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

STATE OF FLORIDA, ET AL.,

Appellants,

v.

CITY OF WESTON, FLORIDA, ET AL.,

Appellees.

CASE NO. 1D19-2819
L.T. CASE NOS.:
2018-CA-000699
2018-CA-001509
2018-CA-00882

BRIEF OF AMICUS CURIAE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. IN SUPPORT OF APPELLANTS

Stephen P. Halbrook
Attorney at Law
3925 Chain Bridge Road
Suite 403
Fairfax, VA 22030
Tel: (703) 352-7276
protell@aol.com
(*Pro Hac Vice* Application Pending)

John Parker Sweeney
James W. Porter, III
Marc A. Nardone
BRADLEY ARANT BOULT CUMMINGS LLP
1615 L Street, NW
Washington, DC 20036
Tel: (202) 393-7150
jsweeney@bradley.com
jporter@bradley.com
mnardone@bradley.com
(*Pro Hac Vice* Applications Pending)

Eliot B. Peace (FBN: 124805)
BRADLEY ARANT BOULT CUMMINGS LLP
100 N. Tampa Street, Suite 2200
Tampa, FL 33602
Telephone: (813) 559-5500
epeace@bradley.com

Counsel for Amicus Curiae National Rifle Association

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IDENTITY AND INTEREST OF AMICUS CURIAE

The National Rifle Association of America, Inc. (NRA), is the oldest civil rights organization in America and the Nation's foremost defender of Second Amendment rights. Founded in 1871, the NRA has approximately five million members—including tens of thousands in Florida—and is America's leading provider of firearm marksmanship and safety training for civilians. The NRA has a strong interest in this case because the penalty provisions challenged by the Plaintiffs protect NRA members' rights under the Second Amendment and the Florida Constitution, Art. I, § 8(a), from unconstitutional local government infringement.

SUMMARY OF ARGUMENT

The Florida Legislature has fully occupied the field of firearm regulation under its clear constitutional authority. Section 790.33(1), Fla. Stat. Nonetheless—in open contempt of the Legislature's exercise of its preemption prerogative—local governments in Florida have routinely passed ordinances unlawfully regulating the sale, possession, and use of firearms by Floridians and proposed even more unlawful regulations. These local governments and government officials knowingly—and contemptuously—violated state law with impunity and threatened further violations. The Florida Legislature adopted the challenged penalty provisions, Section 790.33(3), Fla. Stat., to prevent these unlawful acts and to hold local governments and governmental officials accountable for violating the law.

The penalty provisions are necessary to preserve and protect the Florida Legislature's prerogative to occupy the field of firearm regulation to preempt unlawful local action. Local authority and home rule cannot constrain the Legislature's enforcement of its preemption prerogative because local governments do not have any independent rights or powers beyond those granted by the Florida Legislature. Nor do the penalty provisions violate the principles of legislative and governmental immunity flowing from the doctrine of separation of powers because that doctrine applies exclusively to state government. This Court should reverse the circuit court and reject Appellees' challenges to the penalty provisions.

Further, Appellees obtained a declaration from the circuit court that certain proposed local government firearm regulations would be a valid exercise of the narrow authority granted counties by Article VIII, § 5(b), of the Florida Constitution. These proposed regulations would violate the Florida Legislature's clear, unequivocal, and explicit preemption in the field of firearm regulation. Neither Appellees nor the circuit court provided any substantive analysis or support for this dramatic expansion of Article VIII, § 5(b). This Court should overturn the circuit court's unwarranted extension of the narrow power granted local government over firearms.

ARGUMENT

I. The Penalty Provisions Fall Squarely Within the Power of the Florida Legislature to Preempt Local Government Firearm Regulation.

A. The Florida Legislature fully occupied the field of firearm regulation.

The Second Amendment provides, "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." U.S. Const., Amend. II. In *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010), the Supreme Court held that the right to keep and bear arms is "among those fundamental rights necessary to our system of ordered liberty."

Further, Art. I, § 8(a), Fla. Const., 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 . . . ." *See Norman v. State,* 215 So. 3d 18, 42 (Fla. 2017) (recognizing "the fundamental right to bear arms").

In that spirit of ordered liberty and to protect the fundamental right to keep and bear arms, the Florida Legislature fully occupied the field of firearm regulation in 1987: "Except as otherwise 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 . . . ." Section 790.33(1), Fla. Stat.[1] The

[1] Forty-two other States have enacted similar legislation, reflecting a national consensus that regulation of such a bedrock constitutional right should not remain subject to the whims of local officials. *See* Arian Campo-Flores, *A Rebellion in*

purpose of the Legislature's express field preemption was to "provide uniform firearms laws in the state." Section 790.33(2)(a), Fla. Stat.[2]

The Legislature's preemption of local firearm regulation is grounded in its plenary authority to preempt local government regulation in any field not otherwise addressed in the Florida Constitution or other Florida laws. *See* Art. VIII, §§ 1(f), 1(g), 2(b), Fla. Const.; *see also Metro. Dade Cty. v. Chase Fed. Haus. Corp.*, 737 So. 2d 494, 504 (Fla. 1999) (noting if the Legislature did not have plenary preemption authority, "political subdivisions would have the power to frustrate the ability of the Legislature to set policies for the state").

Local governments ignored the Legislature's exercise of its preemption prerogative by enacting various ordinances regulating firearms, for example, prohibiting high-capacity ammunition magazines and requiring gun-locks. *Fla. H. Judiciary Comm., H.B. 45 Final Bill Analysis,* 2011 Leg., 113th Sess., at 2-3 (Fla. 2011) (footnotes omitted); *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504, 504 (Fla. 3d DCA 2002) (invalidating the City of South Miami's regulation

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Florida: Cities vs. State for Gun Control, WALL STREET J. (May 9, 2018), https://goo.gl/qX8sHD.

[2] "The right to own firearms is a basic fundamental right, and we're going to have one set of laws for all of the citizens to follow." *Regulations Firearms and Ammunition: Hearing on S.B. 402 Before the S. Crim. Just. Comm.,* 2011 Leg., 113th Sess. at 2:03-2:10 (Fla. 2011) (statement of Fla. Sen. Joe Negron), *available at* https://goo.gl/CezZzJ.

requiring gun-locks). Section 790.33 needed an enforcement mechanism to ensure local governments did not violate the Legislature's preemption of local regulation.

The Florida Legislature exercised its constitutional and statutory prerogatives to implement the challenged penalty provisions by creating a private right of action, accompanied by civil penalties, to hold accountable local government officials who violate the Legislature's occupation of the field of firearm regulation. Section 790.33(3), Fla. Stat. Instead of requiring citizens to challenge impermissible local firearm regulations through years of costly litigation, *see Nat'l Rifle Ass 'n v. City of S. Miami,* 812 So. 2d at 505 (citizens left "wondering whether they are going to be illegally prosecuted by the City come next dove hunting season"), local governments are now required to ensure their ordinances comply with State law.

B. Local governments have no rights or powers not granted by the Florida Legislature.

Appellees' entire lawsuit proceeds from a flawed premise: that local governments have rights and powers independent of those conferred on them by the Legislature. Local governments derive their powers and authority solely from the State and do not have any right and powers but those the State permits them to exercise. Because local governments do not have any independent sources of authority, the State may define, delineate, and abrogate the rights and powers of local governments. Accordingly, local authority or home rule cannot serve as a basis to overturn the penalty provisions.

Local governments, including counties and municipalities, are creatures of the State without any independent sovereignty. *See* Art. VIII, §§ 1–2, Fla. Const.; *see also Weaver v. Heidtman*, 245 So. 2d 295, 296 (Fla. 1st DCA 1971) (holding counties "do not possess any indicia of sovereignty; they are creatures of the legislature, created under Art. VIII, Sec. 1, of the State Constitution . . . and accordingly are subject to the legislative prerogatives in the conduct of their own affairs").

Unlike the federal relationship between the states and the federal government recognized in the U.S. Constitution, in which both the states and the federal government possess independent sovereignty, *see, e.g.*, Art IV., and Amend. X, U.S. Const., local governments are subordinate to their state because local governments do not possess independent sovereignty. "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them . . . . The number, nature, and duration of the powers conferred upon these corporations . . . rest[] in the absolute discretion of the state." *Hunter v. City of Pittsburgh,* 207 U.S. 161, 178 (1907); *see also Reynolds v. Sims,* 377 U.S. 533, 575 (1964) ("Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities"). While states may grant broad local

authority, that does not confer sovereignty to local governments. *See Wisconsin Pub. Intervenor v. Mortier,* 501 U.S. 597, 607-08 (1991) (reaffirming as well-settled the principle that "local governmental units are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion") (internal citations omitted). In Florida, local governments can only act under authority permitted by the State of Florida. *See State ex rel. Gibbs v. Couch,* 190 So. 723, 727 (Fla. 1939); *Barry v. Garcia,* 573 So. 2d 932, 936-37 (Fla. 3d DCA 1991). They do not possess independent sovereignty on which to attack the penalty provisions.

The Florida Constitution does provide local governments limited authority under the principle of "home rule." The home rule provision authorizes local governments the authority to exercise any powers except as otherwise provided by law. Art. VIII, §§ 1(f)–(g), 2(b), Fla. Const.; *see also* Section 166.021(1), Fla. Stat. While these home rule authorities permit local governments to act in the absence of Legislative preemption, they do not alter the relationship between the State and local governments, nor do they confer independent sovereignty on local governments to resist State preemption. Local governments remain subordinate to the Legislature. *See City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928 (Fla. 2013) (holding the Florida Legislature retains superiority over local exercises of power "except as otherwise provided by law"); *see also Thomas v. State*, 614 So. 2d 468,

470 (Fla. 1993) ("Municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute."); *see also Rinzler v. Carson,* 262 So. 2d 661, 668 (Fla. 1972); *D'Agastino v. City of Miami,* 220 So. 3d 410 (Fla. 2017). Home rule clarifies the scope of permissible local action under state law, but it does not constrain the Legislature's prerogative to enforce its preemption of local action with penalties.

As authorized in the Art. VIII, §§ 1–2, Fla. Const., the Florida Legislature expressly preempted the field of firearms regulation, prohibiting local government action in that field. Section 790.33(3), Fla. Stat. The penalty provisions are a lawful and necessary enforcement of the Florida Legislature's constitutional and statutory prerogatives in the face of consistent resistance by local governments to the State's preemption of local firearm regulation. The penalty provisions should be upheld.

II. The Separation of Powers Doctrine Does Not Bar the Penalty Provisions.

The circuit court incorrectly held that the separation of powers doctrine, as expressed through legislative and governmental immunity, forbids the penalty provisions. (R. 2007–2010., Summ. J. Order.) On the contrary, the separation of powers doctrine does not apply to local governments and does not bar the penalty provisions.

A. The legislative immunity doctrine does not constrain the Florida Legislature's power to enact the penalty provisions.

The circuit court determined the principles of legislative immunity, which it

ruled protects local governments from the penalty provisions, arises from three sources: Florida common law, separation of powers in the Florida Constitution, and federal law. (R. 2007, Summ. J. Order.) First, under Florida law, legislative immunity only arises from the common law—and the Legislature abrogated this common law legislative immunity in Section 790.33(3). As a matter of Florida constitutional law, separation of powers only applies to state, not local government. Finally, federal law fails to extend legislative immunity to local governments.

The circuit court correctly found legislative immunity arises from common law and the Legislature abolished any common law legislative immunity by enacting the penalty provisions. (R. 2007, Summ. J. Order.)

However, the circuit court also recognized legislative immunity arising from the separation of powers. The Florida Constitution provides for the separation of powers between the legislative, executive, and judicial branches of state government. Art. II, § 3, Fla. Const. ("The powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."). The Florida Supreme Court reiterated the separation of powers provision "was placed in our constitution to emphasize the balance of power between the three branches of state government" and "was not intended to apply to local governmental entities and officials." *Locke v. Hawkes,* 595

So. 2d 32, 36 (Fla. 1992); *see also Citizens for Reform v. Citizens for Open Gov't, Inc.,* 931 So. 2d 977, 989-90 (Fla. 3d DCA 2006) ("[T]he concept of Constitutional separation of powers simply does not exist at the local government level.") The circuit court held legislative immunity, arising from the separation of powers doctrine, prevents the enforcement of the penalty provisions against local legislatures. Because that conclusion is incorrect as a matter of law—separation of powers only applies to state government—legislative immunity cannot serve to invalidate the penalty provisions.

Further, the circuit court incorrectly held, without substantial analysis, that the U.S. Constitution also provides legislative immunity. (R. 2009, Summ. J. Order.) The circuit court cited *Florida House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 519 (Fla. 1st DCA 2012), a case involving compelled testimony by a state legislator and legislative testimonial privilege—a case that actually contradicts the circuit court's use.[3] In distinguishing between legislative *privilege* and legislative *immunity* of state officials, this Court held in *Expedia* "the privileges and immunities afforded to all government officials, including those who serve in the legislative

[3] The passage the circuit court quotes in support of its holding that the U.S. Constitution affords legislative immunity to local government officials instead establishes privilege and legislative immunity are common law, not constitutional, principles. (R. 2009, Summ. J. Order.)

branch, *arise from the common law*." *Id*. at 522 (emphasis added).[4] Finally, the U.S. Supreme Court has rejected the notion that legislative immunity arises from the U.S. Constitution. *Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 403 (1979).

Even assuming legislative immunity applies to local government officials (it does not), it is at most derived from common law and may be abrogated by an act of the Legislature—which is precisely what the Legislature did here. Section 790.33(3)(a), Fla. Stat. (providing any local government official who "violates the Legislature's occupation of the whole field of firearms regulation" by "infringing upon such exclusive occupation of the field shall be liable" as provided in the statute).[5] The doctrine of legislative immunity cannot be used to attack the Legislature's action because the Legislature determines whether local governments retain any sort of legislative immunity. The Legislature's enactment of the penalty provisions is enough in and of itself to negate any legislative immunity as a ground to challenge those penalty provisions.

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[4] If any legislative immunity available to a state legislator arises from the common law, it follows that legislative "immunity" available to local government officials, if any, also arises from the common law, unless expressly established elsewhere.

[5] In addition to abrogating common law legislative immunity on a case-by-case basis, the Legislature could extend legislative immunity to local government officials or abolish the immunity entirely. *McNayr v. Kelly*, 184 So. 2d 428, 430 n.6 (Fla. 1966); *see also Bates v. St. Lucie Cty. Sheriff's Off,* 31 So. 3d 210, 213 (Fla. 4th DCA 2010).

B. The governmental immunity doctrine does not constrain the Florida Legislature's power to enact the penalty provisions.

The circuit court also held that separation of powers provides governmental function immunity for local governments, which the penalty provisions violated. (R. 2009–2010, Summ. J. Order.) But governmental immunity applies only to tort claims. Because the challenged penalty provisions create a statutory cause of action, rather than a tort claim, the governmental immunity doctrine is inapplicable.

The doctrine of governmental immunity does not apply because governmental immunity for discretionary functions—and the separation of powers concerns on which it is founded—arises in the context of tort liability, not statutory liability. Florida, like other states and the federal government, waives sovereign immunity for most torts in which the state is a defendant. Section 768.28, Fla. Stat. Governmental immunity, a tort liability exception for "certain [quasi-legislative] policy-making, planning or judgmental governmental functions," is implied. *Wallace v. Dean*, 3 So. 3d 1035, 1053 (Fla. 2009) (alteration in original). This immunity only applies in the tort context and is not a bar to the penalty provisions.

Governmental immunity only applies to tort causes of action. *Trianon Park Condo Assoc., Inc. v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985) (holding that governmental immunity only applies "absent a violation of constitutional or *statutory* rights") (emphasis added); *see also Citizens Prop. Ins. Corp. v. Perdido Sun Condo. Ass'n, Inc.,* 164 So. 3d 663, 667 (Fla. 2015) (distinguishing between

statutory causes of action and tort actions); *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp..,* 908 So. 2d 459, 471-72 (Fla. 2005) (holding the Florida Constitution authorizes the Legislature the authority to waive state and local government immunity); *and see Bifulco v. Patient Bus. & Fin. Servs., Inc.*, 39 So. 3d 1255, 1257 (Fla. 2010) (holding the Legislature waives immunity when it expressly creates a statutory cause of action against local governments). Because Section 790.33(3), Fla. Stat., creates a statutory cause of action, it is not limited by the governmental immunity doctrine.[6] Finally, this Court has previously ruled that immunity does not apply in actions brought under Section 790.33, Fla. Stat. *See Florida Carry, Inc. v. Univ. of Fla.*, 180 So. 3d 137, 149–50 (Fla. 1st DCA 2015). Thus, governmental function immunity is inapplicable and does not constrain the Legislature's prerogative to enact the penalty provisions.

III. Counties Cannot Require Firearm Sellers to Keep Records on Purchasers or to Regulate Gun Shows.

In its order granting summary judgment to the Appellees, the circuit court declared that counties, pursuant to their authority under Art. VIII, § 5(b), may enact certain additional regulations requiring:

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[6] Section 790.33(3) is not merely a waiver of sovereign immunity for local governments that violate the Legislature's preemptive authority. This section also creates a new, statutory private cause of action and allows injunctive and monetary relief against the offending local governments. *See* Sections 790.33(3)(b), (f), Fla. Stat.; *Bifulco* 39 So. 3d at 1257–58; *Maggio v. Florida Dep't of Labor & Emp't Sec.*, 899 So. 2d 1074, 1078–79 (Fla. 2005).

1. Documentation the date and hour of the firearm sale and of the transfer or receipt.

2. Documentation of the criminal records history check.

3. Requiring conspicuous notice at gun shows of the waiting period and background check.

4. Requiring that guns brought into gun shows for sale be tagged and controlling access doors at gun shows to ensure regulatory compliance.

(R. 2017–2018, Summ. J. Order.) The circuit court reasoned that requiring the creation of "records of firearms transactions, even if enacted in the form of regulations, do[es] not violate Section 790.335, Florida Statutes, which is limited solely to records of firearms and firearm owners." (R. 2018, Summ. J. Order.)

A record of a firearm transaction, such as that proposed here, would require identification of the firearm, the previous owner, and the current owner. So would documentation of the date and hour of the firearm sale and of the transfer or receipt and documentation of the criminal records history check. As such, the above provisions constitute regulations of firearms, including the purchase, sale, transfer, ownership, and possession. Therefore, the circuit court incorrectly expanded the counties' authority under Art. VIII, § 5(b) beyond merely requiring a records check and waiting period.

A. Counties may require a records check and waiting period, but may impose no other requirements on firearm purchase, sale, transfer, and ownership.

Counties have power to require a background check and waiting period for

certain firearm sales under Fla. Const., Art. VIII, Section 5(b), which provides:

> Each county shall have the authority to require a criminal history records check and a 3 to 5 -day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term "sale" means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

Art. VIII, § 5(b), only authorizes a county to require a records check and waiting period and, by implication from its authority to so "require," to make the failure to comply an offense. It does not authorize further restrictions or duties. "Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's *explicit langage*." *Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004) (emphasis added & citation omitted). Nothing in the explicit language authorizes a county to require more, including making and retaining records of firearm transactions, notices at gun shows, tagging guns at gun shows, and controlling access doors at gun shows.

Though counties have the power to require a records check and waiting period, they have no plenary power to criminalize *other* conduct under the guise that it may be useful in enforcing the records check and waiting period. Such measures would usurp the legislature's general powers and its specific guardianship to enforce the right to keep and bear arms.

In contrast to the limited regulatory authority Art. VIII, § 5(b), gives to counties, the Florida Constitution provides that "[t]here shall be a mandatory period of three days . . . between the purchase and delivery at retail of any handgun," and directs the Legislature to make it a felony not to do so. Art. I, § 8(b), (c), Fla. Const. Based on its plenary powers, the Legislature went further and required a waiting period for all firearms, violation of which it made a felony. Section 790.0655(1)(a), (3), Fla. Stat. It added a provision that records of firearm sales must be available for inspection by any law enforcement agency. Section 790.0655(2), Fla. Stat. A county has no plenary power to enact similar regulations requiring records retention and inspection. A county *only* has power to require a waiting period and background check.

B. The State occupies the field other than as "expressly provided" by the Constitution or general law.

The Florida Legislature is fully empowered to occupy a field except as expressly provided by the Constitution. "The legislative power of the state shall be vested in a legislature of the State of Florida . . . ." Art. III, § 1, Fla. Const. No person belonging to the legislative, executive or judicial branches "shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Art. II, § 3, Fla. Const.

The Florida firearms preemption law, Section 790.33(1), Fla. Stat., begins: "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 . . . including the purchase, sale, transfer . . . ownership, [and] possession . . . thereof . . . .” (Emphasis added.) *See National Rifle Ass'n v. City of South Miami*, 812 So. 2d at 505 (local firearm regulation preempted). The only power “expressly” granted in Art. VIII, § 5(b), Fla. Const. is that a county may “require a criminal history records check and a 3 to 5-day waiting period” for certain firearm sales, nothing more.

As such, a county, which “may be created, abolished or changed by law,” Art. VIII, § 1(a), Fla. Const., may be preempted from regulation of firearms except as the Constitution expressly provides. Art. VIII, § 5(b), Fla. Const., authorizes nothing more than the requirement of a records and waiting period. “We think that this provision of the Constitution must be read in pari materia with other parts of the Constitution . . . .” *Scarborough v. Webb's Cut Rate Drug Co.*, 8 So. 2d 913, 921 (1942).

In addition to its plenary legislative power, the legislature is entrusted with the power to protect constitutional rights. As explained by *Florida Carry, Inc. v. University of North Florida*, 133 So. 3d 966 (Fla. 1st DCA 2013) (*en banc*):

> The legislature's primacy in firearms regulation derives directly from the Florida Constitution. Article I, § 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.
>
> 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. . . . Indeed, the legislature has reserved for itself the whole field of firearms regulation in section 790.33(1) . . . .

Id. at 972. *Florida Carry* mandates inquiry into the counties' authority "must first begin with an examination of *the actual language of the constitutional provision*." *Id*. at 973-74 (emphasis added). Doing that here demonstrates that counties have authority to require a records check and waiting period—but nothing more.

In addition to the above, Florida's anti-registration law, Section 790.335(2), Fla. Stat., provides that no locality may "keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms." Moreover, "[t]his section shall be construed to effectuate its remedial and deterrent purposes." Section 790.335(6), Fla. Stat.

Here, the County Appellees propose to require keeping of records of privately purchased and owned firearms, including serial numbers, and of the identities of their owners. That blatantly violates Section 790.335(2) because nothing in a county's authority to require a background check and waiting period authorizes it to require keeping records of firearms that are purchased and their owners.

Finally, County Appellees concede that "the County Commissions are in doubt as to their rights to enact and enforce such regulations . . . ." (R. 1640, Amend.

Compl. of Broward Cty.) "[A]n ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute." *Rinzler,* 262 So. 2d at 668 (Fla. 1972) (firearm ordinance preempted).

C. The circuit court incorrectly expanded the Counties' authority over firearms.

Aware that additional requirements are preempted, previously, counties simply required a records check and waiting period and imposed penalties for violation. *See* Broward County Code of Ordinances, §§ 18-96 et seq. (imposing a $500 fine and 60 days in jail for violation);[7] *Jensen v. Pinellas County*, 198 So. 3d 754, 758-59 (Fla. 2d DCA 2016) (same, Pinellas County code). The requirements have been enforced by assigning police to detect violations, like other ordinances creating crimes are enforced. *E.g.*, *Pamphile v. State*, 110 So. 3d 517 (Fla. 4th DCA 2013) (officers monitored sales at gun show, arrested suspect).[8]

While not enacting new, preempted ordinances, some counties have shown their displeasure at the preemption law by not repealing older, invalid ordinances,

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[7] Broward County includes the cities of Ft. Lauderdale, Weston, and Coral Springs, all four of which are Appellees here.

[8] The mayor of Ft. Lauderdale confirmed: "We are fully enforcing the county ordinances as well as the state law." "Ft. Lauderdale police start enforcing background checks," https://www.floridabulldog.org/2013/05/ft-lauderdale-police-start-enforcing-background-checks-for-buyers-at-gun-shows/.

but reprinting them. "No doubt, the Commissioners in this case understood the preemption issue and acted defiantly in refusing to repeal the challenged ordinances . . . ." *Florida Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, 457 (Fla. 1st DCA 2017). That avoided a direct violation of Section 790.33(3)(a). *Id*.

In this case, County Appellees expanded their narrow power by obtaining a declaratory judgment from the circuit court that they have authority to pass various requirements in addition to imposing a records check and waiting period. (R. 1638–1641, Amend. Compl. of Broward Cty.) In addition to the provisions described in the circuit court's opinion, a draft ordinance provides more details, such as that a seller would be required to retain records for three years and the records would be subject to police inspection on demand. (R. 1658., Amend. Compl. of Broward Cty.) "Clearly this round-about attempt is being made because of the County's frustration at its inability to directly regulate firearms, an exercise proscribed by section 790.33, . . . which expressly preempts to the state legislature the entire field of firearm and ammunition regulation." *Penelas v. Arms Technology, Inc*., 778 So. 2d 1042, 1045 (Fla. 3rd DCA 2001).

The above restrictions go beyond the core requirement of a background check and waiting period and violate the preemption and anti-registration provisions. This Court should strike the circuit court's unwarranted expansion of Art. VIII, § 5(b).

CONCLUSION

The Second Amendment and Art. I, § 8(a), Fla. Const., protect the right of the people to keep and bear arms. The Florida Legislature chose to preempt the field of firearm regulation to ensure the exercise of the fundamental Second Amendment right is not infringed by local government. Nevertheless, many local governments knowingly and contemptuously violated State preemption law to infringe the exercise of this fundamental constitutional right by many Florida citizens. Local governments and their officials are not above the law and should be held accountable when they violate the law. The Florida Legislature acted well within its powers to institute the challenged penalty provisions. Finally, the additional proposed restrictions exceed the authority granted under Art. VIII, § 5(b), Fla. Const.

For the foregoing reasons, amicus curiae NRA respectfully requests the Court reverse the circuit court's grant of summary judgment and uphold the penalty provisions.

DATED this 2d day of December, 2019.

s/John Parker Sweeney
John Parker Sweeney
James W. Porter, III
Marc A. Nardone
BRADLEY ARANT BOULT CUMMINGS LLP
1615 L Street, NW
Washington, DC 20036
Tel: (202) 393-7150
jsweeney@bradley.com
jporter@bradley.com
mnardone@bradley.com
(*Pro Hac Vice* Application Pending)

Eliot B. Peace (FBN: 124805)
BRADLEY ARANT BOULT CUMMINGS LLP
100 N. Tampa Street, Suite 2200
Tampa, FL 33602
Telephone: (813) 559-5500
epeace@bradley.com

Stephen P. Halbrook
Attorney at Law
3925 Chain Bridge Road
Suite 403
Fairfax, VA 22030
Tel: (703) 352-7276
protell@aol.com
(*Pro Hac Vice* Application Pending)

Counsel for Amicus Curiae National Rifle Association

CERTIFICATE OF SERVICE

I certify that on December 2, 2019, I electronically filed the foregoing document with the Court via the Florida E-Portal system, which will send notice of electronic filing to the following counsel of record in this case.

/s/ Eliot B. Peace
Eliot B. Peace

Counsel for Amicus Curiae National Rifle Association

Joe Jacquot
Colleen Ernst
Executive Office of the Governor
The Capitol, PL-05
Tallahassee, FL 32399-0001
(850) 717-9310
Joe.jacquot@eog.myflorida.com
Colleen.ernst@eog.myflorida.com

Amit Agarwal
Daniel W. Bell
James H. Percival
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399
(850) 414-3818
Amit.agarwal@myfloridalegal.com
Daniel.bell@myfloridalegal.com
James.percival@myfloridalegal.com

Jamie A. Cole
Edward G. Guedes
Adam M. Hapner
Weiss Serota Helfman Cole & Bierman, P.L.
200 East Broward Blvd., Ste. 1900
Fort Lauderdale, FL 33301
(954) 763-4242
jcole@wsh-law.com
eguedes@wsh-law.com

ahapner@wsh-law.com

Matthew Triggs
Proskauer Rose LLP
One Boca Place
2255 Glades Road, Suite 421 Atrium
Boca Raton, Florida 33431
(561) 995-4736
mtriggs@proskauer.com
florida.litigation@proskauer.com

Michael A. Cardozo
Chantel L. Febus
David L. Bayer
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299
(212) 969-3000
mcardozo@proskauer.com
dbayer@proskauer.com
cfebus@proskauer.com

Eric A. Tirschwell
Everytown Law
450 Lexington Avenue, #4184
New York, New York 10017
(646) 324-8222
etirschwell@everytown.org

René D. Harrod
Nathaniel A. Klitsberg
Joseph K. Jarone
Claudia Capdesuner
Andrew J. Meyers, Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
(954) 357-7600
rharrod@broward.org
nklitsberg@broward.org
jkjarone@broward.org

clcapdesuner@broward.org

Altanese Phenelus
Shanika A. Graves
Angela F. Benjamin
Abigail Price-Williams
Miami-Dade County Attorney
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128
(305) 375-5151
Altanese.Phenelus@miamidade.gov
sgraves@miamidade.gov
Angela.benjamin@miamidade.gov

Abigail G. Corbett
Veronica L. De Zayas
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130 (305) 789-3200
acorbett@stearnsweaver.com
vdezayas@stearnsweaver.com

Aleksandr Boksner
Raul J. Aguila
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
(305)673-7470
AleksandrBoksnerEservice@miamibeachfl.gov

Herbert W.A. Thiele
Lashawn Riggans
301 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(850) 606-2500
countyattorney@leoncountyfl.gov
riggansl@leoncountyfl.gov
tsonose@leoncountyfl.gov

Clifford B. Shepard
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Pkwy. Ste. 100
Maitland, FL 32751
(407) 622-1772
cshepard@shepardfirm.com

Dexter W. Lehtinen
Claudio Riedi
Lehtinen Schultz, PLLC
Village of Palmetto Bay, Florida
1111 Brickell Avenue, Ste. 2200
Miami, FL 33131
Telephone: (305) 760-8544
dwlehtinen@aol.com
criedi@Lehtinen-Schultz.com
asalmon@Lehtinen-Schultz.com

Jacqueline M. Kovilaritch
Joseph P. Patner
Office of the City Attorney for the City of St. Petersburg
P.O. Box 2842
St. Petersburg, FL 33731
(727) 893-7401
eservice@stpete.org
Jacqueline.kovilaritch@stpete.org
Joseph.patner@stpete.org

Philip R. Stein
Kenneth Duvall
Ilana Drescher
BILZIN SUMBERG BAENA PRICE
& AXELROD LLP
1450 Brickell Avenue, Suite 2300
Miami, Florida 33131
Telephone: 305.374.7580
Facsimile: 305.374.7583
pstein@bilzin.com
kduvall@bilzin.com
idrescher@bilzin.com

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the font and margin requirements as described in Rules 9.100(1) and 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ Eliot B. Peace
Eliot B. Peace

Counsel for Amicus Curiae
National Rifle Association