novo review. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011).

Plaintiff's primary claim in this case is that Lainez and Florida Carry's members, seek to exercise their right to keep a securely encased firearm and other lawfully possessed weapons in their vehicle pursuant to Sec. 790.25, Fla. Stat. Defendants' claim that they have statutory authority under Sec. 790.115, Fla. Stat. To prohibit firearms in private vehicles on their campus fails. Sec. 790.115, Fla. Stat., specifically authorizes individuals to carry securely encased firearms in their vehicle, pursuant to Sec. 790.25 Fla. Stat., unless they are seeking to park on the campus of a school, for which the governing school district has waived the operation of that portion of Sec. 790.115, Fla. Stat., but only to the extent the

person is exercising student or campus parking privilege.

Sec. 790.25, Fla. Stat., which is specifically referenced by Sec. 790.115, Fla. Stat., is the statute controlling the legislatively recognized right to keep a firearm or weapon securely encased.

> (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. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. *This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons*, including lawful self-defense as provided in s. 776.012. (emphasis added)

Sec. 790.25, Fla. Stat.

Sec. 790.25, by its plain terms states that is superior to any statute that might be in conflict and that it should be liberally construed in favor of bearing arms and that carry securely encased in a vehicle specifically, shall be liberally

construed in favor of the lawful use, ownership, and possession of firearms and other weapons. A court has no authority to overturn a clearly stated legislative intent or direction of construction and must find that Defendants are without authority under Sec. 790.115 to prohibit possession of a firearm in a private conveyance.

The waiver provision of Sec. 790.115, Fla. Stat., for school districts is inapplicable to universities and does not allow any entity other than an elected school board of a county to prohibit the possession of firearms in private vehicles.

Standard of Review

Interpretation of a statute is a legal issue involving the interpretation and application of statutory language and is therefore subject to a de novo review. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011).

Defendants claim that their unlawful regulation is based on Sec. 790.115 and Sec. 790.251. Defendant's have never claimed authority to regulate firearms under Sec. 790.251, Fla. Stat., prior to this case, probably because Sec. 790.251, does not grant any affirmative right to Defendants, and does not apply to Plaintiffs in this case unless they are employees of Defendant UNF.

The Court cannot ignore the plain language of the statute and the fact that a

"school district" is a defined legal entity existing under the constitution and the laws of the State of Florida. The lower tribunal relied on Defendants' argument that the legislative intent and debate over Sec. 790.251 controlled, to hold that the legislature meant all schools including post-secondary, when it defined schools for the purposes of Sec. 790.251, Fla.Stat. The Plaintiffs agree. The problem is that the Defendants are not being sued for violation of Sec. 790.251, Fla.Stat., they are being sued for violation of Sec. 790.33, Fla. Stat. Sec. 790.33, Fla. Stat. is clear that as a state agency and employee, Defendants may not make a rule regarding firearms without specific statutory authority.

By their own statements Defendants enacted a rule prohibiting firearms in vehicles on campus pursuant to Sec. 790.115, Fla. Stat.[1], which only authorizes school districts, not just any school, to make such a rule. There is no reason that Defendants have pointed to, for the legislature to use the term "school" throughout chapter 790, and to define the term, and to even list different types of schools, but then suddenly use a new term in Sec. 790.115, Fla.Stat., "school district", when according to Defendant's argument "school district" should include all schools. The only logical explanation for this is that the legislature intended to make a distinction between individual schools and school districts. See *Gen. Elec. v.*

[1]See Student Handbook Page 51 (R. 20).

DeCubas, 504 So. 2d 1276, 1278 (Fla. 1st DCA 1986)(all word in the statue must be given effect, there are no superfluous words).

The Defendant argue that the term school district is not defined in chapter 790, and that the Court must therefore look to legislative intent to determine the meaning of the term or whether there are extraneous words. In fact, the legislature did not define the term school district in chapter 790, because it did not need to. The term was already defined in both the Florida Constitution, Art. IX. Sec. 4, and in general law, Sec. 1001.30 and 1001.31, Fla. Stat. In fact Defendants initially argued in their opposition to the temporary injunction request that the lower tribunal should, rely on the definition in Sec. 1001.31, Fla. Stat. The problem is that the definition of school district under this statute would not include UNF unless it became subject to the direction of the local district school officials. Sec. 1001.30 and 1001.31, Fla. Stat. (R. 102).

The Defendants seem to argue that because the legislature failed to direct that one should look to the Florida Constitution or other chapters for the definition of the term "school district", the Court should not do so. This is directly contrary to well established rules of statutory construction as well as common sense. *State v. Fuchs*, 769 So.2d 1006 (2000).

Fuchs was a criminal case in which the defendant argued that the criminal

statute he was prosecuted under was unclear because the legislature had not defined every term in the statute and had in fact specifically removed a provision in the statute that stated "as defined under the laws of Florida" during an amendment. Fuchs argued that because the legislature had specifically removed language stating that the terms in the statute would be defined under the laws of Florida, the court could not look to other chapters for definitions, and that the statute he was prosecuted under was therefore unconstitutionally vague. *Fuchs* at 1009.

The court rejected Fuchs argument and pointed out that it was well settled that in the absence of a statutory definition a court could rely on case law or related statutory provisions. The court went on to point out previous cases where it had relied on constitutional definitions, and other statutory definitions from other chapters to define terms at issue in a case. The court also stated that the failure of the legislature to direct where to look for definitions of terms did not prohibit the court from looking to other sources within the law or even industry custom.

In both the Florida Constitution and Chapter 1001, the only places in Florida law where the term school district is defined by the legislature, the definition of what is a school district is consistent and clear, and does not include

a university or post secondary school such as UNF. Somehow, the Defendants argue however, that the term school district means something completely different when used in chapter 790, rather than its defined meaning throughout the rest of Florida law.

The Defendants seek to avoid this logical conclusion by arguing that because the legislature included post-secondary schools in the list of exceptions for purposes of the prohibitions in Sec. 790.251, Fla. Stat., this Court should assume that the failure to include post-secondary schools as an authorized entity to publish a written waiver to secure encasement in Sec. 790.115, Fla. Stat., was a mere oversight by the legislature.

The approach argued by Defendants here is quite the opposite of the approach taken by the U.S. District Court in *Florida Retail Federation v. Attorney Gen. of Fl.*, 576 F. Supp. 2d 1281 (N.D. Fla. 2008)(ruling that 790.251 only applies to an employer's regulation of certain employees). Defendants' desire to rewrite Sec. 790.251, Fla. Stat., and its reliance on the legislative record to accomplish what Defendants claim was the law's intent, based on floor debate, was specifically rejected by the court in the *Florida Retail Federation* case. In response to the Attorney General's request to rewrite Sec. 790.251, Fla. Stat., to accomplish its clearly stated legislative objectives, the court there stated that

"when the language of a statute is this clear, a court's job ordinarily is to apply the statute as written, not to rewrite it in the belief that the Legislature must have meant something else." The court went on to state that "the Attorney General offers no constitutionally sufficient explanation for the statute's distinction between the businesses that are and are not required to allow guns, but the Attorney General says the distinction is just an error in drafting—that the distinction disappears when the statute is properly construed to mean what the Legislature intended rather than what the Legislature said. The intervening defendant National Rifle Association says the statute means what it says and is constitutional as so construed." *Florida Retail Federation*, 576 F. Supp. 2d (N.D. Fla. 2008). The court declined to rewrite the statute and held it unconstitutional.

If a court cannot rewrite a statute to save it based on the clear words of the legislature' statement of intent, how can a court rewrite a statute based on floor debate statements by three individual legislators, who were talking about another law enacted 16 years earlier that they took no part in drafting? At least in this case the language of the statute is consistent with legislative intent.

The fact that the legislature left the decision up to local school districts makes it clear that the legislature contemplated that at least in some instances, firearms would be allowed in vehicles on some school campuses, specifically, any

school not governed by a school district. While private schools could make their own rules for their customers, the preemption of Sec. 790.33, Fla. Stat., would prohibit any public school from publishing such a waiver lawfully. Therefore the legislature passed an amendment to Sec. 790.115, Fla. Stat., to allow school districts to avoid the restriction of preemption and prohibit firearms for student and campus parking privileges. The legislature declined however to prohibit guns from all cars on campuses or to allow every individual school to make its own rules, the result sought by Defendants here. This makes it clear that the failure to include all schools in the campus prohibition for purposes of securely encased firearms, was intentional and not an accident. If the Defendants are correct in their position surely the legislature would have corrected this error in the intervening 5 years.

Sec. 790.251 Fla. Stat., does not grant any substantive right to Defendants regulate firearms in private vehicles.

Standard of Review

Interpretation of a statute is a legal issue involving the interpretation and application of statutory language and is therefore subject to a de novo review. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011).

What Defendants ignore in making their argument is that Sec. 790.251, Fla.

Stat., does not grant any affirmative right to Defendants or any other business or school. It was passed as a protection for individuals who were denied the right to park their vehicle at their job or at businesses they visit. The exceptions in Sec. 790.251, Fla. Stat., are not an affirmative grant of authority to defendants or any other business. They are what they say they are, exceptions to liability to suit for regulating guns in parking lots under Sec. 790.251, Fla. Stat. Sec. 790.251 certainly does not allow governmental entities to violate the preemption set forth by the legislature.

In addition to trying to read things into Sec. 790.251, Fla. Stat. that are not there, Defendants ignore the fact that it has been declared unconstitutional except as between employers and employees, and is therefore inapplicable as between Defendants and their students. The lower tribunal's order on the Motion for Temporary Injunction relied, at Defendants' urging, almost exclusively on Sec. 790.251, Fla. Stat. This statute, as pointed out by Plaintiffs at the hearing on the Motion for Temporary Injunction, was declared unconstitutional shortly after its passage, to the extent it applied to any relationship other than the employer-employee relationship. *Florida Retail Federation Inc. v. Atty. Gen. of Florida*, 576 F.Supp.2d 1281 (2008) and 576 F. Supp.2d 1301 (2008). The Plaintiffs' do not seek to abrogate the effect of Sec. 790.251, Fla. Stat. as it applies to the

employer-employee relationship between Defendants and their employees. In this case Plaintiff's are only suing as to students and other guests, lawfully present on the campus of UNF, not its employees.

Sec. 790.251, Fla. Stat., is a civil statute, while 790.115 Fla. Stat., is a criminal statute. Sec. 790.251, never mentions any criminal punishment for the possession of a firearm. It merely states, that in accordance with its legislative intent, an individual whose rights under the statute are violated by their employer, has a cause of action against the employer for civil damages, much as Sec. 790.33, Fla. Stat., the statute being enforced by this action, does for individuals who sue governmental entities for violation of the preemption provisions.

Sec 790.115, Fla. Stat., is a criminal statute. It provides that possession of a firearm on a school campus, including Defendants' is a felony, unless a person possess a concealed carry permit, in which case the possession of the firearm is a misdemeanor. It then makes a specific exception for those persons carrying a securely encased firearm in a private conveyance, in accordance with Sec. 790.25, Fla. Stat, as Plaintiffs' Complaint sets forth they wish to do. The next part of the statute allows "school districts" but not individual schools or any other entity, to waive operation of the securely encased provision, but not for all cars on campus. It only allows the waiver of the securely encased provision for purposes of student

and campus parking privileges. See *Thompson v. State*, FLW Supp. 1805THOM; 18 Fla. L. Weekly Supp. 461a.(holding that the provision allowing for waiver of the securely encased provision of Sec. 790.115, Fla. Stat., did not apply to a parent picking up their child, and that such a reading would lead to an absurd result when read in part with the declaration of policy and legislative intent and construction contained in the referenced statute of Sec. 790.25. Fla. Stat.)

Sec 790.251, Fla. Stat. does not grant a business, or school any substantive right to ban firearms from its premises, but is a protection for individuals, which authorizes civil suits against businesses. The Court's Order Denying Motion for Temporary Injunction misapprehends the purpose of Sec. 790.251, Fla. Stat. Nowhere does Sec. 790.251 authorize UNF or any other individual school to ban firearms from school property, nor does any statute indicate an intent to do so. Sec. 790.251, Fla. Stat., as set forth above and in its legislative intents and findings, never indicates such an intent and in fact indicates that any restriction should be read in a very limited manner. The clear intent of the statute was for a very specific reason, to prevent discrimination against holders of Concealed Weapon Firearms Licenses, and to protect the rights of employees and other guests of businesses to have a privacy interest in the content of their vehicles in regards to the storage of firearms.

> **(3) Legislative intent; findings.--**This act is intended to codify the long-standing legislative policy of the state that individual citizens have a constitutional right to keep and bear arms, that they have a constitutional right to possess and keep legally owned firearms within their motor vehicles for self-defense and other lawful purposes, and that these rights are not abrogated by virtue of a citizen becoming a customer, employee, or invitee of a business entity. It is the finding of the Legislature that a citizen's lawful possession, transportation, and secure keeping of firearms and ammunition within his or her motor vehicle is essential to the exercise of the fundamental constitutional right to keep and bear arms and the constitutional right of self-defense. The Legislature finds that protecting and preserving these rights is essential to the exercise of freedom and individual responsibility. The Legislature further finds that no citizen can or should be required to waive or abrogate his or her right to possess and securely keep firearms and ammunition locked within his or her motor vehicle by virtue of becoming a customer, employee, or invitee of any employer or business establishment within the state, unless specifically required by state or federal law.

§ 790.251, Fla. Stat. Ann.

The only reference to schools in the entire statute is that schools, as defined in chapter Sec. 790.115, Fla. Stat., (which would include Defendant UNF) are not prohibited, by the terms of Sec. 790.251, Fla. Stat., from engaging in conduct prohibited to other employers, but the statute does not authorize UNF or any other college to do anything specific regarding the regulation of firearms in vehicles. That is left to the provisions of other statutes, such as Sec. 790.115, Fla. Stat.

Defendants argue that the treatment of different categories of schools differently is an absurd result and therefore must be overruled. Defendants argued

below that Plaintiff's interpretation of chapter 790 would lead to an absurd result, because it would allow some schools such as private schools to ban firearms on campus but not individual public schools or universities. In order to make this claim, defendant ignored applicable parts of chapter 790, as well as basic legal principles.

It is well established that the rights, obligations and roles of public elementary and secondary schools and their students are different and distinct from those at the post secondary or college level. See, *Morse v. Frederick*, 551 U.S. 393, 396 (2007). This has been held to be true for First Amendment free speech cases, religious expression cases, and funding cases, and Fourth Amendment cases. The Court's have reasoned that the greater standard of control is necessary at the younger ages in part because of the schools responsibility for the safety and welfare of the students, that does not exist at the college level.

The Florida legislature has also expressly recognized that there is a distinction between K-12 schools and universities in 790.115, Fla. Stat. While under (2)(a) of Sec. 790.115 firearms are generally banned from the property of any school, subsection (1) prohibits exhibition of firearms on any school property or within 1000 feet of a "public or private elementary school, middle school, or secondary school, during school hours or during the time of a sanctioned school

activity". Interestingly the 1000 foot provision is never referenced in regards to post-secondary schools, a clear indication that the legislature understood the difference and determined there was a necessity to treat the different types of schools differently. Despite the legislature's definition of the word "school" later in the statute, it is clear that the word's use in the last sentence of 790.115(1), Fla. Stat., was limited to elementary, middle, and secondary schools as identified in the immediately preceding sentence.

In fact, if it was the legislature's intent to ban all firearms from school property in all instances as the Defendants suggest Sec. 790.251, Fla. Stat., was intended, there would be no need for the provision in Sec. 790.115, Fla. Stat., that allows possession of a securely encased firearm in a vehicle as an exception to the general prohibition of firearms from school property. Nor would there be a need to grant school districts the authority to restrict firearms for purposes of student and campus parking privileges, if there was a general intent to always ban firearms from all school campuses including those securely encased in a vehicle. If Defendants' interpretation was correct, the language in Sec. 790.251, Fla. Stat., would have already banned all firearms from all campus under any circumstances. This is a situation clearly not desired by the legislature considering its specific language in Sec. 790.115, Fla. Stat., allowing for an exception for firearms in

private conveyances, and would render that provision of Sec. 790.115, Fla. Stat., meaningless, violating a basic rule of statutory construction that all words be given effect. See *Gen. Elec. v. DeCubas*, 504 So. 2d 1276, 1278 (Fla. 1st DCA 1986)

As to the distinction between public and private schools the difference is critical and obvious. The action here is governmental interference with a fundamental constitutional right, a problem not encountered when a private school enacts a similar ban. Just because the legislature excepted all schools from liability for violation of Sec. 790.251, it does not necessarily follow, that it intended to allow public universities to violate the preemption law, or create a felony crime just because the school chose to.[2]

Allowing the un-elected Defendants to create a felony, where none previously existed, would constitute an unconstitutional delegation of authority which the legislature could not have intended, and such a delegation would be invalid if it had intended to grant such authority.

Standard of Review

Interpretation of a statute is a legal issue involving the interpretation and

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[2] *State v. Ragland*, 789 So.2d 530 (Fla. 5th DCA 2001) concurring opinion (questioning the authority of the legislature to delegate the creation of a felony).

application of statutory language and is therefore subject to a de novo review. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011).

In addition to the different ages of the students, with Defendants' students being legal adults, the legislature could not have intended to empower non-elected officers of public or private businesses or agencies that operate schools with the authority to create a felony where none existed before, by the publishing of a waiver of secure encasement under Sec. 790.115. To do so would be a clearly unconstitutional grant of authority. See, *State v. Ragland*, 789 So.2d 530 (Fla. 5th DCA 2001)

As discussed above, the publishing of a waiver pursuant to Sec. 790.115, creates, by law, a crime where none previously existed. A general employer who makes a rule contrary to Sec. 790.251, breaks the law if they do not come within one of the exceptions, but by having such a rule does not make the individual who breaks the rule a criminal. If they do meet one of the exceptions their rule allows them to fire an employee or ban them from the premises, but still does not make the employee a criminal. A school district that properly publishes a waiver pursuant to Sec. 790.115, makes an 18 year-old student with a firearm securely encased in his car a felon, based merely on its publishing of the waiver. Such authority simply cannot be delegated to an unelected board or person, and

certainly not to a private organization.

The distinction between public and private schools is proper and was critically necessary to the drafting of Sec. 790.115, Fla. Stat. Without such a distinction there could be no legal basis whatsoever for the legislature's grant of waiver authority. *Ragland*. For the waiver authority granted in Sec. 790.115, Fla. Stat., to withstand any level of constitutional scrutiny, the authority to control creation of a felony statute could only be granted to an elected constitutional officer or group of officers, such as a school board, the duly elected governing body of a school district. To apply the statute any differently would make it clearly invalid as any delegation to a private individual to create a felony based on the exercise of their own discretion would constitute an unconstitutional delegation of legislative authority. As there is also no authority expressed for the Defendants who are a non-elected officer and president of the university and the university itself to enact or promulgate and enforce such a waiver. Because the law on which Defendants rely did not allow the promulgation or enforcement of this regulation, Defendants are in clear violation of 790.33, Fla. Stat.

Reliance on legislative history is improper when the statute at issue is clear and unequivocal, and the legislative history does not support the Defendants' claims.

Standard of Review

Interpretation of a statute is a legal issue involving the interpretation and application of statutory language and is therefore subject to a de novo review. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011).

Defendants relied heavily on legislative history in the prior hearing in this case, arguing that the Court should consider the statements of three individual senators, two of whom ultimately voted against the bill, and one who sponsored the bill to divine the intent of Sec. 790.251, Fla. Stat. The Legislative intent of Sec. 790.251, Fla. Stat., however, is irrelevant to the legislative intent of Sec. 790.115, Fla. Stat., which was passed 16 years earlier.

Legislative intent cannot be divined from the statement of an individual legislator. "[F]loor debates reflect at best the understanding of individual Congressmen." *Zuber v. Allen,* 396 US 168 (1969). Further, there is no need to rely on analysis of legislative intent when the plain language of the statute is clear.

The Defendants argued that the floor debate on Sec. 790.251, Fla. Stat., should somehow inform or influence the Court to delete a word from Sec. 790.115, Fla. Stat., specifically the word district, from the term “school district” and rule that because the quoted legislators determined that the term “school” as defined in Secs. 790.251 and Sec. 790.115, Fla. Stat., applied to Defendant UNF,

the Court should hold that Defendant UNF was also within the term "school district" in Sec. 790.115, Fla. Stat.

Floor debate over 790.251, Fla. Stat., in 2008, referring to the provisions of 790.115, Fla. Stat., is not authoritative of 790.115's intent as enacted by other legislators 16 years earlier. Further, the Court's findings of legislative intent directly conflict with 790.251's expressed legislative intent and findings. See 790.251(3), Fla. Stat., as quoted previously. There is absolutely no support for Defendants' argument that individual legislation's opinions regarding a statute under consideration can bear in any way upon a statute passed 16 years prior.

In fact the legislators cited were not even discussing the same provision at issue here. The Senators were discussing whether the exemption from suit under Sec. 790.251, included the same schools as defined in 790.115, Fla. Stat. The answer was yes. This is absolutely true. What the senators did not discuss, was the fact that even though a school could not be sued for violation of Sec. 790.251, Fla. Stat., nothing about that legislation prevents suits under Sec. 790.33, Fla. Stat., for violation of preemption by a governmental entity.

Prior to 1997 there was no restriction on possession of a firearm in a private vehicle on any school campus. At that time carry of the firearm on any school campus was prohibited, but nothing prevented the right to store a firearm in a

private conveyance on any school campus. A review of the legislative history of 790.115, Fla. Stat., and the passage of the provision making an exception for school districts in 790.115, Fla. Stat., shows that the only schools considered at the time was K-12 schools. The bill was passed through the Committee on Education/ K-12, which is concerned with K-12 education only. It was never even referred to any committee which is responsible for legislation affecting post-secondary schools. HR1309, 1997.

The bill that created the waiver exception for school districts HR 1309, 1997, was a bill regarding zero tolerance, truancy, compulsory attendance and second chance schools, issues that generally do not concern 4 year universities. In fact there is not one instance in HR 1309 which seeks to apply to post-secondary schools other than the provision that Defendants here are trying to apply. As an additional note, the bill repeatedly uses the terms school board and school district. See HR 1309, 1997.

Had the legislature wanted to ban storage in private vehicle from all campuses it could have easily done so. It did not. This issue was specifically considered as shown by the Senate's staff analysis of 2 April 1997, on a related bill, SB 1904, 1997. The original language of this bill, considered at the same time as HR 1309, included a provision to completely do away with securely

encased firearms in vehicles on school campuses. Prior to passage of the bill, the language was removed, leaving the statute with its present language. The Legislature specifically chose to limit this new restriction on firearm in vehicle possession to cases where school districts passed the waiver, but for purposes of student and campus parking privileges only, not even banning all firearms from those district's schools who chose to enact the waiver. Those not exercising student or campus parking privilege can still store a firearm in their vehicle on those school's campuses, for example when they pick up their child. See, *State v. Thompson*, FLWSUPP 1805 THOM; 18 Fla. L. Weekly Supp. 461a.

The Defendants also seem to rely on an argument that they as a university are a special case, and should of course be allowed to ban firearms, and that of course the legislature intended to include them despite all evidence to the contrary. They claimed that the entire university system in Florida prohibits possession in a vehicle on campus. (R. 108). The Defendant's ignore, as discussed above, that the legislature considered and rejected this idea of a ban on in car firearm possession on all campuses. They also ignore the fact that numerous colleges and universities in other states allow not just in car possession, but even carrying of concealed firearms around campus, including, Colorado, Oregon, and Utah. Other states that do not, by law, prohibit carrying of firearms on campus include, Kentucky,

Washington, Idaho, Montana, Arizona, Alaska, South Dakota, Minnesota, Iowa, Indiana, Alabama, West Virginia, Virginia, Pennsylvania, New Hampshire, Connecticut, Rhode Island, Delaware, and Hawaii. Open carry is legal on campuses in, Wyoming, Kansas, Missouri, Michigan, and Ohio. http://www.opencarry.org/college.html.

At the end of the day the legislative intent of neither Sec.790.115 or Sec. 790.251, Fla. Stat. in any way support Defendants' argument, and should not be considered because the language of the statutes is clear and unambiguous. The legislative history of Sec. 790.115, Fla. Stat., shows that Defendants' analysis of the statute is incorrect and that the legislature never intended to ban securely encased firearms in vehicles from Defendant's campus.

The denial of the Plaintiffs' Motion for Temporary Injunction, was improper and impairs the Plaintiffs' constitutional right under the Florida and U.S. Constitution to keep and bear arms for purposes of self-defense.

Standard of Review

Interpretation of a statute is a legal issue involving the interpretation and application of statutory language and is therefore subject to a de novo review. *Brown v. City of Vero Beach*, 64 So. 3d 172, 174 (Fla. 4th DCA 2011). However, denial of a temporary injunction is reviewed under a clear abuse of discretion

standard. *3299 N. Fed. Highway, Inc. v. Bd. of County Com'rs of Broward County*, 646 So. 2d 215, 220 (Fla. 4th DCA 1994).

Plaintiffs sought a temporary injunction that was denied by the lower court on the grounds that Defendants were specifically authorized to pass the rules objected to in this action. Should this Court determine that the court below erred in its interpretation of the statutes at issue, Sec. 790.33, Fla. Stat., specifically authorizes injunctive relief, that should be granted to prevent further deprivation of Plaintiffs' rights under federal and state law.

The right to keep and bear arms is a fundamental individual right protected by the second amendment to the United States Constitution. *Dist. of Columbia v. Heller,* 554 U.S. 570 (2008). The Second Amendment has been applied to the states by incorporation through the 14th Amendment. *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010). The right to keep and bear arms in Florida has been interpreted similarly to the Second Amendment Right. *Brook v. State*, 999, So.2d 1093, 1094 (Fla. 5th DCA 2009). Where there is a deprivation of such a constitutional right, irreparable injury is presumed. *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011)(holding that an ordinance substantially impairing range training, an important corollary right to the right to keep and bear arms was a violation of the Second Amendment).

Injunctive relief for the violations alleged in this case was specifically contemplated and authorized by the legislature. Sec. 790.33, Fla. Stat. The public has an interest in the enforcement of state law and in preventing Defendants from continuing to flout the law as they have for many years. The denial of the injunction by the lower court impairs the rights of the citizens of Florida and the authority of the legislature to enact laws for the state at large.

Any remedy awarded in this case will not adequately compensate Plaintiffs for the loss of their right to keep and bear arms during the pendency of the case, as protected by the Florida Constitution, and as regulated and recognized by the Florida Legislature. *Ezell*. Plaintiff has a right to bear arms for self-defense in her vehicle pursuant to Art. I Sec. 8, Florida Constitution, Sec. 790.25, and Sec. 790.06, Fla. Stat. *Davis v. State*, 146 So.2d 892, 893 (Fla. 1962)(holding that the Florida constitutional guarantee was intended to secure to the people the right to carry weapons for their protection).

Furthermore, in Florida the castle doctrine has been extended to the automobile as the extension of the home for purposes of self defense. See, Sec. 776.013, Fla. Stat. Defendants seek to prevent Plaintiff's from exercising their right to the most efficient means of self defense. See, *Heller* at 629 (stating that handguns are the quintessential self defense weapon).

As stated in *Heller*, the enshrinement of constitutional rights necessarily takes certain policy choices off the table. *Heller* at 635. Two different times in the Florida Statutes the legislature states that supplemental to constitutional rights, there is a legislatively recognized right to arms and to bear them in self defense.

> Florida Statute 790.25 (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."

> Florida Statute 790.06 (14) The Legislature finds … This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.

The right of Plaintiffs as recognized in both the U.S. Constitution and the Florida Constitution as well as under state law is being impaired by Defendants and should not be allowed to continue another day.

CONCLUSION

The legislature's intent was clear, to preempt regulation of firearms by any other agency or subdivision of the state. There is no support for Defendants' argument that its unauthorized rules and regulations attacked in this action are statutorily authorized. The Florida Legislature has the ultimate authority to

determine the laws of the State of Florida and has determined that a person should be allowed to carry a weapon or a firearm securely encased in their vehicle, and that doing so should not be a crime, including when driving onto a university campus. The legislature has not granted any affirmative authority to universities such as Defendant UNF to publish a waiver of the secure encasement provisions of Sec. 790.115, Fla. Stat.

Plaintiffs request the court reverse the lower tribunal, and reinstate the Plaintiffs' action against Defendants, and order the lower court to enter a temporary injunction prohibiting enforcement of Defendants' unlawful regulations. The Court should find that Secs. 790.06 and 790.33, Fla. Stat., preempts any regulation of weapons or firearms by University of North Florida or its president, and that Sec. 790.115, does not grant any right to Defendants to regulate firearms in any way. The lower tribunal should be directed to find in Plaintiffs' favor, issue the requested injunction and conduct a hearing to award statutory and actual damages.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 31st day of August, 2012 by E filing or U.S. Mail, to the following:

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CERTIFICATE OF COMPLIANCE

I hereby certifying that this brief complies with the font requirements of Rule 9.210 Fla. R. App. P.

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