

City of Crystal River



Agenda Packet
for
Regular Council Meeting
Monday, April 9th, 2018
7:00 p.m.



Agenda
Crystal River City Council
Regular Council Meeting
Monday, April 9th, 2018 @ 7:00 p.m.
Council Chamber, City Hall

Jim Farley, Mayor
Ken Brown, Council Seat #1/ Vice Mayor
Mike Gudis, Council Seat #2
Pat Fitzpatrick, Council Seat #3
Robert Holmes, Council Seat #5

Dave Burnell, City Manager
George G. Angeliadis, City Attorney
Mia Fink, City Clerk

NOTICE TO PUBLIC

Any person who decides to appeal any decision of the Governing Body with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose may need to provide that a verbatim record of the proceeding is made, which record includes testimony and evidence upon which the appeal is to be based. (Section 286.0105, Florida Statutes)

Any person requiring reasonable accommodation at this meeting because of a disability or physical impairment should contact the City of Crystal River, City Manager's Office, 123 N.W. Highway 19, Crystal River, Florida, 34428 (352) 795-4216, at least two (2) days before the meeting.

GENERAL MEETING PROCEDURES

1. In consideration of others, we ask that you follow a few basic rules:
 - A. Please turn cell phones off, or place on vibrate. If you must make a call, please step out into the hallway, in order not to interrupt the meeting.
 - B. If you must speak to someone in the audience, please speak softly or go out into the hallway, in order not to interrupt the meeting.
 - C. Personal comments/remarks, directed to Council or the public, are not allowed and are considered out of order.
2. Public comment is allowed two (2) times during the Council meeting:
 - A. **Public Input:**
The general public will be allowed three (3) minutes to speak during the *Public Input* section at the beginning of the meeting. The topic is open.
 - B. **Public Input:**
The general public will be allowed five (5) minutes to speak during the *Public Input* section at the end of the meeting. The topic is open.

1. CALL TO ORDER

- A. Roll Call.....City Clerk Fink
- B. Invocation.....Council member Gudis
- C. Pledge of Allegiance.....Mayor Farley
- D. Recognition of Elected Officials in Attendance.....Mayor Farley

2. ADOPTION OF AGENDA

3. PRESENTATIONS

- A. Springs Protection Awareness Month Proclamation.....Mary Kassebaum, SWFWMD

4. UNFINISHED BUSINESS

5. APPROVAL OF CONSENT AGENDA

- A. Motion to approve minutes from the Regular City Council meeting held March 26, 2018
- B. Motion to appoint Lora Klein to the Waterfronts Advisory Board Seat No. 7 - Regular Resident
- C. Motion to approve a revised memorandum of understanding for the 2018 Kings Bay Pirate Fest

6. PUBLIC INPUT

(Time Limit of Three Minutes)

7. PUBLIC HEARING

8. CITY ATTORNEY

9. CITY MANAGER

- A. CRA Annual Report
- B. Discussion regarding Pickleball in Legrone Park
- C. Discussion regarding "Super Preemption" and "Complaint for Declaratory Relief"

10. CITY COUNCIL

11. COMMITTEE REPORTS

- A. Mayor Farley
 - *Waterfronts Advisory Board*
- B. Vice Mayor Brown
 - *Withlacoochee Regional Water Supply Authority*
 - *Crystal River Main Street*
- C. Council member Fitzpatrick
 - *Metropolitan Planning Organization*

D. Council member Gudis

- *Tourist Development Council*
- *Library Governing Advisory Board*
- *Florida League of Cities*
- *Citrus County Community Charitable Foundation Board*

E. Council member Holmes

- *Keep Citrus County Beautiful*
- *Springs Coast Steering Committee*

12. COMMUNICATIONS

13. COUNCIL MEMBER REPORTS

A. Mayor Farley

B. Vice Mayor Brown

C. Council member Fitzpatrick

D. Council member Gudis

E. Council member Holmes

14. PUBLIC INPUT

(Five Minute Time Limit)

15. ADJOURNMENT

PROCLAMATION

WHEREAS, Florida's springs are essential to the environment, economy, residents and visitors of the state; and

WHEREAS, there are more than 150 documented springs as well as thousands of undocumented springs and seeps in the Southwest Florida Water Management District; and

WHEREAS, the District has five first-magnitude spring groups that collectively discharge more than one billion gallons of water per day; and

WHEREAS, these groups are important not only for their ecological value but also for their economic impact on the communities that call these areas home; and

WHEREAS, the District, in partnership with the various stakeholders, is committed to implementing projects to conserve and restore the ecological balance of these spring systems, thereby supporting regional economies and quality of life.

THEREFORE, BE IT RESOLVED that the City of Crystal River hereby proclaims the month of April 2018 as

SPRINGS PROTECTION AWARENESS MONTH

BE IT FURTHER RESOLVED that the Southwest Florida Water Management District shall continue to implement an adaptive management strategy to protect the region's springs through restoration, planning, communication and education, monitoring, research and development, regulation, conservation, and land acquisition and management.

In witness whereof, I have hereunto set my hand and caused to be affixed the official seal of the City of Crystal River, Florida, this 9th day of April, 2018.

Attest:



Mia Fink, City Clerk



Jim Farley, Mayor



City of Crystal River



Minutes from the
Regular Council Meeting held
Monday, March 26th, 2018
@ 7:00 p.m.



**Minutes of the
Crystal River City Council
Regular Council Meeting
Monday, March 26th, 2018 @ 7:00 p.m.
Council Chamber, City Hall**

1. CALL TO ORDER

Mayor Farley called the meeting to order at 7:00 p.m.

Council Present: Mayor Farley, Vice Mayor Brown, Council member Fitzpatrick, Council member Gudis, Council member Holmes

Council Absent: None

Staff Present: Finance Director Michelle Russell, City Attorney Jennifer Rey, City Clerk Fink, Public Works Director Beau Keene, Special Events Coordinator Leslie Bollin and Planning and Development Services Director Jackie Gorman.

Mayor Farley led in the Pledge of Allegiance and Council member Holmes led the invocation.

2. ADOPTION OF AGENDA

Motion to adopt the agenda was made by Vice Mayor Brown; seconded by Council member Gudis. Motion carried unanimously.

3. PRESENTATIONS

A. Water Conservation Month Proclamation.....Mary Kassebaum, SWFWMD
Mayor Farley presented the proclamation to Ms. Kassebaum who thanked Council for acknowledgment of April as water conservation month.

4. UNFINISHED BUSINESS

5. APPROVAL OF CONSENT AGENDA

A. Motion to approve minutes from the Regular City Council meeting held March 12, 2018

B. Motion to approve monthly departmental reports

C. Motion to approve the road closure, waiver of open container, and memorandum of understanding for the 2018 Kings Bay Pirate Fest

Background: [Agenda Sheet Requested Motion: Motion to approve the road closure, waiver of open container, and memorandum of understanding for the 2018 Kings Bay Pirate Fest.

Summary: The City special events department, along with Citrus Sertoma will once again be hosting the Kings Bay Pirate Fest on Saturday, May 19, 2018. The event will include: live music, arts and crafts, non-profits, kids areas, food trucks, beer and wine sales, The CR Raft Race, etc. They are requesting closure of Citrus Avenue from Highway 19 to NW 3rd Street and NE 5th Street from Citrus Avenue to NE 1st Ave. and NW 3rd Street from Citrus Avenue and NW 5th Street from Citrus Avenue to NW 1st Avenue for the hours of 6:00am-12:00am. They are also asking for waiver of open container for the festival area from the hours of 10:00am-10:00pm. This year they will be working with Citrus Sertoma on the event and they will be selling the beer and wine. They will be working with the CCSO deputies for the event.

Staff Recommendation: Staff recommends approval

End of Agenda Sheet]

D. Motion to approve a special event permit and waiver of open container for the Kemper BBQ at Kings Bay Park
Background: [Agenda sheet **Requested Motion: Motion to approve a special event permit and waiver of open container for the Kemper BBQ at Kings Bay Park.**

Summary: The Kemper Group is requesting permission to use an area at Kings Bay Park for a BBQ on April 17th & 18th, 2018 from 3:00pm- Sunset. The group is holding their annual conference at the Plantation and wants to expand their event to another waterfront area of Crystal River. The group is requesting a waiver of open container to be able to bring in their own beer and wine for the event, there will be no sales of alcohol and a CCSO Deputy will be hired.

Staff Recommendation: Staff recommends approval.

End of Agenda Sheet]

Motion to approve the consent agenda was made by Vice Mayor Brown; seconded by Council member Holmes. Motion carried unanimously.

6. PUBLIC INPUT

(Time Limit of Three Minutes)

Jack Huegel- 743 SE 1st Court- Discussed upcoming Three Sisters Springs Refuge management decision, urging comparison of past actions of each managing entity, noting work done by staff, severability clause in existing contract and expressing concerns with certain provision of a draft USFWS management plan.

Guy Marwick- Executive Director- Felburn Foundation- Discussed upcoming Three Sisters Springs Refuge management decision, urging a partnership with USFWS, noting benefits including wildlife management expertise and available funding, and suggesting further discussion between City and USFWS.

Nathan Braugh- 8387 N. Marinazzo Terrace- Expressed concerns with roadside maintenance on Three Sisters Springs Trail and Refuge, offering to provide a higher quality of service through his current employer.

Mary Morgan- 431 NE 13th & 124 N. Citrus Ave.- Expressed concern with cost of projects proposed in the city's draft management plan for Three Sister Springs Refuge, noting the expense of existing city projects including Riverwalk and City Hall, and concern with lack of detail as to how free days would be managed. w cost of all these projects on page 9 and 10...of the 3SSR Management Plan - added up to nearly a million dollars- 3000 residents- City walk and Bay Walk and new city hall- don't want city to find itself. Concerned... bottom of page 2- it's discussed managing ... people on free days- no mention of negative impacts- it's a lot of people but how was it handled?

Mayor Farley noted City's ability to maintain low tax rates.

Diane Oestreich- Birds Underwater- Spoke in favor of USFWS oversight for Three Sisters Springs Refuge management plan decision and expressed concerns with city's proposal to allow access for swimming and launching, including impact on local businesses.

City Manager Burnell clarified those provisions, intended for summer months, would be omitted.

James Greene- Homosassa- Discussed upcoming Three Sisters Springs Refuge management decision and article by former City Manager Andy Houston, noting past collaborative efforts between both entities and former Council view to put USFWS as the managing entity due to cost and personnel concerns and additional burden.

Mike Engiles- Crystal River Watersports- Discussed upcoming Three Sisters Springs Refuge management decision and letter from META expressing concerns including lack of ability to review draft plans, proposed in water access from the property, and uncertainty of future under Council authority, noting USFWS plan's inclusion of joint mechanism for management authority.

City Manager Burnell clarified that any future plan or change of plan would require FCT and SWFWMD approval.

7. PUBLIC HEARING

8. CITY ATTORNEY

City Attorney Angeliadis provided an update regarding an upcoming abatement code modification to allow for special assessments and provided clarification for Council that when a lien is in place a homesteaded property cannot be foreclosed upon.

9. CITY MANAGER

- A. Motion to approve a piggyback contract off Citrus County with Tolle Roads, LLC for roadway thermoplastic striping and marking in a not-to-exceed amount of \$50,000.00CRA Annual Report

Background: [Agenda Sheet **Requested Motion: Motion to approve a piggyback contract off Citrus County with Tolle Roads, LLC for roadway thermoplastic striping and marking in a not to exceed amount of \$50,000.00.**

Summary: With reference to the attached exhibits, numerous locations throughout the city --- especially in the school zone areas --- are in need of pavement striping and marking rehabilitation.

Staff also recommends updating the existing Crosstown Trail crossings to meet FDOT's special emphasis criteria to enhance safety.

Consistent with direction from the CRA at its May 8, 2017 hearing, bike sharrows ("share the road") are also proposed along NE 3rd St., Citrus Ave, and Crystal Street to provide a designated bicycle route which would link both sides of the Crosstown Trail across US-19.

Staff proposes to piggyback Citrus County's contract with Tolle Roads, LLC who was the low bidder in response to Citrus County Bid No. 006-11 for thermoplastic traffic striping; that contract is valid through 6/28/2019.

Tolle Roads, LLC has provided an estimate in the amount of \$45,860.00. Payment will be made based on the actual final quantities and Staff is requesting a not-to-exceed amount of \$50,000.00 to provide for an allowance.

The County's Road Maintenance Director stated Tolle's work has been acceptable.

Staff Recommendation: Approve a piggyback contract off Citrus County with Tolle Roads, LLC for roadway thermoplastic striping and marking in a not-to-exceed amount of \$50,000.00

End of Agenda Sheet]

City Manager Burnell provided a brief overview of the item and Council member Gudis noted the benefits of utilizing piggyback contracts.

Motion to approve a piggyback contract off Citrus County with Tolle Roads, LLC for roadway thermoplastic striping and marking in a not to exceed amount of \$50,000.00 Council member Gudis; seconded by Council member Holmes. Motion carried unanimously.

B. Status of FEMA Reimbursements related to Hurricane Hermine and Hurricane Irma

Background: [Agenda Sheet Requested Motion: Information only- Status on FEMA reimbursements related to Hurricane Hermine and Hurricane Irma.

Summary: The grant funding reimbursement can often be a lengthy process which can take years to complete. FEMA claims for both Hurricane Hermine and Hurricane Irma the applications have been completed and submitted for payment. This required City Staff spending many hours of document preparation to make both claims and it appears the review process and payments are no exception. To date we have had no rejections related to claims as it relates to the processes followed during the cleanup.

Hermine: Staff submitted requests for reimbursement for costs associated with Hurricane Hermine related to the City's cost for debris clean-up and removal, protective measures, and repairs and replacement of damaged or destroyed city assets/buildings. The City has been reimbursed for a small portion of the expenses incurred thus far and reimbursement for debris removal is outstanding. The requested reimbursement is all related to debris removal is approximately \$198,900.00. Staff requested a closeout on the reimbursement of for the debris removal in May 2017 and it is currently being processed by the State. Staff continues to work with both State and Federal agencies to secure total reimbursement for the expenses incurred during Hermine.

Irma: Staff has been working with FEMA to secure reimbursement for expenses incurred by the City during Hurricane Irma. The process for reimbursement was revamped and streamlined between Hurricane Hermine and Hurricane Irma. The state level of the process was removed to expedite the process. The State still pays its share but local governments now deal only with FEMA for final payment. The City request for of reimbursement is \$135,943.00 for eligible expenses. Staff has been told it is likely the City will see final payments for Irma before the final payments for Hermine are received based on the revised process.

Current total City funds expensed and not reimbursed is \$334,844.00. City Council authorized utilizing funds set aside for catastrophic events which had been set aside in a Money Market Account. Finance took steps and avoided drawing funds from the actual account by managing operating fund cash flow which has avoided account penalties and loss of interest income.

Staff Recommendation: N/A

End of Agenda Sheet]

City Manager Burnell provided a status update regarding outstanding FEMA funding reimbursements. He also addressed questions regarding the funding status for other communities, noting past assurances made by legislative representatives that reimbursement could be anticipated soon.

C. Discussion on the viability of continuing tent sales on commercial property

Background: [Agenda Sheet Requested Motion: No motion. Discussion on the viability of continuing tent sales on commercial property.

Summary: The City's Code of Ordinances addresses Tent Sales under Chapter 23-Special Events, which is attached for review.

This section of the code was developed in order secure the beneficial interests and purposes thereof which include public safety, health and general welfare through structural strength, stability, sanitation and safety to life and property from fire and other hazards incidental to congregation of persons at special events.

Tent Sales is listed in the ordinance as an acceptable activity under certain conditions. The conditions are based on the purpose and requirements which vary based on a number of conditions within the code.

Staff Recommendation: N/A

End of Agenda Sheet]

City Manager Burnell provided a brief overview of the item and presented members with a provision from the Citrus County LDC 9(ATTACHMENT A), noting that staff was requesting input to move forward with drafting an ordinance revision to current code regulating the issue. City Attorney Angeliadis also provided clarification regarding existing city code noting the opportunity to revise and clarify.

Council discussion was held during which concerns were expressed regarding an automobile tent sale held over the previous weekend, benefits of utilizing the county's LDC provisions and exceptions as a model and staff was requested to prepare and present options. City Manager Burnell also noted that he would be working with the Inverness City Manager.

- D. Motion to approve an Interlocal Agreement between the City of Crystal River, the City of Inverness, and Citrus County, Florida for Airport Protection Zoning Regulation in Citrus County Chapter 333, Florida Statutes

Background: [Agenda Sheet **Requested Motion: Motion to approve an Interlocal Agreement between the City of Crystal River, the City of Inverness, and Citrus County, Florida for Airport Protection Zoning Regulation in Citrus County Chapter 333, Florida Statutes.**

Summary: This Interlocal Agreement requires the City to amend the Land Development Code airspace protection standards as needed to comply with the recently amended standards as required to ensure compliance with the recently amended State standards of Chapter 333, Airport Zoning, and Florida Statutes. The City will also be required to amend any related ordinances. These standards include the criteria for an Airspace Height Notification Zone and a Notice of Potential Obstruction. Those applicants affected by a Notice of Potential Obstruction will be required to apply for a Construction/Use Permit determined and issued by the County.

Staff Recommendation: In order to ensure continued federal and state funding for Crystal River Airport this agreement must be in place.

End of Agenda Sheet]

City Manager Burnell introduced the item to Council, offering to address any questions.

Motion to approve an Interlocal Agreement between the City of Crystal River, the City of Inverness, and Citrus County, Florida for Airport Protection Zoning Regulation in Citrus County Chapter 333, Florida Statutes was made by Council member Fitzpatrick; seconded by Vice Mayor Brown. Motion carried unanimously.

10. CITY COUNCIL

11. COMMITTEE REPORTS

A. Mayor Farley

- *Waterfronts Advisory Board*

B. Vice Mayor Brown

- *Withlacoochee Regional Water Supply Authority* – Reported on a failed motion made by Citrus County representation to transfer ownership of a well back to Citrus County.
- *Crystal River Main Street*- Reported that the restoration grant for the pump house grant was funded.

C. Council member Fitzpatrick

• *Metropolitan Planning Organization*- Reported on upcoming inclusion of a red light at the traffic signal located at Seven Rivers Hospital, with pedestrian crossing to added, upcoming restoration of the red light at Highway 488, and current review of concerns related to the intersection of Highway 19 and Highway 44.

Vice Mayor Brown inquired about modifying the signalization at Crystal Park Plaza and City Manager Burnell confirmed that staff was working on the request, noting that completion of the requested turning signal at highway 19 and Kings Bay Drive would occur within thirty days.

Council member Gudis reported on a recent meeting held with Crystal River Village residents on golf carts during which discussion on traffic modifications in the area was held.

D. Council member Gudis

- *Tourist Development Council*- Reported on ongoing efforts to identify ways to attract tourism.
- *Library Governing Advisory Board*
- *Florida League of Cities*
- *Citrus County Community Charitable Foundation Board*- Discussed recent effort to address an inconsistency between the by-laws and charter regarding eligibility of projects. He also addressed Mayor Farley's questions regarding funding of a mental health crisis facility by confirming that no proposals had been received for such a project, and noting that effort would likely be a multi-organizational one.

E. Council member Holmes

- *Keep Citrus County Beautiful*- City Clerk Fink reported on recent signing of Resolutions, facilitating dissolution of Citrus 20/20 and retention of Save Our Waters Week Committee, reported on upcoming clean-up by Chassahowitzka Riverkeepers, and upcoming Earth Day/Adopt a Highway Clean-up Blitz.
- *Springs Coast Steering Committee*

12. COMMUNICATIONS

Mayor Farley reported on calls received regarding the previously discussed auto tent sale, Vice Mayor Brown reported on calls received regarding parking issues in the area around Hunter Springs Park and a stop made in response. City Manager Burnell confirmed there was an upcoming meeting with residents in that area to discuss solutions.

13. COUNCIL MEMBER REPORTS

A. Mayor Farley

B. Vice Mayor Brown

C. Council member Fitzpatrick

D. Council member Gudis- Remarked on the difficulty of the upcoming Three Sisters Springs management plan decision.

E. Council member Holmes

14. PUBLIC INPUT

(Five Minute Time Limit)

Glen Robertson-Citrus Springs- Reported on concerns with ads distributed via mail by Bonita Springs Mitsubishi for the recent auto tent sale, including misleading prize offerings and lack of accountability.

Peter Weber-Crystal River- Expressed concerns regarding City Attorney's update on special assessments (eligibility of homesteaded properties) and continued assessment of fines. Discussion was held during which the City Attorney provided clarification regarding special assessments and the abatement process, confirming it was not code enforcement related.

Phillis Rosetti- 209 SE Paradise Pt Road- Commended City Manager and Council for addressing difficult items and making progress.

Phil Jannarone-1405 SE 5th Avenue- Commented on the recent auto tent sale and impact to local businesses, inquired about any deed restrictions associated with the current city hall property and inquired about feasibility of adding a second floor. City Attorney Angeliadis confirmed there were no deed restrictions and City Manager Burnell clarified that feasibility had not yet been determined.

Ron Ross- Gulf Coast Expeditions- Discussed upcoming Three Sisters Springs Refuge management decision and preference for USFWS to continue management due to uncertainty of future Council decisions.

Jack Huegel-743 SE 1st Court- Discussed upcoming Three Sisters Springs Refuge management decision, speaking in favor of city as managing entity, and outlined past challenges with the management partnership, citing unmet obligations, negative statements made by volunteers and potential federal funding shortfalls.

Nathan Brough- 8387 N. Marinazzo Terrace- Spoke in reference to statements made during previous Council meeting regarding school safety and gun control, addressing Vice Mayor Brown, and the ability for the city to take actions to address related issues. He also suggested reconsideration of code enforcement liens and seizure of private property, and encouraged Council to look beyond addressing opioid issues to include other substances, and commented on litter issues observed throughout the city.

Vice Mayor Brown clarified that responses to previous comments regarding school safety and gun control were related to jurisdiction, noting that Citrus County School Board and Citrus County Sheriff's Office were working closely to ensure school safety and decisions regarding gun control are made at the State level.

Ms. Sandra Engiles-Crystal River Watersports- Spoke in favor of USFWS management of Three Sisters Springs Refuge through a city partnership, noting the tourism-related benefits of operating within a National Wildlife Refuge, continuity of rules and volunteer force and workload for of city staff. She also expressed concerns regarding competition with local businesses and uncertainty regarding springs closures referenced in the City's draft management plan and urged an ongoing partnership.

15. ADJOURNMENT

Mayor Farley adjourned the meeting at 8:28 p.m.

CRYSTAL RIVER CITY COUNCIL
Agenda Item Summary

Meeting Date: April 9, 2018

Agenda Item Number: 5B

Requested Motion: Motion to appoint Lora Klein to the Waterfronts Advisory Board Seat No. 7 - Regular Resident.

Summary:

Ms. Klein would be seated in Seat NO. 7. Mr. Olen "Ray" Oates was seated in seat No. 7; however, Mr. Oates had to resign from the board because he was no longer a City resident and Seat No. 1 Regular Non-Resident At-Large (county) and Seat No. 6 – Regular Non-Resident At-Large (county) were already filled. Ms. Klein would be fulfilling the remainder of Mr. Oates's term who was appointed to fulfill a term through 5/27/2020. Ms. Klein would then be eligible for another full term upon completion of the current partial term.

Staff Recommendation: Staff recommends approval.

Funding Information:

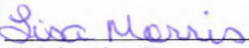
Project Cost:

Funding Source:


Amount Available:

Finance Department Approval: _____

Approvals:



Originating Department



City Manager

City Attorney (if applicable)

Attachments: Updated Roster

Council Action:

Approved _____ Denied _____ Deferred _____ Other _____

**CITY OF CRYSTAL RIVER
WATERFRONTS FLORIDA ADVISORY BOARD**

2 County Seats are Permitted

4-Year Terms

Member Type/ Category	Name Address Phone	Date Of Appointment	Date Of Term Expiration
Regular Non-Resident At Large Seat No 1 **County**	Vice-Chair Rocky Rich, Jr. 5711 W. Paprika Loop Homosassa, FL 34448 352-586-4771(H) rocky.rich2@gmail.com	05/27/12 (O) 12/12/16 (A)	5/27/19 Eligible for an additional full term
Regular Resident Seat No. 2	James Baumstark SW Kings Bay Drive Crystal River, FL 34428 352-794-3439(H) jimpatb@live.com	5/27/08 (O) 11/24/2016 (A)	05/27/20 Eligible for an additional full term
Regular Resident Seat No. 3	Chair Joan B. Luebbe 1004 SE 5 th Ave. Crystal River, FL 34429 352-795-1514 (H) 352-220-2577 (C) joanluebbe@yahoo.com	5/27/10 (O) 8/11/14(A)	05/27/18 Eligible for an additional full term
Regular Resident Seat No. 4	Phillis Rosetti-Mercer 209 SE Paradise Point Road Crystal River, FL 34429 795-9230 (H) prosetti@tampabay.rr.com	5/23/07 (O) 8/26/13 (A) 11/13/17 (R)	05/22/21 Eligible for an additional full term
Regular Resident Seat No. 5	Sherry "Lynn" Marcum 241 SE Kings Bay Drive Crystal River, FL 34429 727-333-5651(c) 352-564-0964(H) marcummiller@yahoo.com	5/23/07 (O) 12/14/2015 (A)	12/14/19 Eligible for an additional full term
Regular Non-Resident At Large Seat No. 6 **County**	Michael Engiles 12 Highwood Path Homosassa, Florida 34446 540-295-0158 (C) Mjengiles@gmail.com	05/23/09 (O) 2/27/2017(A) 11/13/17 (R)	05/22/21 Eligible for an additional full term
Regular Resident Seat No. 7	Lora Klein 707 SE 1 st Ct. Crystal River, FL 34429 352-628-3122 Klein.lora@ymail.com	5/27/08 (O) 4/28/16 (A) (R)	5/27/20 Eligible for an additional full term
<u>Alternate</u> Seat No. 1		(O) (A) (R)	
<u>Alternate</u> Seat No. 2		(O) (A) (R)	
City Council Liaison	Mayor Jim Farley 1461 NW 19 th Street Crystal River 34428 794-7455		N/A

Legend: O – Original term date

A – Appointed

R – Reappointed

Staff Liaison : Lisa Morris
City Clerk: Mia Fink mfink@crystalriverfl.org
Deputy Clerk: Lisa Morris lmorris@crystalriverfl.org

CRYSTAL RIVER CITY COUNCIL
Agenda Item Summary

Meeting Date: April 9, 2018

Agenda Item Number: 5C

Requested Motion: Motion to approve a revised memorandum of understanding for the 2018 Kings Bay Pirate Fest.

Summary: The City special events department, along with Citrus Sertoma, will once again be hosting the Kings Bay Pirate Fest on Saturday, May 19, 2018. The attached MOU includes subsequent revisions to the initial version submitted to Council and requires approval by Council.

Staff Recommendation: Staff recommends approval

Funding Information:

Project Cost:

Funding Source:

Amount Available:

Finance Department Approval: _____

Approvals:



Originating Department

City Manager

City Attorney (if applicable)

Attachments: Memorandum of Understanding (Final Draft)

Council Action:

Approved _____ Denied _____ Deferred _____ Other _____



Leslie Bollin, Special Events Coordinator

lbollin@cystalriverfl.org
352.795.4216 x 316 (o)

123 NW Highway 19
352.212.0437 (c)

Crystal River, FL 34428
352.795.6351(f)

Memorandum of Understanding

This memorandum of understanding is between The City of Crystal River and Citrus Sertoma in regards to the 2018 Kings Bay Pirate Fest.

Event Agreement

City of Crystal River agrees to be the lead agency on the event. Citrus Sertoma agrees to a partnership with the City of Crystal River on The Kings Bay Pirate Fest. This partnership includes sharing duties, expenses and profits of the event. Revenues from gate sales, vendor fees, and sponsorships will be used to pay operating expenses of the event. At the conclusion of payment of operating expenses both parties agree to put a "to be determined" amount, out of net profits, into an account with the City of Crystal River for the 2019 Kings Bay Pirate Fest. Reserve amounts for 2019 shall not exceed 125% of 2018 start up reserves. Both parties, including City of Crystal River Council reserve the right to alter this amount based on a mutual agreement. Any money profited above this amount, excluding liquor sales will be split as follows:

City of Crystal River: 50% of net profits

Citrus Sertoma: 50% of net profits

Specific Duties, The City of Crystal River: The City of Crystal River agrees to keep all records and books related to finances of the Kings Bay Pirate Fest. This includes making payments, executing contracts, making purchases and invoicing vendors and sponsorships for the event. The City also agrees to do the majority of set-up and breakdown of the festival. The City of Crystal River agrees to provide personnel for set up and breakdown of the festival. Also, the City agrees to provide all supplies for gates, as well as electric and water for vendors and general event purposes.

Specific Duties, Citrus Sertoma: Citrus Sertoma agrees to assist in finding sponsorships for the event if needed. The group agrees to provide 6-8 volunteers for the day of the event to assist as well as 4-5 people the day prior to the event. The group agrees to serve on a pirate fest planning committee which will include helping out with random planning tasks.

In the event of a net loss on the event, The City of Crystal River and Citrus Sertoma agree to cover operating expenses up to \$5000.00 each for a total of \$10,000.00 to cover expenses, including entertainment costs assumed by Sertoma. Expenses not covered by sponsorships, vendors fee, and starting budget from 2017 are not to exceed the above \$10,000.00 prior to the event.

Alcohol Sales

Citrus Sertoma agrees to be the sole provider of alcoholic beverages for the 2018 Kings Bay Pirate Fest. In exchange for these rights, Citrus Sertoma agrees to cover costs related to the event as follows:

Liquor licensing fee: \$25.00

Main Band: Up to \$2500.00, band TBD

Cost of Product with Great Bay Distributors: TBD

Cost of Liquor Liability Insurance: TBD

Any profits over and above these costs belong solely to Citrus Sertoma. In the event of alcohol sales not exceeding the expected contribution, Citrus Sertoma will not be asked to pay additional money to make up the difference. They agree to cover the above expenses with what profits are available.

City of Crystal River

Citrus Sertoma

CRYSTAL RIVER CITY COUNCIL
Agenda Item Summary

Meeting Date: April 9, 2018

Agenda Item Number: 9A

Requested Motion: None – Presentation of CRA Annual Report

Summary: Florida Statutes require the Community Redevelopment Agency, on or before March 31st of each year, to submit a report of all activities for the preceding fiscal year. The report includes a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of each fiscal year along with CRA related activities. The Agency is also required to publish in the newspaper a notice to the effect that such report has been filed with the county or municipality and that the report is available for inspection during business hours in the offices of the City and County Clerk. In addition it is recommended (not required) that the report be sent to the taxing entities who contribute to the CRA trust fund with a cover letter stating who to contact for more information.

Attached you will find the 2018 (FY 2016/2017) Annual Report for the Crystal River Redevelopment Agency for your review. The City auditors do not express an opinion at this time on the statements mentioned above because they are preliminary drafts and we have not as yet completed all of the auditing procedures which we consider necessary. These preliminary drafts are for review and discussion purposes only and are, therefore, subject to change.

An ad will be placed in the Chronicle and copies will be mailed to the Board of County Commissioners and County Clerk. A copy of the report will be available in the Crystal River City Clerk's office for public inspection.

Staff Recommendation: None

Funding Information:

Project Cost:

Funding Source:

Amount Available:

Finance Department Approval: _____

Approvals:



Originating Department



City Manager

City Attorney (if applicable)

Attachments: Annual Report

Council Action:

Approved _____ Denied _____ Deferred _____ Other _____

2018 Annual Report

Crystal River Community
Redevelopment Agency



ON THE COVER

PHASE I

COMPLETE!!!

How proud we are...this project has been in the CRA plan for decades!

Kudos to the CRA Board for supporting the dream.

Honorable mention to our Public Works staff who worked tirelessly in making this happen!

2008 Visioning Plan

City Redevelopment Agency

THE WATERFRONT

MAKING CONNECTIONS

1. How do we make the physical connection between the waterfront and the downtown?
2. How do we help the passing motorist find the waterfront?
3. What amenities are needed on the waterfront?
4. What kind of events and physical changes are needed to encourage more use of the parks and connect them to the downtown?



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**CRYSTAL RIVER COMMUNITY REDEVELOPMENT AGENCY
T.I.F. HISTORY CHART**

YEAR	VALUATION	CITY PORTION	COUNTY PORT	TOTAL
88-89 BASE	15,300,855	N/A	N/A	N/A
89-90* ACT	15,640,426	665.98	971.23	1,637.21
90-91 PER I	15,344,505	0	0	0
91-92* ACT	15,750,588	3,161.62	3,536.75	6,698.37
92-93* ACT	16,399,920	6,250.35	7,798.32	14,048.67
93-94 PER I	16,563,220	6,525.00	7,975.00	14,500.00
94-95* AC	19,317,680	27,665.88	28,894.63	56,560.51
95-96	PER	24,473.70	29,912.30	54,386.00
96-97	PER	23,499.90	28,722.10	52,222.00
97-98* ACTUAL		22,834.53	32,228.71	55,063.24
98-99* ACT	20,110,600	25,130.92	37,189.80	62,320.72
99-00 ACTL	22,187,250	35,981.41	52,820.71	88,802.12
00-01 ACTL	25,551,277	58,427.40	78,626.73	137,054.13
01-02 ACTL	27,098,261	65,209.92	90,493.00	155,702.92
02-03 ACTL	28,822,344	71,934.32	99,337.88	171,272.20
03-04 ACTL	37,392,765	121,726.43	169,457.87	291,184.30
04-05 ACTL	42,302,802	143,650.36	207,120.73	350,771.09
05-06 ACTL	48,365,558	175,904.22	240,737.49	416,641.71
06-07 ACTL	60,897,667	242,575.04	288,664.30	531,239.34
07-08 ACTL	61,938,373	190,514.26	274,774.73	465,288.99
08-09 ACTL	64,775,232	178,602.50	283,888.67	462,491.17
09-10 ACTL	62,312,616	169,712.46	269,757.95	439,470.41
10-11 ACTL	62,854,596	171,669.01	272,286.89	443,955.90
11-12 ACTL	60,734,267	164,050.73	260,701.25	424,751.98
12-13 ACT	58,842,821	157,186.50	260,677.26	417,863.76
13-14 ACT	60,253,884	162,280.43	348,834.61	511,115.04
14-15 ACT	58,772,835	173,453.20	335,293.30	508,746.50
15-16 ACT	58,196,415	171,153.28	317,395.62	488,548.00
16-17 ACT	59,493,969	176,330.52	321,811.60	498,142.13
17-18 EST	60,909,113	194,975.30	322,389.00	517,364.80
TOTAL		2965545.17	4672298.43	7,637,843.21



Main Street
Boundary
Map



Projects



GET YOUR FREE SOUVENIR AND MAP
In Crystal River, FL



CRYSTAL RIVER MAIN STREET

Ready for a TREASURE HUNT?

Visit these and other fine merchants to discover discounts and give-aways just by showing your coin.



Ask your Hotel for your FREE coin and map. Maps are also available at the Three Sisters Springs Trolley Center.

For information:
Phone: 352-759-3149
Karen @ CrystalRiverMainStreet.org
www.CrystalRiverMainStreet.org/for-coins
*Asking at the store has a fee. Expires 02/31/2018

MINI GRANT PROJECTS

Façade



Sign



Murals





**More pictures of
Riverwalk!**

NATURE POLES
BEAUTIFUL ARTWORK
ALONG THE RIVERWALK CREATED BY
JOE ROBILLER





Music Under the Stars
 Saturday, April 7th | 6:30 pm
 The Bandshell, Kings Bay Park
 featuring the
TOMCATZ 9-PIECE BAND
 EXPERIENCED WORLD-CLASS MUSICIANS
 Bring your friends, food & drinks!

U.S. Water CHRONICLE DUKE ENERGY Suncoast Credit Union
 Another free event brought to you by The City of Crystal River!



ALWAYS AN
 ACTIVITY GOING
 ON
 DOWNTOWN!



New Businesses in the CRA!

- ◆ **Hardwood Smokehouse**—A great project for our downtown!
Building was remodeled and flood proofed!
- ◆ **Crystal Blue Manatee Bed & Breakfast**—Gorgeous murals and wonderful hospitality for those visiting our great city!
- ◆ **Metro PCS Sun Plaza Shopping Center**



CITY OF CRYSTAL RIVER, FLORIDA
 BALANCE SHEET
 COMMUNITY REDEVELOPMENT AGENCY
 SEPTEMBER 30, 2017



ASSETS

Cash	\$ 1,222,908
Investments	11,507
Other assets	<u>1,793</u>
TOTAL ASSETS	<u>\$ 1,236,208</u>

LIABILITIES

Accounts payable and accrued expenses	<u>\$ 243,158</u>
Total Liabilities	<u>243,158</u>

FUND BALANCE

Restricted for:	
Community redevelopment	<u>\$ 993,050</u>

Amounts reported for governmental activities in the statement of net position are different because:

Capital assets used in governmental activities are not financial resources and, therefore, are not reported in the fund.	3,798,754
The note payable is not due and payable in the current period and is therefore not reported in the fund.	<u>(1,350,000)</u>
Net position of governmental activities	<u>3,441,804</u>

**CITY OF CRYSTAL RIVER, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN FUND BALANCES
COMMUNITY REDEVELOPMENT AGENCY
FOR THE YEAR ENDED SEPTEMBER 30, 2017**



REVENUES:

Taxes	\$ 498,142
Investment earnings	4,317
Other	1,000
Total revenues	<u><u>503,459</u></u>

EXPENDITURES:

Current:	
Developmental services	43,660
Salaries and wages	158,691
Capital outlay	
Developmental services	800,851
Total expenditures	<u><u>1,003,202</u></u>

Excess of revenues over expenditures (499,743)

OTHER FINANCING SOURCES (USES)

Debt proceeds	750,000
Transfers out	(16,884)
Total other financing sources (uses)	<u><u>733,116</u></u>

Net change in fund balance 233,373

Fund balance, beginning of year 759,677
Fund balance, end of year \$ 993,050

Amounts reported for governmental activities in the statement of activities are difference because:

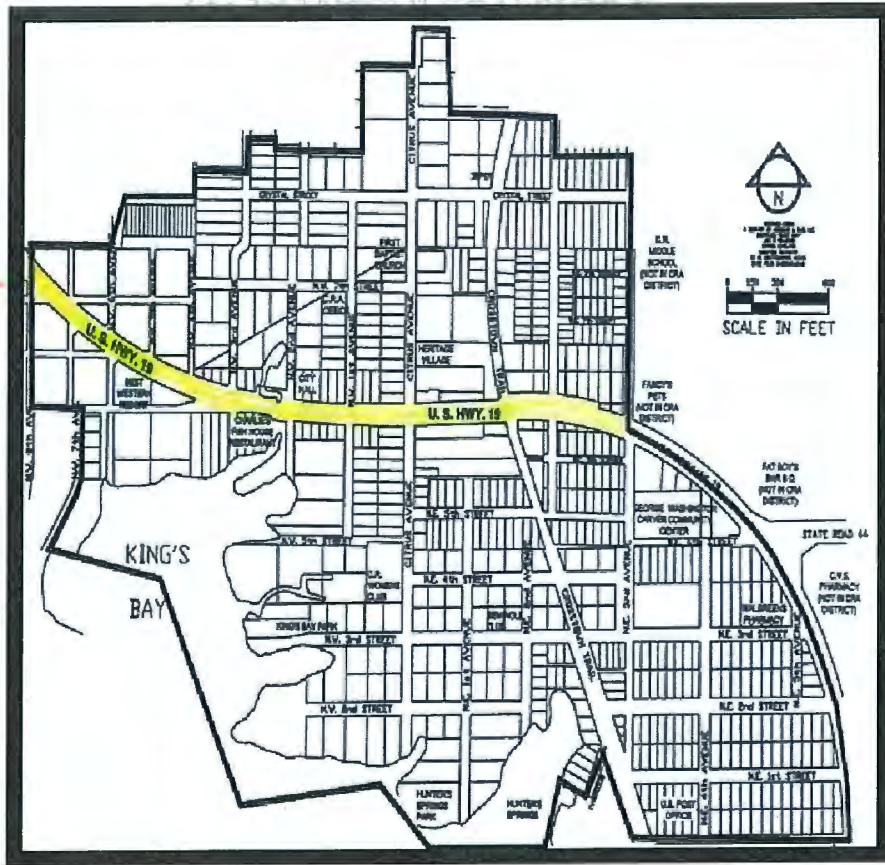
Net change in fund balances - Community Redevelopment Fund 233,373

Capital assets used in governmental activities are not financial resources and, therefore, are not reported in the funds.

Capital outlay	743,110
Depreciation expense	(56,984)

Debt proceeds provide current financial resources to governmental funds, but issuing debt increases long-term liabilities in the Statement of Net Position
 Debt proceeds (750,000)

Change in net position of Community Redevelopment Fund \$ 169,499



*CITY OF CRYSTAL RIVER
COMMUNITY REDEVELOPMENT
AGENCY
123 NORTHWEST HIGHWAY 19
CRYSTAL RIVER, FLORIDA 34428*



CRYSTAL RIVER CITY COUNCIL

Agenda Item Summary

Meeting Date: April 9, 2018

Agenda Item Number: 9B

Requested Motion: "None --- Discussion Only" --- Pickleball at Legrone Park.

Summary: Several years ago pickleball came up on staff's radar as a potential park activity addition. Since then Council has briefly discussed the possibility of adding pickleball to Legrone Park on two occasions. Current budget funding will only allow for the over-striping for shared use with the tennis courts. Staff became concerned of the public's acceptance of altering the tennis courts. Therefore, as a test, removable marking tape has been installed on the west tennis court at Legrone Park.

This has made the pickleball players happy but appears to have upset a small group of the tennis players. In the 2018 CIP budget there is an allowance of \$2,000.00 for pickleball at Legrone Park; no additional funds are currently being requested for the FY2019 budget.

If Council desires to implement pickleball at Legrone Park, three options are provided for consideration:

- 1) Over-stripe one, some, or all of the existing tennis courts, making them dual use. In lieu of permanent striping, Staff recommends using removable tape which only costs about \$30 per court and can be pulled up in the event of a USTA-sponsored tournament.
- 2) Over-stripe the basketball court and install a net such that the basketball court effectively becomes one half court (which would inhibit activities of the basketball players who run full-court games). The cost for this option is estimated at \$8,000 to \$10,000.00, which would include fencing.
- 3) Install a new freestanding pickleball court with fencing; cost is estimated at \$45,000.00 (or \$65,000 for two courts).

Options 2 and 3 require additional funding through the budget process.

Staff Recommendation: N/A

Funding Information:

Project Cost: \$
 Funding Source:
 Amount Available: \$

Finance Department Approval: _____

Approvals:



 Originating Department



 City Manager

City Attorney (if applicable)

Attachments:

Council Action:

Approved _____ Denied _____ Deferred _____ Other _____

CRYSTAL RIVER CITY COUNCIL
Agenda Item Summary

Meeting Date: April 9, 2018

Agenda Item Number: 9C

Requested Motion: None – Discussion regarding “Super Preemption” and “Complaint for Declaratory Relief”

Summary: On April 2, 2018 10 South Florida cities and certain Elected Officials from those cities filed a lawsuit in Leon County Circuit Court against Governor Rick Scott, Attorney General Pam Bondi, and others, all in their official capacity, alleging that certain provisions of section 790.33, Florida Statutes ("Super Preemption") are unconstitutional. A copy of the lawsuit is attached.

The Super Preemption contained in 790.33, Florida Statutes, impacts local elected officials throughout the state.

The seven count complaint seeks declaratory relief and requests that it be heard on an expedited basis. This is the first preemption statute that provides for personal penalties and removal from office with no hearing.

The City Manager would like to provide Council members with an opportunity to discuss implications of such legislation and subsequent filing of the suit.

Staff Recommendation: None

Funding Information:

Project Cost:

Funding Source:

Amount Available:

Finance Department Approval: _____

Approvals:

Originating Department



City Manager

City Attorney (if applicable)

Attachments: Complaint for Declaratory Relief

Council Action:

Approved _____ Denied _____ Deferred _____ Other _____

IN THE CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR LEON
COUNTY, FLORIDA

CASE NO.

CITY OF WESTON, FLORIDA;
MAYOR DANIEL J. STERMER,
COMMISSIONER MARGARET BROWN,
and COMMISSIONER BYRON L. JAFFE,
each as elected officials of the City of Weston,
Florida;

CITY OF MIRAMAR, FLORIDA;
MAYOR WAYNE M. MESSAM,
COMMISSIONER YVETTE COLBOURNE,
COMMISSIONER WINSTON F. BARNES,
and COMMISSIONER DARLINE B. RIGGS,
each as elected officials of the City of Miramar,
Florida;

CITY OF POMPANO BEACH, FLORIDA;
and MAYOR LAMAR FISHER,
as an elected official of the City of Pompano
Beach, Florida;

VILLAGE OF PINECREST, FLORIDA;
MAYOR JOSEPH M. CORRADINO,
VICE-MAYOR CHERI BALL,
COUNCILMEMBER ANNA
HOCHKAMMER, COUNCILMEMBER
DOUG KRAFT, and COUNCILMEMBER
JAMES E. MCDONALD, each as elected
officials of the Village of Pinecrest, Florida;

CITY OF SOUTH MIAMI, FLORIDA;

CITY OF MIAMI GARDENS, FLORIDA;
MAYOR OLIVER G. GILBERT, III, VICE-
MAYOR ERHABOR IGHODARO, PH. D.,
COUNCILMEMBER LISA C. DAVIS,
COUNCILMEMBER RODNEY HARRIS,
COUNCILMEMBER LILLIE Q. ODOM,
COUNCILMEMBER FELICIA ROBINSON,
and COUNCILMEMBER DAVID
WILLIAMS, JR., each as elected officials of the

City of Miami Gardens, Florida;
CITY OF MIAMI BEACH, FLORIDA;
MAYOR DANIEL GELBER,
COMMISSIONER MICKY STEINBERG,
COMMISSIONER MARK SAMUELIAN,
COMMISSIONER MICHAEL GÓNGORA,
COMMISSIONER KRISTEN GONZALEZ,
COMMISSIONER RICKY ARRIOLA, and
COMMISSIONER JOHN ALEMÁN
each as elected officials of the City of Miami
Beach, Florida;

CITY OF CORAL GABLES, FLORIDA; and
MAYOR RAUL VALDES-FAULI,
as an elected official of the City of Coral
Gables, Florida;

TOWN OF CUTLER BAY, FLORIDA;
MAYOR PEGGY R. BELL, and
COUNCILMEMBER ROGER CORIAT,
each as elected officials of the Town of Cutler
Bay, Florida; and

CITY OF LAUDERHILL, FLORIDA; and
MAYOR RICHARD J. KAPLAN, as an elected
official of the City of Lauderhill, Florida,

Plaintiffs,

vs.

THE HONORABLE RICHARD "RICK"
SCOTT, in his official capacity as Governor of
the State of Florida, and in his official capacity
as head of the Department of Revenue;

THE HONORABLE PAMELA JO BONDI, in
her official capacity as Attorney General of the
State of Florida;

THE HONORABLE ADAM H. PUTNAM,
in his official capacity as Commissioner,
Florida Department of Agriculture and
Consumer Services;

THE HONORABLE RICK SWEARINGEN,

in his official capacity as Commissioner,
Florida Department of Law Enforcement;

THE HONORABLE SHERRILL F. NORMAN,
in her official capacity as Auditor General of
the State of Florida; and

THE HONORABLE JIMMY PATRONIS, in
his official capacity as Chief Financial Officer
of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs bring this action against Defendants for declaratory relief, and state as follows:

Overview

1. This is an action by numerous Florida municipalities and elected officials challenging the onerous, unconstitutional, and unprecedented penalties contained in section 790.33, Florida Statutes. The penalties are imposed whenever a municipality or its officials are found to have violated or impinged upon the State Legislature's purportedly exclusive occupation of the field of regulation of firearms and ammunition.

2. Normally, the enactment of a law in violation of express preemption will, at most, result in a declaration that the law is null and void. The penalty provisions of section 790.33 go much further, threatening an official who violates section 790.33(1) with removal from office with no hearing and a civil fine of up to \$5,000 that must be paid personally by the official. Additionally, public funds may not be used to defend the official. Further, the violation of section 790.33(1) can lead to unlimited lawsuits by any persons or organizations that claim to be "adversely affected" by the law, exposing the municipality to substantial damages and attorneys'

fees. Finally, section 790.33(3)(b) specifically precludes the municipality from claiming good faith or reliance upon advice of counsel as a defense.

3. These onerous penalties are vindictive and expressly intended to be punitive in nature. *See* § 790.33(2), Fla. Stat. As a result, the penalties deter and chill officials from taking *any* actions in the area of firearms and ammunition, even in those areas where such actions are (or may be) allowed. *See, e.g.*, § 790.33(4), Fla. Stat.

4. The penalties are improper and must be declared null and void because they: (1) violate constitutional limitations on gubernatorial authority with respect to municipal officers; (2) conflict with the constitutional right of elected officials to legislative immunity in connection with their performance of legislative activities; (3) conflict with the constitutional right of municipalities to be immune from suit for discretionary functions; (4) are overbroad, in violation of local officials' free speech rights; (5) are unconstitutionally vague; (6) are irrational, arbitrary, and capricious; and (7) violate the right to petition and instruct local elected officials.

Jurisdiction and Venue

5. This is an action for declaratory relief, pursuant to Chapter 86, Florida Statutes, seeking to declare that the penalty provisions contained in section 790.33(3), Florida Statutes, are unconstitutional and invalid. The Court has jurisdiction to grant declaratory relief. *See* §§ 86.011, 86.021, 86.101, Fla. Stat.; *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991).

6. Venue is proper in Leon County because the Defendants are all located in, or have their principal headquarters in, Leon County, Florida.

7. All conditions precedent to the institution of this lawsuit have been, or will be, satisfied or waived.

The Parties

8. The Plaintiffs are all incorporated municipalities existing under the laws of the State of Florida (the “Municipal Plaintiffs”) and elected officials in those municipalities (the “Elected Official Plaintiffs”) (together, the “Plaintiffs”). The Plaintiffs consist of:

- a. The Weston Plaintiffs. The CITY OF WESTON (“Weston”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. DANIEL J. STERMER is the duly elected Mayor of Weston. COMMISSIONERS MARGARET BROWN and BYRON L. JAFFE are duly elected Commissioners of Weston.
- b. The Miramar Plaintiffs. The CITY OF MIRAMAR (“Miramar”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. WAYNE M. MESSAM is the duly elected Mayor of Miramar. COMMISSIONERS YVETTE COLBOURNE, WINSTON F. BARNES and DARLINE B. RIGGS are duly elected Commissioners of Miramar.
- c. The Pompano Beach Plaintiffs. The CITY OF POMPANO BEACH (“Pompano Beach”) is a municipality existing under the laws of the State of Florida, and is located in Broward County, Florida. LAMAR FISHER is the duly elected Mayor of Pompano Beach.
- d. The Pinecrest Plaintiffs. The VILLAGE OF PINECREST (“Pinecrest”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. JOSEPH M. CORRADINO is the duly elected Mayor of Pinecrest. CHERI BALL is the duly elected Vice-Mayor of Pinecrest.

COUNCILMEMBERS ANNA HOCHKAMMER, DOUG KRAFT, and JAMES E. MCDONALD are duly elected Councilmembers of Pinecrest.

- e. The South Miami Plaintiff. The CITY OF SOUTH MIAMI (“South Miami”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida.
- f. The Miami Gardens Plaintiffs. The CITY OF MIAMI GARDENS (“Miami Gardens”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. OLIVER G. GILBERT, III, is the duly elected Mayor of Miami Gardens. ERHABOR IGHODARO, PH. is the duly elected Vice-Mayor of Miami Gardens. COUNCILMEMBERS LISA C. DAVIS, RODNEY HARRIS, LILLIE Q. ODOM, FELICIA ROBINSON and DAVID WILLIAMS, JR are duly elected Councilmembers of Miami Gardens.
- g. The Miami Beach Plaintiffs. The CITY OF MIAMI BEACH (“Miami Beach”) is a municipality existing under the laws of the State of Florida, and is located in Miami-Dade County, Florida. DANIEL GELBER is the duly elected Mayor of Miami Beach. COMMISSIONERS MICKY STEINBERG, MARK SAMUELIAN, MICHAEL GÓNGORA, KRISTEN GONZALEZ, RICKY ARRIOLA, and JOHN ALEMÁN are duly elected Commissioners of Miami Beach.
- h. The Coral Gables Plaintiffs. The CITY OF CORAL GABLES (“Coral Gables”) is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida. RAUL VALDES-FAULI is the duly elected Mayor of Coral Gables.

- i. The Cutler Bay Plaintiffs. The TOWN OF CUTLER BAY (“Cutler Bay”) is a municipality existing under the laws of the State of Florida and is located in Miami-Dade County, Florida. PEGGY R. BELL is the duly elected Mayor of Cutler Bay. COUNCILMEMBER ROGER CORIAT is a duly elected Councilmember of Cutler Bay.
- j. The Lauderhill Plaintiffs. The CITY OF LAUDERHILL (“Lauderhill”) is a municipality existing under the laws of the State of Florida and is located in Broward County, Florida. MAYOR RICHARD J. KAPLAN is the duly elected Mayor of Lauderhill.

9. Each of the Elected Official Plaintiffs performs legislative functions as part of his or her responsibilities as an elected representative, including, but not limited to, participating in public deliberations and voting on the adoption of ordinances and resolutions relating to the health, safety, and general welfare of the citizens of his or her respective municipality. Nearly all of the Elected Official Plaintiffs receive a salary from his or her respective municipality in compensation for his or her performance and services. Each Elected Official Plaintiff has taken an oath to uphold the Florida Constitution.

10. Each of the Municipal Plaintiffs is a municipality established pursuant to Article VIII, Section 2(a) of the Florida Constitution and is authorized to exercise home rule powers pursuant to Article VIII, Section 2(b) of the Florida Constitution.

11. The governing body for each of the Municipal Plaintiffs has affirmatively passed, by majority vote, resolutions indicating that the Municipal Plaintiffs would consider firearms-related measures if not for the preemption statute and its penalties, and each of the Elected Official Plaintiffs voted for those resolutions.

12. THE HONORABLE RICHARD “RICK” SCOTT (“Scott”) is the Governor of the State of Florida and is sued in his official capacity. Scott is a proper defendant in this action because the Governor is expressly designated as the official to enforce section 790.33(3)(e), Florida Statutes, regarding the removal from office of an official for violation of section 790.33(1), Florida Statutes. The Governor is also expressly designated in the Florida Constitution as the person who can initiate judicial proceedings against any county or municipal officer to enforce compliance with any duty or to restrain any unauthorized act, including any alleged violations of section 790.33(1), Florida Statutes. *See* Art. 4, § 1(b), Fla. Const. The Governor’s antagonistic position is further established by the fact that he signed into law the legislation that is now section 790.33, Florida Statutes, and challenged herein.

13. THE HONORABLE PAMELA JO BONDI (“Bondi”) is the Attorney General of the State Florida and is sued in her official capacity. Bondi is a proper defendant in this action because the Attorney General is the chief law enforcement officer of the State and is expressly designated to enforce a portion of Chapter 790, to which the preemption and penalties in section 790.33 apply. Specifically, the Attorney General is designated to enforce the provisions that prohibit the registries and listing of gun owners, § 790.335(5)(c), Fla. Stat., and the provisions that relate to the right to bear arms in motor vehicles, § 790.251(6), Fla. Stat. The Attorney General also has the general right and authority to defend the constitutionality of state laws and, in fact, has intervened in at least one prior legal proceeding seeking to defend the validity of the preemption penalties found in section 790.33.

14. THE HONORABLE ADAM H. PUTNAM (“Putnam”) is the Commissioner of the Florida Department of Agriculture and Consumer Services (“FDOACS”) and is sued in his official capacity. Putnam is a proper defendant in this action because FDOACS is expressly

designated to enforce and administer a portion of Chapter 790, to which the preemption and penalties in section 790.33 apply. Specifically, FDOACS is designated to enforce and administer the concealed weapons license regulations and program pursuant to section 790.06, Florida Statutes.

15. THE HONORABLE RICK SWEARINGEN (“Swearigen”) is the Commissioner of the Florida Department of Law Enforcement (“FDLE”) and is sued in his official capacity. Swearigen is a proper defendant in this action because FDLE is expressly designated to enforce and administer a portion of Chapter 790 for which the preemption and penalties in section 790.33 apply. Specifically, FDLE is designated to enforce and administer the provisions related to the sale of firearms pursuant to section 790.65(1)(a), Florida Statutes.

16. THE HONORABLE SHERRILL F. NORMAN (“Norman”) is the Auditor General of the State of Florida and is sued in her official capacity. Norman is a proper defendant in this action because, through her audit and review functions under section 11.45, Florida Statutes, the Auditor General is the official responsible for ensuring that municipalities do not use public funds for improper purposes. Thus, the Auditor General would be the responsible official to enforce the provision in section 790.33(3)(d), Florida Statutes, that prohibits the use of public funds to defend against or reimburse expenses incurred in defending an alleged violation of section 790.33(1), Florida Statutes.

17. THE HONORABLE JIMMY PATRONIS (“Patronis”) is the Chief Financial Officer (“CFO”) of the State of Florida and is sued in his official capacity. Patronis is a proper defendant in this action because the CFO is the official responsible for depositing and accounting for the fines issued and collected pursuant to section 790.33(3)(c), Florida Statutes.

18. Defendants Scott, Bondi, Putnam, and Patronis, collectively, also constitute the head of the Florida Department of Revenue and are being sued in that official capacity as well. The Florida Department of Revenue is the official State agency responsible for receiving the fines issued and collected pursuant to section 790.33(3)(c), Florida Statutes.

19. Defendants Scott, Bondi, Putnam, Swearingen, Norman, and Patronis each have an actual, cognizable interest in this action for, among other things, the reasons stated above.

BACKGROUND

Home Rule Powers And Preemption Generally

20. Prior to 1968, Florida operated under “Dillon’s Rule,” which provided that municipalities only had those powers that were expressly given to them by the State.

21. This changed with the approval by the voters of the 1968 Florida Constitution, which gave broad home rule powers to municipalities in Article VIII, Section 2(b):

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

22. Consistent with the new home rule powers given to municipalities by Florida’s electors, the Florida Legislature adopted the Home Rule Powers Act, which provided that “[t]he legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except . . . any subject expressly preempted to state or county government by the constitution or by general law.” § 166.021(3), Fla. Stat.

23. The Plaintiffs do not dispute in this action the power of the State, generally, to preempt certain subject matters from regulation by municipalities. In fact, the State has preempted several subject areas, including, *inter alia*, signs for gas stations and franchises, the

activities and operations of pest control services, the operation of the state lottery, the use of electronic communication devices in motor vehicles, inter-district transfers of groundwater, mobile home lot rents, minimum wage, short-term rentals, plastic bags, and managed honeybee colonies. However, other than in connection with the firearm preemption that is the subject of this action, the State has never created legislation that would impose penalties on local officials and local governments for the violation of a preemption statute. In every other circumstance, the only consequence of a determination that local action violates express preemption would be a finding that such local action is null and void.

The Firearm Preemption

24. In 1987, the Legislature enacted the Joe Carlucci Uniform Firearms Act, which is codified in section 790.33, Florida Statutes. The statute was amended to its current version in 2011.

25. The general preemption of regulations of firearms and ammunition is set forth in section 790.33(1), Florida Statutes, and will be referred to hereafter as the “Firearm Preemption”:

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.

26. Notwithstanding the broad language of the Firearm Preemption, the Municipal Plaintiffs retain some authority to regulate and operate in the area of firearms and ammunition, as well as in areas unrelated to firearm regulation that may affect the use and possession of

firearms. Not only does this Firearm Preemption language not apply to regulations that are related to, but not necessarily encapsulated within, the field of firearms and ammunition itself, section 790.33 expressly incorporates exceptions to the Firearm Preemption. For example, section 790.33(1) does not prohibit: zoning ordinances that encompass firearms businesses; law enforcement agencies from enacting or enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties; or any entity from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties. § 790.33(4)(a)–(c), Fla. Stat. Additionally, there is a provision requiring local jurisdictions to enforce state firearm laws. § 790.33(2)(a), Fla. Stat.

27. Although the Municipal Plaintiffs and the Elected Official Plaintiffs are allowed (and in one case required) to act in the area of firearms and ammunition, the permissible actions are vague and ambiguous. For example, while the Firearm Preemption applies only to “ordinances and regulations,” section 790.33(3)(a) also refers to “administrative rule[s],” and section 790.33(3)(f) suggests it may apply to any “measure, directive, rule, enactment, order or policy promulgated.” Additionally, although the Firearm Preemption applies only to “firearms and ammunition,” another section also mentions, but does not define, firearm “components.” § 790.33(2)(a), Fla. Stat. Indeed, many of the terms in section 790.33 are not defined, leading to further uncertainty.

28. As a result of the conflicting and undefined terms, as well as the lack of clarity in section 790.33, municipal attorneys are unable to give assurances to municipalities and elected officials that any particular desired act relating to or impacting firearms is free of risk of being

found to be preempted, even acts that the attorney's legal analysis would suggest are likely not preempted.

The Onerous Consequences For Impinging Upon Or Violating the Firearm Preemption

29. Normally, ambiguity in a preemption statute would not prevent a municipality or its elected officials from acting in accordance with the wishes of their constituents. They would, instead, in good faith and upon reliance of advice of counsel, engage in reasonable regulation despite the lack of certainty, knowing that the consequence of a legal determination of preemption would be limited to a finding that the regulation is null and void.

30. However, in 2011, penalties were specifically added to section 790.33 that apply to both individual elected officials and local governments. The Legislature's stated intent in imposing these penalties was to chill and deter local governments from taking *any* action at all that might affect firearms, even when such action might not be preempted. Section 790.33(2)(b) states:

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.

31. In order to ensure that there would be no "abuse of official authority," onerous (and unprecedented) consequences were enacted for the violation or impingement of the Firearm Preemption (collectively, the "Onerous Preemption Penalties"), which also requires members of the judicial branch of government to inquire into the hearts and minds of members of the legislative branch to determine whether the alleged violation was "knowing and willful":

- a. Potential removal from office. Section 790.33(3)(e) provides that “[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.*”
- b. Potential civil fine. Section 790.33(3)(c) provides that “[i]f 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.”
- c. Prohibition on use of public funds for legal defense. Section 790.33(3)(d) provides that “[e]xcept as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated this section.”
- d. Potential civil liability for damages up to \$100,000 and attorneys’ fees. Section 790.33(3)(f) provides that “[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.” It further provides that “[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.” In addition, pursuant to section 790.33(3)(b), “[i]t is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.” Thus, even a good faith, unintentional violation of the preemption statute, done upon advice of counsel, could still result in an unlimited number of lawsuits against a Plaintiff Municipality for damages and attorneys’ fees.

The Desire, But Inability, Of Plaintiffs To Act In The Area Of Firearms

32. Over the past several years, there have been an unprecedented number of mass shootings in American communities, including at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018. As a result, many students throughout the country, as well as many adults, have petitioned and instructed their elected officials, including the Elected Official Plaintiffs, to take some action regarding firearms and ammunition to increase public safety.

33. Consistent with their constitutional authority, the Elected Official Plaintiffs and Municipal Plaintiffs desire to take reasonable, constitutional actions relating to firearms and have considered a panoply of possible measures, including, but not limited to, the restricting of guns in municipal-owned facilities and parks, the placing of signs relating to guns in municipal-owned facilities and parks, the regulation of gun accessories (such as holsters or high capacity magazines), or the creation of “gun free zones” or “gun safe zones.” These and other possible measures have been discussed by the Plaintiffs, but the attorneys for the Plaintiffs have warned them about the risk of the Onerous Preemption Penalties, even as to measures that are likely not

preempted by the Firearm Preemption, but could nonetheless result in costly litigation, the cost of which would be largely borne by the elected officials personally.

34. The Plaintiffs have also been threatened with the Onerous Preemption Penalties to the extent they seek to enact, promulgate, or enforce any regulation relating to firearms or ammunition. Most recently, a gun rights organization, which has sued a number of local governments under section 790.33 in the past, threatened litigation when the Coral Gables Plaintiffs considered enacting certain firearm-related measures and took a preliminary vote in February 2018 in favor of passing one such a measure. Through an email from its general counsel to the Coral Gables City Attorney, the entity reminded the City Attorney about a recent lawsuit in which it had sued a different South Florida city (and several of the city's employees) over a zoning measure that related to firearms. Additionally, a member of the public told the Coral Gables Plaintiffs that he and that same gun rights organization "will in fact sue" if the city so much as passed the proposed gun-related measures on first reading, and he also told the Coral Gables Mayor that he will "urge Governor Scott to remove you from office and fine you individually as permitted under Florida statutes."

35. Because of the actual and imminent threat of the imposition of the Onerous Preemption Penalties, the Elected Official Plaintiffs and Municipal Plaintiffs are uncertain as to their rights and responsibilities and fear taking any action that could even remotely be viewed as a violation of the Firearm Preemption.

36. Accordingly, the Plaintiffs have suspended or refrained from consideration of reasonable firearms measures that express the political views of the Municipal Plaintiffs and their citizens, and which may be appropriate for the specific circumstances of that municipality (as opposed to the "one size fits all" approach of the State), thus making the constitutionality of

the penalties an issue that is capable of repetition, yet evading review. In short, the Onerous Preemption Penalties have created the intended chilling effect upon taking any action and preventing the Plaintiffs from responding to the petitions and requests of their constituents relating to firearms.

Expedited Consideration

37. Section 86.111, Florida Statutes, provides for expedited consideration of actions for declaratory relief, and the Municipal Plaintiffs and the Elected Official Plaintiffs hereby request such consideration.

COUNT I

**VIOLATION OF CONSTITUTIONAL LIMITATIONS ON GUBERNATORIAL
AUTHORITY WITH RESPECT TO MUNICIPAL OFFICERS**
(Elected Official Plaintiffs Against Defendant Scott)

38. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

39. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the removal penalty provided for in section 790.33(3)(e), Florida Statutes, violates the constitutional limitations on the Governor's authority to remove municipal elected officials from office.

40. The authority of the Governor vis-à-vis duly elected municipal officials is circumscribed by the Florida Constitution, and the Legislature lacks the authority to expand the Governor's authority through section 790.33(3)(e), which purports to allow the Governor to remove from office "any 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)," if that official violated the Firearm Preemption in a "knowing and willful" manner.

41. Article IV, Section 7(c) of the Florida Constitution provides that “[b]y order of the governor, any elected municipal officer *indicted for crime* may be *suspended* from office until acquitted and the office filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter.” (emphasis added).

42. There is, however, no constitutional authority for the Governor to remove from office any municipal elected official simply because that individual knowingly and willfully violated the Firearm Preemption. Even a knowing and willful violation of the Firearm Preemption is not tantamount to an indictment for committing a crime. Moreover, the constitutional authority conferred by Article IV, Section 7(c) merely provides for the *suspension* of the indicted municipal official, not his or her automatic and permanent removal.

43. In fact, the Governor’s authority to remove a county official pursuant to section 790.33(3)(e), Florida Statutes, has already been stricken as unconstitutional because the purported statutory authority exceeded the Governor’s constitutional authority to suspend county officials pursuant to Article IV, Section 7 of the Florida Constitution. *Marcus v. Scott*, 2014 WL 3797314 (Fla. 2d Jud. Cir. June 2, 2014).

44. The court’s reasoning in *Marcus* is instructive here:

This Court further finds that [section 790.33] may not constitutionally authorize the Governor to remove Plaintiffs from office in the event that they are found to have committed a knowing and willful violation of the State’s preemption of firearms regulation. Article IV, section 7, Florida Constitution, authorizes the Governor only to suspend county commissioners and recommend their removal by the Florida Senate; *the Legislature has no power to expand* the Governor’s suspension power into a removal power. *See In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520, 523 (Fla. 1975) (holding that a constitutional prescription of the manner in which an action should be taken is a prohibition against a different manner of taking the action); *Bruner v. State Commission on Ethics*, 384 So. 2d 1339, 1340-41 (Fla. 1st DCA 1980) (holding that the Florida

Legislature may not vary from the constitutional allocation of power in the gubernatorial suspension of public officials). *In re Advisory Opinion of Governor Civil Rights*, at p. 523 stated: “The principle is well established that, where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it.” (citations omitted) “Therefore, *when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.*” (Emphasis Supplied).

45. As such, the Court should declare that section 790.33(3)(e), as applied to the Elected Official Plaintiffs, is invalid and unconstitutional.

46. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(e), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(e), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT II

VIOLATION OF LEGISLATIVE IMMUNITY AND SEPARATION OF POWERS
(Elected Official Plaintiffs Against All Defendants)

47. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

48. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties applicable to the Elected Official Plaintiffs, as provided for in sections 790.33(3)(a), (c), (d), and (e), Florida Statutes, violate the Elected Official Plaintiffs' well-settled right to legislative immunity in the enactment of legislation.

49. Among the Onerous Preemption Penalties are two punitive provisions that specifically target individual elected officials for actions taken in their purely legislative capacities: (1) the possibility of a \$5,000 fine; and (2) removal from office by the Governor upon a finding that the elected official violated the Firearm Preemption in a "knowing and willful" manner.

50. Additionally, section 790.33(d) precludes the expenditure of any public funds to defend the elected official or reimburse the elected official if that official's conduct is found to

be “knowing and willful,” thereby requiring the elected official to use personal funds to pay attorneys for his or her defense.

51. The “knowing and willful” components of section 790.33(3) necessarily require an inquiry into the motives and intent of the elected official in voting as he or she did, in order to potentially punish that local legislator for such a vote.

52. Such an inquiry is an invasion of the legislative immunity afforded to elected officials when acting within the sphere of legitimate legislative activity.

53. The concept of legislative immunity is a fundamental component of American democracy. As the United States Supreme Court has observed:

The principle that legislators are absolutely immune from liability for their legislative activities has long been recognized in Anglo–American law. This privilege has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries and was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation.

* * *

Because the common law accorded local legislators the same absolute immunity it accorded legislators at other levels of government, and because the rationales for such immunity are fully applicable to local legislators, we now hold that local legislators are likewise absolutely immune from suit ... for their legislative activities.

Bogan v. Scott-Harris, 523 U.S. 44 (1998) (internal quotation marks and citations omitted). As the *Bogan* Court further explained, “Absolute immunity for local legislators ... finds support not only in history, but also in reason.... ‘[A]ny restriction on a legislator’s freedom undermines the “public good” by interfering with the rights of the people to representation in the democratic process.’” *Id.* at 52 (quoting *Spallone v. United States*, 493 U.S. 265, 279 (1990)).

54. “Furthermore, the time and energy required to defend against a lawsuit are of particular concern at the local level, where the part-time citizen-legislator remains commonplace.

. . . And the threat of liability may significantly deter service in local government, where prestige and pecuniary rewards may pale in comparison to the threat of civil liability.” *Id.* (citing *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951), and *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982)).

55. “Absolute legislative immunity attaches to all actions taken ‘in the sphere of legitimate legislative activity.’” *Id.* at 54 (citing *Tenney, supra*, at 376). Any inquiry into the motivations or intent of local legislators, therefore, is prohibited. *Id.* at 55 (“Furthermore, it simply is ‘not consonant with our scheme of government for a court to inquire into the motives of legislators.’” (quoting *Tenney*, 341 U.S. at 377)). The threat of proceedings against the Elected Official Plaintiffs, whether for monetary or injunctive relief, “creates a distraction and forces [legislators] to divert their time, energy, and attention from their legislative tasks to defend the litigation.” *Supreme Court of Va. V. Consumers Union of U.S., Inc.*, 445 U.S. 719, 733 (1980) (quoting *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503 (1975)).

56. The Florida Supreme Court has echoed the importance of legislative immunity in its own jurisprudence. In *McNayr v. Kelly*, 184 So. 2d 428 (Fla. 1966), the Florida Supreme Court, citing federal precedents, first expressly acknowledged the absolute privilege from liability that elected officials enjoy for conduct in their official capacities, and stressed its critical role:

The justification for [the immunity] is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.

* * *

In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.

Id. at 431 n. 12. Since *McNayr*, other Florida courts, citing *McNayr* and U.S. Supreme Court precedents like *Tenney*, have reaffirmed the application of legislative immunity to local legislators and concluded that the scope of the immunity must be broadly construed. *See, e.g., Prins v. Farley*, 208 So. 3d 1215 (Fla. 1st DCA 2017); *City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So. 2d 455 (Fla. 4th DCA 2006); *P.C.B. P’ship v. City of Largo*, 549 So. 2d 738 (Fla. 2d DCA 1989).

57. Florida courts have also concluded that legislative immunity has independent roots in the Florida Constitution’s separation of powers doctrine. *See Florida House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 524 (Fla. 1st DCA 2012) (recognizing that legislative privilege, which derives from legislative immunity, “exists by virtue of the separation of powers provision of the Florida Constitution”); *see also Wallace v. Dean*, 3 So. 3d 1035, 1045 (Fla. 2009) (“[W]e take this occasion to reaffirm that, in Florida, governmental immunity derives entirely from the doctrine of separation of powers, not from . . . any statutory basis.” (citations and quotations marks omitted)). Florida’s separation of powers doctrine is set forth in Article II, section 3 of the Florida Constitution: “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 doctrine in Florida has been applied to maintain a *strict* separation of powers. *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004).

58. The First District explained:

The importance of this provision cannot be overstated. Our supreme court described the separation of powers as “the cornerstone of American democracy.” . . . The power vested in the legislature under the Florida Constitution would be severely compromised if legislators were required to appear in court to explain why they voted a particular way or to describe their process of gathering

information on a bill. Our state government could not maintain the proper “separation” required by Article II, section 3 if the judicial branch could compel an inquiry into these aspects of the legislative process.

Expedia, 85 So. 3d at 525.

59. The Onerous Preemption Penalties, as applied to the Elected Official Plaintiffs, breach the strict separation of powers doctrine by specifically authorizing the judiciary to inquire into the motivations and intent of local legislators to determine whether they knowingly and willfully violated the Firearm Preemption. This is precluded by binding precedent and threatens “the cornerstone of American democracy.”

60. The Legislature was well aware that its enactment of the Onerous Preemption Penalties targeting local elected officials would potentially eviscerate legislative immunity and undermine the principles of democratic representation. *See* Staff Final Bill Analysis, Bill #: CS/CS/CS/HB 45 (“Bill Analysis”). The Bill Analysis expressly states:

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts. Absolute immunity for legislators has historically been recognized as a “venerable tradition” which has withstood the development of the law since pre-colonial days. Courts have upheld absolute immunity for legislators at all levels of law-making, including federal, state, and local government levels. The courts’ reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers. Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen-legislators, and deter service in local government.

Id. at 4 (footnotes omitted). The Bill Analysis further recognized that notwithstanding legislative immunity, citizens retain the legal remedy of challenging preempted ordinances and obtaining declaratory and injunctive relief to prevent enforcement of preempted local laws. *Id.*

61. And yet, despite the Bill Analysis’ recognition of the critical significance of legislative immunity, the Legislature imposed the Onerous Preemption Penalties on individual

elected officials, based entirely on an inquiry into the elected officials' motivation in enacting local legislation.

62. The Bill Analysis' only basis for attempting to penalize the Elected Official Plaintiffs despite an immunity that the Bill Analysis recognizes as "a 'venerable tradition,' which has withstood the development of the law since pre-colonial days," is that "[a]rguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field." Bill Analysis at 4. The reasoning underlying this approach is that the Legislature's preemption would make the enactment of local legislation and the voting of elected officials into "ministerial" acts. *Id.*

63. The adoption of ordinances and resolutions are not, however, ministerial acts. Lawmaking, such as the adoption of ordinances and resolutions, requires the exercise of discretion in balancing the costs of the proposed legislation against the legislation's relative benefits. "Voting for an ordinance" is "quintessentially legislative" conduct. *Bogan, supra*, at 55.

64. Furthermore, the question of whether a particular legislative act runs afoul of the Firearm Preemption can be determined only after review by a court, considering the express language of the preemption itself and any other general laws relating to gun regulation.

65. Given the variety of statutory and constitutional provisions affecting local firearms and ammunition regulation, the sphere of legitimate local activity in this field is not clearly defined. Rather, the development of some policies in the field of regulation of firearms and ammunition is clearly within the province of local governments, who serve closest to the people who are actually affected by gun violence. If states are the laboratories of our democracy, municipalities are the scientists. Local governments are where democracy flourishes in its truest

and most accessible sense. As issues relating to gun activity develop and evolve in particular jurisdictions, the Elected Official Plaintiffs can, should, and desire to react accordingly and in the best interest of the local community.

66. The electoral process, which allows for removal of elected officials, and the ability and duty of the judiciary to declare preempted legislation null and void, are fully adequate “checks” on the Elected Official Plaintiffs. The punitive provisions of section 790.33 are unnecessary and unconstitutional.

67. As such, the Court should declare section 790.33(3), Florida Statutes, invalid and unconstitutional.

68. Based on the foregoing, all elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties are invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Elected Official Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that sections 790.33(3)(a)–(e), Florida Statutes, are unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT III

VIOLATION OF GOVERNMENTAL FUNCTION IMMUNITY **(Municipal Plaintiffs Against All Defendants)**

69. The Municipal Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

70. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3)(f), Florida Statutes, is invalid because it violates the discretionary governmental immunity of the Municipal Plaintiffs by creating a strict liability cause of action for damages (up to \$100,000), not inclusive of attorneys' fees and costs, against municipalities for performing the discretionary governmental act of enacting or enforcing ordinances or regulations. The Municipal Plaintiffs face liability even if their officials acted in good faith and in reliance on counsel.

71. Under Florida law, there are certain policy-making, planning, or judgmental governmental functions that are inherent in the act of governing and therefore ought not to be subjected to scrutiny by judge or jury because it would inappropriately entangle the courts in fundamental questions of planning and policy. *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979).

72. Notwithstanding the Legislature's enactment in section 768.28, Florida Statutes, of a limited waiver of sovereign immunity for tort actions against local governments (up to specified monetary caps), the Florida Supreme Court has held that "even absent an express exception in section 768.28 for discretionary functions, certain policy-making, planning or judgmental governmental functions cannot be the subject of traditional tort liability." *Id.* at 1020.

73. "Accordingly, where governmental actions are deemed discretionary, as opposed to operational, the government has absolute immunity from suit." *City of Freeport v. Beach Community Bank*, 108 So. 3d 684 (Fla. 1st DCA 2013).

74. The decision of a municipality's governing body to enact an ordinance or regulation is quintessential discretionary conduct. It involves the determination of governmental policy and objective; is an essential step in the accomplishment of the policy or objective; requires the exercise of basic policy evaluation and judgment on the part of the government; and is within the lawful authority and duty of the governing body. *Trianon Park Condo. Ass'n v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985).

75. Even if a Court were to ultimately determine that a local government and its municipal attorney were incorrect and enacted an ordinance that violated the Firearm Preemption, the decision to enact the ordinance was still a discretionary function that is protected by absolute immunity.

76. As such, the Court should declare section 790.33(3)(f), Florida Statutes, invalid and unconstitutional.

77. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(f), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(f), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT IV

VIOLATION OF RIGHT TO FREE SPEECH DUE TO OVERBREADTH
(Municipal And Elected Official Plaintiffs Against All Defendants)

78. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

79. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3)(f), Florida

Statutes, is unconstitutional on grounds of overbreadth. Such overbreadth results in an infringement of the Elected Official Plaintiffs' free speech rights secured by Article I, Section 4 of the Florida Constitution.

80. Section 790.33(3)(f) states, in pertinent part, "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 ... municipality[.]"

81. The term "promulgate" is defined in various ways:

1. to make (something, such as a doctrine) known by open declaration; proclaim
2. to make known or public the terms of (a proposed law)
3. to put (a law) into action or force

See <https://www.merriam-webster.com/dictionary/promulgate>; see also *Black's Law Dictionary* (10th ed. 2014). The statute does not specify which of these potential definitions governs the potential liability of a municipality under section 790.33(3)(f). However, the first two definitions immediately demonstrate the vagueness and over-breadth problems with the statute.

82. While case law suggests that elected officials do not typically enjoy constitutional free speech protection when merely *casting a vote* in their elected, representative capacities, they do, however, enjoy free speech rights when advocating on behalf of particular public policies. The Elected Official Plaintiffs frequently address their colleagues and members of the public from the dais on issues of great public significance, including potential firearm regulation. In doing so, they certainly "make (something, such as a doctrine) known by open declaration" or "proclamation." They just as frequently "make known or public the terms of a *proposed* law," even if that law is never ultimately enacted.

83. Because the Legislature's use of the term "promulgate" is overbroad, it is virtually impossible for any elected official to know when his or her protected free speech crosses the line into "promulgation" that might give rise to significant municipal and personal liability. This uncertainty infringes upon the free speech rights of the Elected Official Plaintiffs and works to deter them from engaging even in simple, constitutionally protected advocacy of a political position. Furthermore, the overbreadth of the term "promulgate" purports to make speech that is unquestionably protected by the Florida Constitution subject to state-sanctioned strict liability.

84. The Municipal Plaintiffs similarly are deterred from encouraging public discourse at public meetings for fear that such discourse might lead their elected officials to "promulgate" views that contravene the preemption endorsed by the Legislature. In fact, the Bill Analysis expressly acknowledged that the penalty provision found in section 790.33(f) will have a negative fiscal impact on municipalities and that any damages awarded could even be satisfied "by seizure of municipal property." Bill Analysis at 4, 7.

85. Additionally, the statute is overbroad in that it restricts the protected speech and conduct of the electorate who desire to promote positive change in their own communities. Indeed, the very existence of the Onerous Preemption Penalties causes constituents to refrain from constitutionally protected speech or expression with their elected officials out of fear that their public comments could lead to severe sanctions against the very municipality they seek to improve, not to mention the local leaders who serve them. As a result, a substantial amount of protected speech concerning the regulation of firearms and ammunition is effectively prohibited or chilled in the process.

86. As such, the Court should declare section 790.33(3)(f), Florida Statutes, invalid and unconstitutional.

87. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33(3)(f), Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33(3)(f), Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT V

VIOLATION OF RIGHT TO DUE PROCESS DUE TO VAGUENESS **(Elected Official Plaintiffs Against All Defendants)**

88. The Elected Official Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

89. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties in section 790.33, Florida Statutes, are void for vagueness.

90. In a penal statute, the Due Process Clause of the Florida Constitution, Article I, Section 9, requires the use of language that is sufficiently definite to provide fair notice to individuals who may be affected of what conduct is prohibited.

91. Section 790.33 fails to give adequate notice of what conduct is prohibited. It appears to proscribe municipalities and their elected officials 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 regulation of firearms and ammunition.” However, this section is riddled with ambiguity. For example, while the Firearm Preemption applies only to “ordinances and regulations,” section 790.33(3)(a) also refers to “administrative rule[s],” and section 790.33(f) suggests it may apply to any “measure, directive, rule, enactment, order or policy promulgated.” Additionally, although the Firearm Preemption applies only to “firearms and ammunition,” another section also mentions, but does not define, firearm “components.” § 790.33(2)(a), Fla. Stat.

92. This language of section 790.33 is so vague and so broad that a person of common intelligence must speculate about its meaning and be subjected to punishment if the

guess is wrong. Further, because of its imprecision, section 790.33 necessarily invites arbitrary and discriminatory enforcement.

93. Section 790.33 is a penal statute in that it imposes effectively criminal punishment against the Elected Official Plaintiffs. It has a “knowing and willful” scienter or *mens rea* requirement. When the scienter requirement is met, the Elected Official Plaintiffs may be fined up to \$5,000 and removed from office, and the Elected Official Plaintiffs may not use public funds in their defense.

94. The Elected Official Plaintiffs have property rights in continued employment as elected officials. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538–39 (1985); *McRae v. Douglas*, 644 So. 2d 1368, 1372–73 (Fla. 5th DCA 1994). The Elected Officials also have property rights in the use of their private funds.

95. The purpose and intent of the Onerous Preemption Penalties are punishment, retribution, and deterrence.

96. As such, the Court should declare section 790.33, Florida Statutes, invalid and unconstitutional.

97. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that section 790.33, Florida Statutes, is invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.

- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that section 790.33, Florida Statutes, is unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

COUNT VI

**VIOLATION OF THE PROHIBITION ON ARBITRARY AND CAPRICIOUS LAWS
AND LAWS THAT LACK A RATIONAL BASIS**
(Municipal And Elected Official Plaintiffs Against All Defendants)

98. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

99. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that section 790.33(3), Florida Statutes, is invalid because it treats the violation of the preemption of local government regulation of firearms differently than violations of other preempted subject areas and gives more protection to the newly created right against local regulation of firearms than to any other rights (even those set forth in the Florida Constitution), all with no rational basis. This Count also seeks a declaratory judgment that section 790.33(3), and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of

firearms by a municipality on municipal-owned property, are invalid because they arbitrarily and capriciously treat municipal-owned property differently than privately owned property, with no rational or reasonable basis to distinguish between the two.

100. Under Florida law, all statutes must, at a minimum, have a rational basis and must not be arbitrary and capricious. *See Dept. of Corrections v. Fla. Nurses Ass'n.*, 508 So. 2d 317, 319 (Fla. 1987). This requirement is rooted in doctrines of equal protection and due process, as well as Article III, Section 11(b) of the Florida Constitution (“In the enactment of general laws on other subject, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.”); *see also Goodman v. Martin County Health Dept.*, 786 So. 2d 661, 664 (Fla. 4th DCA 2001) (“A statute that is vague, arbitrary, or capricious and bears no reasonable relationship to a legitimate legislative intent is unconstitutional.”).

101. Under Section 790.33(3), individual elected officials who vote for an ordinance in violation of the Firearm Preemption are subject to severe consequences (removal from office and civil fines), while individual elected officials who vote for an ordinance in violation of other state preemptions (or even in violation of other state constitutional rights) are not. Similarly, municipalities that enact ordinances in violation of the Firearm Preemption are subjected to lawsuits from all adversely affected persons and organizations and to damages up to \$100,000, plus attorneys’ fees, while municipalities that enact ordinances in violation of other state preemptions (or even in violation of state constitutional rights) are not.

102. There is no rational basis for such disparate treatment. The concept of preemption is of equal importance regardless of the subject matter of the preemption, and the consequences for violation should be the same. The consequence of a violation of the Firearm Preemption was, until the enactment of the Onerous Preemption Penalties in 2011, always the same as a violation

of any other preemption statute—a declaration that the preempted ordinance is invalid. The creation of different consequences for a preemption violation is arbitrary and capricious and has no rational basis.

103. In essence, the Onerous Preemption Penalties create a private right to be free from local governmental regulation of firearms, and then makes that right sacrosanct and elevates and protects it more than even the core constitutional rights declared in Article 1 of the Florida Constitution (including the right of equal protection, religious freedom, freedom of speech, freedom of the press, due process, etc.), by creating severe penalties for the violation of only that right.

104. In addition, under Florida law, private property owners are permitted to pass and enforce “rules” relating to firearms and ammunitions on their property. However, pursuant to section 790.33(1), Florida Statutes, local government property owners may not do so.

105. The Plaintiffs have the same interest as private property owners in keeping their government-owned premises, visitors, and employees safe. Elsewhere in Chapter 790, the State recognized this important interest by exempting the possession of a concealed firearm at any meeting of the governing body of a municipality by an individual who is otherwise licensed to carry a concealed firearm. § 790.06(12)(a)(7), Fla. Stat. However, prior to the meeting, as soon as the meeting is over, and every other day of the week, the employees of a municipality who are clearly deserving of protection are again subject to the potential danger posed by firearms.

106. The Plaintiffs, like many private property owners throughout the State, desire to enact and enforce rules related to firearms and ammunition on their property that do not conflict with the fundamental right to bear arms, but that provide for more uniform protection and safety of property, visitors, and employees.

107. Section 790.33(1), taken together with other Florida Statutes, creates a classification scheme treating local government property owners differently than private property owners with no reasonable relationship to the purpose of the law. There is no rational basis for treating local governments who seek to impose limitations on the use of firearms and ammunition on their property differently from private entities who seek to do so on their privately owned property.

108. As such, the Court should declare section 790.33(3), Florida Statutes, and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of firearms by a municipality on municipally owned property, invalid and unconstitutional.

109. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties contained in section 790.33(3), Florida Statutes, are invalid, and unconstitutional, and that the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation by the Plaintiffs of firearms on municipally owned property, and the imposition of the Onerous Preemption Penalties for the enactment of such regulation, are also invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.

- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- a. Declaring that section 790.33(3), Florida Statutes, is unconstitutional;
- b. Declaring that section 790.33(3), and the application of the general preemption of local firearm regulation contained in section 790.33(1) to the regulation of firearms by a municipality on municipally owned property, are unconstitutional; and
- c. Granting such other relief as this Court deems just and proper.

COUNT VII

VIOLATION OF RIGHT TO PETITION AND INSTRUCT
(Municipal And Elected Official Plaintiffs Against All Defendants)

110. The Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 37 inclusive, as if fully set forth herein.

111. This count is an action for declaratory judgment, pursuant to section 86.011, *et. seq.*, Florida Statutes, seeking a declaration from the Court that the Onerous Preemption Penalties applicable to the Elected Official Plaintiffs, as provided for in sections 790.33(3)(a), (c), (d), and (e), Florida Statutes, violate Article I, Section 5 of the Florida Constitution by

rendering illusory the rights of residents living in the Municipal Plaintiffs to petition and instruct their elected representatives.

112. Article I, Section 5 of the Florida Constitution reads as follows: “**Right to assemble.** – The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.” The Florida Supreme Court has characterized the right to petition as “inherent and absolute.” *Krivanek v. Take Back Tampa Political Committee*, 625 So. 2d 840, 843 (Fla. 1993). Underlying the constitutional right to petition is the concept of government accountability, as noted in *Reynolds v. State*, 576 So. 2d 1300 (Fla. 1991).

113. The U.S. Supreme Court described the right just as eloquently:

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. ... For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions – principles which the Fourteenth Amendment embodies in the general terms of its due process clause.

De Jonge v. State of Oregon, 299 U.S. 353, 364 (1937).

114. Florida is one of only sixteen states with a constitutional provision that authorizes the people to “instruct their representatives.”¹ These rights were typically included in state constitutions because “the drafters of the earliest state constitutions labored under the recent memory of British attempts *to suppress town meetings and assert control over representative governments[.]*” and “those actions figured prominently in colonists’ decisions to safeguard the

¹ See Cal. Const. art. I, § 3; Idaho Const. art. I, § 10; Ind. Const. art. I, § 31; Kan. Const. Bill of Rights, § 3; Me. Const. art. I, § 15; Mass. Const. Declaration of Rights, art. 19; Mich. Const. art. I, § 3; Nev. Const. art. I, § 10; N.H. Const. art. I, § 32; N.C. Const. art. I, § 12; Ohio Const. art. I, § 3; Or. Const. art. I, § 26; Tenn. Const. art. I, § 23; Vt. Const. Declaration of Rights, art. XX; W. Va. Const. art. III, § 16.

right to assemble, and to fuse it to guarantees of the right of instruction and the right to petition the legislature for assistance in redressing wrongs.” *Lahmann v. Grand Aerie of Fraternal Order of Eagles*, 121 P. 3d 671, 681 (Or. 2005) (emphasis added).

115. The Elected Official Plaintiffs all take an oath of office to uphold the Florida Constitution in their roles as representatives of their constituents. The Onerous Preemption Penalties preclude the Elected Official Plaintiffs from fulfilling their oath of office.

116. The Onerous Preemption Penalties do irreparable damage to the rights of petition and instruction enshrined in the Florida Constitution. These rights have no value if the constituents invoking them are faced with the certainty that, as to particular topics solely of the Legislature’s choosing, their concerns *must* be ignored by their elected officials at the risk of facing significant fines and removal from office.

117. The Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress, in an insidious, Orwellian fashion, the voice of the local electorate through intimidation of local elected officials. The right to petition and instruct elected officials, which is guaranteed to Florida citizens by the Florida Constitution, is effectively suppressed by the Onerous Preemption Penalties, as the collective will of the local citizenry on the subject of firearm regulation, most clearly manifested through the legislative or quasi-legislative actions of their democratically elected local representatives, is silenced.

118. The Elected Official Plaintiffs are, through the threat of sanction, precluded from giving voice to the political interests of their constituents, whether by enactment of resolutions and ordinances or arguably even by public expressions of disapproval, on the subject of reasonable gun regulation within their community. Even if limited to symbolic, non-enforceable gestures, the will of the Municipal Plaintiffs’ residents is suppressed by the Onerous Preemption

Penalties, which threaten to punish the Elected Official Plaintiffs and subject the Municipal Plaintiffs to potentially exorbitant liabilities, if they enact, attempt to enforce, or even “promulgate” any “ordinance, regulation, measure, directive, rule, enactment, order, or policy” relating to gun regulation.² *See* § 790.33(3)(f), Fla. Stat.

119. To be clear, Plaintiffs are not alleging that local residents are entitled to have laws enforced that are inconsistent with or preempted by state statute. However, it *is* the Plaintiffs’ contention that local constituencies have a constitutional right to petition their democratically elected local officials and invoke their assistance in enacting local legislation, even if that legislation is ultimately determined to be unenforceable and merely symbolic. It is the role of the judiciary, not the Legislature, to determine whether particular local legislation is enforceable in light of controlling (and even preemptive) state law. Ironically, the Legislature was well aware of this legal remedy available to adversely affected individuals, but intended to threaten into submission (and eventually punish) local governments that do not “bend the knee.”

120. The idea that the Governor may summarily remove from office any elected local representative merely for *voting* in accordance with the petitions and instructions of his or her constituents, but who is later found to have knowingly and willfully voted in a manner inconsistent with the will of the Legislature, erodes the foundation of American democracy.

121. Accordingly, the Court should declare that the Onerous Preemption Penalties violate the constitutional rights to petition and instruct under Article I, Section 5 of the Florida Constitution.

² The inclusion of the term “promulgate,” with its inherent ambiguities and potentially broad interpretation, enhances the chilling effect of the Onerous Preemption Penalties on the democratic process.

122. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the Onerous Preemption Penalties are unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Plaintiffs are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Municipal and Elected Official Plaintiffs respectfully request that judgment be entered in their favor:

- A. Declaring that the penalty provisions set forth in sections 790.33(3)(a), (c), (d) and (e), Florida Statutes, are unconstitutional; and
- B. Granting such other relief as this Court deems just and proper.

Dated this 2nd day of April, 2018.

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