

**CITY OF CORAL GABLES**

**CITY ATTORNEY'S OFFICE**

**M E M O R A N D U M**

**TO:** Mayor and City Commissioners  
**FROM:** Miriam Soler Ramos, City Attorney  
**RE:** City of Weston, et al. v. State of Florida, et al. (firearms preemption lawsuit)  
**DATE:** June 8, 2021

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The Preemption:

Via section 790.33, Florida Statutes, the state legislature occupies the entire field of regulation of firearms and ammunition as follows:

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

The statute contains a few exception and various vague terms and definitions that make the scope of the preemption somewhat unclear. **To be clear, the City has not challenged the preemption itself.**<sup>1</sup>

The Penalties:

The statute includes two sections regarding penalties for violation of the preemption: one against local government entities and one against local government officials. The penalties against local government entities are up to \$100,000 in actual damages per suit incurred by a person or organization adversely affected by the violation and reasonable attorney's fees and costs. The penalties against local officials include removal from office and a \$5,000 fine. The public official is also personally liable for the fine and is responsible for his/her own attorney's fees (the local government is expressly prohibited from defending or reimbursing the official for those fees).

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<sup>1</sup> At the trial court level, there was a cause of action stating that the way the preemption language was worded was vague and ambiguous but there was no challenge to the state's ability to preempt.

### The Lawsuit:

After discussing the statute and its far-reaching and unprecedented implications, the City Commission, in Resolution No. 2018-98, directed the City Attorney to initiate/join a lawsuit to challenge the constitutionality of the punishment and penalty provisions of section 790.33, Florida Statutes. Specifically, the City Commission directed the City Attorney to join the lawsuit being filed by the City of Weston (and many other cities). In addition, the City Commission directed the City Attorney to hire independent counsel to represent the City in that suit. (All other plaintiffs, except the City of Miami Beach, were represented by the law firm of Weiss Serota Helfman (WSH)).

In response to the City Commission's direction, Coral Gables joined Weston and over 80 municipalities and elected officials (in their official capacities) in filing the action. Two other suits were filed and later consolidated with the Weston suit – Dan Daley, et al. v. State of Florida, et. al. and Broward County, et al. v. State of Florida, et al. The cases were consolidated in Leon County Circuit Court and the original defendants were the then-Governor, Florida Attorney General, Commissioner of Agriculture, Florida Department of Law Enforcement (FDLE), the State of Florida, and the Florida Auditor General. The original causes of action argued that the penalty provisions of the statute violate: (1) the state's constitutional limitations on the governor's authority to remove municipal elected officials, (2) legislative immunity, (3) governmental function immunity, (4) the right to free speech, (5) the right to due process due to vagueness, (6) the prohibition against arbitrary and capricious laws, and (7) the right to petition and instruct.

In July 2019, the Leon County Circuit Court ruled in favor of plaintiffs (the municipalities) on three of the claims. The Court found that the provision allowing the governor to remove elected officials from office for violation of the statute violates the state constitution. The Court also found that the assessment of personal fines against elected officials violates legislative immunity. Finally, the Court found that the assessment of fines against local governments violates governmental function immunity.

### The Appeal:

Then-defendants (with the exception of the Commissioner of Agriculture & Consumer Services) appealed the lower court's decision to the First District Court of Appeal ("First DCA"). Defendants only appealed the legislative immunity and governmental function immunity counts (and *not* the removal by the Governor count). On April 9, 2021, the First DCA reversed the lower court's ruling on both counts that were appealed, holding:

We hold that...[g]overnment function immunity does not shield entities that act contrary to or more restrictive than the state law in the completely preempted field of firearm and ammunition regulation. Likewise, legislative immunity does not shield

individuals who knowingly and willfully act contrary to or beyond the limits of state law.

Plaintiffs represented by WSH decided to ask the First DCA to certify the question as a matter of great public importance in order to lay the groundwork for the Florida Supreme Court to hear the case. Given that no Commission meetings were scheduled in April, on April 13, 2021, I emailed the then-members of the City Commission with this update and explained that municipalities are very concerned about the immunity implications of the First DCA's decisions within the context of section 790.33, Florida Statutes, and more generally. Accordingly, I recommended that we join the other plaintiffs in the motion for certification, which was due April 26, 2021. Hearing no objection from any member of the Commission, Coral Gables joined in the motion which was filed prior to the deadline. On May 17, 2021, the First DCA denied the plaintiffs' motion for certification.

Next steps:

Plaintiffs represented by WSH have decided to file a notice of intent to invoke discretionary jurisdiction with the Florida Supreme Court. The City of Coral Gables needs to decide whether to join the plaintiffs in doing so.

Coral Gables has always been a leader in the effort to protect its broad home rule authority and limit preemptions by the state legislature. Significantly, the City led the effort to challenge the preemption surrounding the regulation of single-use plastic bags and expanded polystyrene. Coral Gables enjoys a unique character and provides its residents with true quality of life despite being at the center of a major urban center. This is largely possible due to the City's ability to regulate locally. Allowing the state to continuously infringe upon that ability will undoubtedly erode the City's ability to do that. In the instant matter, however, even more is at stake. What is left of the statute's penalty provision allows for fines to be imposed against a local government. This drives a hole through the doctrine of governmental function immunity. Further, it allows for personal fines to be imposed on elected officials who are acting in their official capacity, thereby largely negating the protections of legislative function immunity which is likely to lead to significant unintended consequences. While success is uncertain, for the reasons set forth above, it is my opinion that joining the other plaintiffs in filing a notice of intent to invoke discretionary jurisdiction with the Florida Supreme Court will further the City Commission's established policy goals with regard to preemption.