

**Legislative #  
171005**

**CITY OF GAINESVILLE, FLORIDA**

**RESOLUTION NO. 171005**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA, AUTHORIZING AND DIRECTING THE INTERVENTION INTO A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS PUNISHING ELECTED OFFICIALS SET FORTH IN SECTION 790.33, FLORIDA STATUTES, FOR VIOLATING THE PREEMPTION RELATED TO THE REGULATION OF FIREARMS AND AMMUNITION ARE INVALID AND SEEKING A DECLARATION THAT THE APPLICATION OF THE GENERAL PREEMPTION TO ANY RULES RELATING TO FIREARMS AND AMMUNITION THAT A MUNICIPALITY MAY DESIRE TO ENFORCE ON MUNICIPALLY OWNED PROPERTY IS INVALID AND UNCONSTITUTIONAL; AUTHORIZING THE RETENTION OF OUTSIDE LEGAL COUNSEL; INVITING OTHER CITIES TO JOIN THE LAWSUIT; DIRECTING THE CLERK TO DISTRIBUTE THIS RESOLUTION TO ALL CITIES IN ALACHUA COUNTY; AUTHORIZING CITY OFFICIALS TO CARRY OUT THIS RESOLUTION AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, over the past several years there have been an unprecedented number of mass shootings in American communities including, most recently, at Marjory Stoneman Douglas High School in Parkland, Florida; and

**WHEREAS**, National and State leaders continue to fail to act to implement sensible gun law reforms that are supported by a majority of the nation; and

**WHEREAS**, in Section 790.33, Florida Statutes, the State of Florida (a) declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or city ordinances, regulations, or rules, (b) purports to prohibit the enactment of any future ordinances or regulations “relating to firearms,” and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including

any “measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced”;  
and

**WHEREAS**, the purported preemption, by using the terms “relating to firearms” and “any measure, directive, rule, enactment, order or policy promulgated,” is extremely broad and vague, and could apply to a panoply of measures that the City would like to consider enacting, including the restricting of guns in City facilities and parks, the placing of signs relating to guns in City facilities and parks, the regulation of gun accessories (such as holsters, high capacity magazines, or bump stocks) or the creating of “gun free zones” or “gun safe zones”; and

**WHEREAS**, the potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive consequences, including but not limited to damages up to \$100,000 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the “Onerous Preemption Penalties”); and

**WHEREAS**, as a result of the Onerous Preemption Penalties, the City Commission and its members fear taking any steps that could even remotely be viewed as a violation of the preemption, creating a chilling effect upon City action and preventing the City Commission from responding to the petitions and requests of the City’s residents to do something to protect against the dangers of firearms; and

**WHEREAS**, the City Commission and its members desire to consider various reasonable measures related to firearms, including the restriction of guns in City facilities and parks, the placing of signs related to guns in City facilities and parks, the regulation of gun accessories (such as holsters, high capacity magazines, or bump stocks), the creation of “gun free zones” or

“gun safe zones,” or other measures related to guns, but have refrained from doing so because they could possibly be viewed as falling under the preemption and be subjected to the Onerous Preemption Penalties; and

**WHEREAS**, 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; and

**WHEREAS**, the Onerous Preemption Penalties infringe on the free speech rights of the City Commission and its members, and interfere with their ability to perform their official duties; and

**WHEREAS**, the Onerous Preemption Penalties infringe upon the legislative immunity of the members of the City Commission enjoy under law when casting votes in their official capacities; and

**WHEREAS**, the portion of the Onerous Preemption Penalties related to the removal from office by the Governor conflicts with Article 4, Section 7 of the Florida Constitution, by allowing the Governor to remove a municipal official who has not been indicted for any crime, and violates due process; and

**WHEREAS**, on February 26, 2018, the City of Weston passed Resolution 2018-30, authorizing and directing its City Attorney (Weiss Serota Helfman Cole & Bierman, the “Firm”) to file a lawsuit seeking a declaration that the provisions punishing elected officials set forth in Section 790.33, Florida Statutes, for violating the preemption related to the regulation of firearms and ammunition, as well as related provisions, are invalid, and invited other local governments to join the lawsuit; and

**WHEREAS**, on April 2, 2018, a lawsuit was filed with ten municipalities and thirty one elected officials as plaintiffs, in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, Case No. 2018 CA 0000699 (the "Lawsuit"); and

**WHEREAS**, the City Commission believes it is in the best interest of the citizens and residents of the City of Gainesville to intervene in the Lawsuit seeking a declaration that the Onerous Preemption Penalties and other portions of the statute are invalid.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:**

**Section 1:** That the foregoing "**WHEREAS**" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** The City Commission hereby authorizes and directs the City and those individual Members of the Commission (in their official capacity) who choose to participate, to move to intervene in the Lawsuit as plaintiffs, seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, and related provisions, based upon any appropriate legal theories, including those set forth above and those included in the complaint filed in the Lawsuit.

**Section 3:** The Firm is hereby retained to represent the City in this litigation. The Firm has agreed to charge the City a flat fee of \$10,000 to represent the City and the individual Members of the Commission (in their official capacity) who choose to participate as plaintiffs, for the litigation, including all appeals. The Firm has agreed that if more than 15 cities choose to have the Firm represent them, the flat fee will be reduced by 1% for each city over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Firm represent them), and refund any amounts paid in excess of the flat fee. The City also

acknowledges that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation. The Firm's retention is subject to execution of a retainer agreement between the Gainesville City Attorney's Office on behalf of the City and the Firm consistent with the terms set forth herein and which addresses any conflict of interest waivers.

**Section 4:** The City Commission invites and urges other cities and elected officials to join the City as plaintiffs in the lawsuit and to coordinate their efforts with the City.

**Section 5:** The City Clerk is directed to distribute this Resolution to all cities in Alachua County.

**Section 6:** That the appropriate City Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

**Section 7:** That this Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of April, 2018.

\_\_\_\_\_  
Lauren Poe, Mayor

ATTEST:

Approved as to form and legality:

\_\_\_\_\_  
Omichele Gainey, City Clerk

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Nicolle Shalley, City Attorney

