

IN THE CIRCUIT COURT, THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CASE NO.:

Div:

S.W. o/b/o J.S. a minor, and
FLORIDA CARRY, INC.

Plaintiffs,

vs.

SCHOOL BOARD OF
HILLSBOROUGH COUNTY,
FLORIDA, a school district;
VAN AYRES individually and in his
official capacity,
Defendants.

_____ /

COMPLAINT FOR DAMAGES, INJUNCTIVE
AND DECLARATORY RELIEF

COMES NOW the Plaintiffs, S.W. o/b/o J.S., and FLORIDA CARRY, INC.,
and sue Defendants, SCHOOL BOARD OF HILLSBOROUGH COUNTY,
FLORIDA, a school district, and VAN AYRES, individually and in his official
capacity as Superintendent of School for Hillsborough County Public
Schools, and says:

1. This is an action for damages, injunctive and declaratory relief pursuant to Sec. 790.33, Fla. Stat.
2. The amount of damages at issue exceeds \$50,000.00

3. Venue is proper in Hillsborough County, Florida, as the acts complained of occurred therein, and all Defendants' primary places of business are located there.

PARTIES

4. Plaintiff S.W. is the next friend to J.S., a minor

5. Plaintiff J.S., a minor, is, and was at all times material, a resident of Hillsborough County, Florida.

6. Plaintiff FLORIDA CARRY, INC. (hereinafter, "Florida Carry") is a Florida not for profit corporation existing under the laws of Florida.

7. Florida Carry's purpose is to advance the fundamental civil right of all Floridians to keep and bear arms for self-defense as guaranteed by the Second Amendment to the United States Constitution and the Constitution of Florida's Declaration of Rights, including illegal attempts to punish the lawful possession of ammunition and ammunition components, or to redefine legal terms related to the possession and use of firearms and ammunition.

8. Florida Carry has members throughout the state of Florida, including in Hillsborough County.

9. Florida Carry has members whose children attend schools operated by the School Board of Hillsborough County.

10. Defendant, THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA (hereinafter "SBHC").

11. SBHC is a governmental entity organized and existing under Florida law, with its principle place of business at 901 East Kennedy Boulevard, Tampa, FL 33602, and local government entity as described in sec. 790.33, Fla. Stat.

12. Defendant, VAN AYRES (hereinafter "AYRES"), was at all times material, the Superintendent of Schools for SBHC.

COMMON FACTS

13. J.S. is a student who attends a high school operated by SBHC.

14. On Thursday, November 21, 2024 at approximately 8:05 a.m., J.S.'s Principal contacted S.W., who is the father of J.S, by telephone.

15. The Principal informed S.W., that the Principal had received an anonymous report through the FortifyFL app, that J.S. may be in possession of a prohibited item.

16. The Principal informed S.W., that the prohibited item might represent a threat to school safety and security.

17. Both of J.S.'s parents went to the school, arriving at around 8:40 a.m.

18. Upon the parent's arrival, the parents learned that school officials, along with the school resource officer, a Deputy employed by the Hillsborough County Sheriff, searched J.S.'s backpack and conducted a pat down of J.S.

19. The search revealed three expended metallic casings contained in a Ziploc bag, along with some change.

20. The casings had been used while target shooting with J.S.'s parents on a recent excursion.

21. The expended casings did not contain any powder, projectile, shot, bullets, wading, or live primer.

22. The Deputy stated that there was no criminal conduct by J.S.'s possession of empty, expended shell casings.

23. The Principal stated that she would need to contact SBHC to see what actions would be taken as the items were shell casings, not ammunition.

24. The parents were instructed to take J.S. home from school immediately.

25. The parents were told by the Principal that they would receive a phone call regarding J.S.'s punishment.

26. In the late afternoon, S.W. received a phone call from the Principal.

27. During the phone call the Principal told S.W. that he was lucky the Principal “went to bat for him”.

28. The Principal stated that J.S. could have been expelled from school.

29. The Principal stated that because she “went to bat for” J.S., J.S. was being punished with a five day suspension.

30. The suspension was to begin effective on November 21, 2024, and include November 22 as day two of the suspension.

31. Because of the Thanksgiving Break, days three through five of the suspension would occur on December 2-4, 2024, after school reopened from the break.

32. No allegation was made that J.S. had threatened anyone.

33. No allegation was made that J.S. intended to use the expended casing to cause harm to anyone.

34. No allegation was made that J.S. intended to use the expended casing as a weapon.

35. J.S.’s suspension was based on one or more, regulations, measures, directives, rules, enactments, orders, or policies, (hereinafter

collectively referred to as a “POLICY” or “POLICIES”) whether written or unwritten, of SBHC.

36. Ammunition is defined by law in Sec. 790.001(1), Fla. Stat.

37. The components that must be present for an object to constitute ammunition are defined by law and set forth in Sec. 790.001(1)(a-c), Fla. Stat.

38. The term “firearm” is defined by law in Sec. 790.001(9), Fla. Stat.

39. The term “weapon” is defined by law in Sec. 790.001(20), Fla. Stat.

40. SBHC is prohibited and preempted by Sec. 790.33 from altering the definitions of “ammunition”, “weapon”, “firearm”, or “”, components of ammunition.

41. The altering of the definitions of the terms, “ammunition”, “weapon”, “firearm”, to be either more or less inclusive, or to define ammunition components as ammunition or a weapon by SBHC is prohibited and preempted by Sec. 790.33, Fla. Stat.

42. The altering of the definitions of the terms, “ammunition”, “weapon”, “firearm”, to be either more or less inclusive, or to define

ammunition components as ammunition or a weapon by SBHC is prohibited and preempted by Art. I, Sec. 8, Fla. Const.

43. SBHC in its bylaws, Sec. 5772-Weapons, also prohibits students from possessing or storing a firearm in a school safety zone.

44. Included within the term “weapons and firearms as defined in F.S. 790.001”, in the SBHC bylaws Sec. 5772 includes ammunition.

45. Florida law does not prohibit possession of ammunition on school property or within a school safety zone.

46. Defendant, SBHC enacted and promulgated a rule or policy prohibiting “[g]arments and/or jewelry that display or suggest . . . weapons, . . .,” stating such items “shall not be worn”¹. SBHC Student Code of Conduct. Pg. 47

47. Defendant, SBHC enacted and promulgated a rule or policy prohibiting the possession of weapons.

48. Included in SBHC’s definition of weapons are guns, knives, toy guns, or anything that resembles or could be considered a weapon. SBHC Student Code of Conduct, Pg. 55.

¹ The cited and quoted provision is in reference to the Sixth-Twelfth Grade conduct provisions, but similar conduct is also prohibited for the elementary grades and likewise violates Florida law.

49. SBHC has POLICIES prohibiting clothing depicting weapons, specifically those that depict firearms (“guns” is the term used in the Student Code of Conduct) as well as anything resembling these items.

50. These SBHC POLICIES are in violation of Sec. 1006.07(2)(g), Fla. Stat., which specifically provides that:

- a. Simulating a firearm or weapon while playing; and
- b. Wearing clothing or accessories that depict a firearm or weapon or express an opinion regarding a right guaranteed by the Second Amendment to the United States Constitution

is not grounds for disciplinary action or referral to the criminal justice or juvenile justice system.

51. Defendants retained possession of the expended shell casings which have sentimental value to J.S. and his parents.

52. Plaintiffs are not required to comply with the conditions of Sec. 768.28, Fla. Stat., as a condition precedent to the filing or maintaining this action. *Florida Carry v. Univ. of Florida*, 133 So.3d 966 (Fla. 1st DCA 2013).

53. J.S. is not required to exhaust administrative remedies or avail himself of administrative remedies as a condition precedent to filing or

maintaining this action. *Pretzer v. Swearingen*, 2024 WL 3463786 (Fla. 1st DCA 2024) en banc.

COUNT 1- Violation of sec. 790.33, Fla. Stat., by Defendant, SBHC

Plaintiff re-alleges paragraphs 1 through 53 as if set forth in full and further alleges:

54. Defendant, SBHC promulgated, enacted and/or enforced POLICIES, written and unwritten regarding firearms and ammunition specifically including but not limited to:

- a. Defining an individual ammunition component(s) as “ammunition”;
- b. Defining or treating ammunition as a “weapon”;
- c. Defining or treating ammunition components as a “weapon”;
- d. A POLICY prohibiting the possession of “ammunition” on SBHC property or in a school safety zone or bus stop;
- e. A POLICY prohibiting the possession of an ammunition component on SBHC property
- f. A POLICY of disciplining students for lawful possession of an ammunition component on SBHC property;

g. A POLICY of disciplining students for possessing ammunition on SBHC property.

55. The POLICIES were promulgated, enacted, and/ or enforced in violation of Sec. 790.33, Fla. Stat.

56. The POLICIES were enforced against J.S. by employees and administrators of SBHC.

57. The enactment and enforcement of the POLICIES was knowing and willful by the employees and administrators of the SBHC.

58. The violation of Sec. 790.33, Fla. Stat., creates liability for damages, fines and attorney's fees, for the violation of Sec. 790.33, Fla. Stat.

59. J.S. has been damaged by the Defendant, SBHC, by loss of reputation.

60. J.S. has been damaged by the Defendant, SBHC, by denial of his right to education pursuant to Art. IX, Sec. 1, Fla. Const., by the suspension and denial of his right to attend school.

61. J.S. has been damaged by the creation of a record of suspension from school.

62. J.S. has been damaged by being denied the opportunity to take tests and complete assignments as a result of the suspension from school.

63. Florida Carry's members have been, or will be, adversely affected if SBHC is allowed to continue promulgating and enforcing policies against the possession of ammunition components in violation of state law.

64. Plaintiffs are entitled to an award of attorney's fees and costs pursuant to Sec. 790.33, Florida Carry.

WHEREFORE, Plaintiffs request a declaratory judgment pursuant to Sec. 790.33, Fla. Stat., that Defendant, SBHC as an entity and by and through its agents violated the provisions of Sec. 790.33, Fla. Stat., and are liable for damages to the Plaintiffs. Plaintiffs request an injunction against Defendant, SBHC prohibiting the enforcement of its illegal POLICIES and requiring the repeal of the same. J.S. further requests that SBHC be enjoined from enforcing or making any record of his suspension and requiring SBHC to provide J.S. a reasonable opportunity to complete all missed assignments, course work, and examinations caused by the J.S.'s illegal suspension, and requiring SBHC to remove and record that J.S. missed school attendance as a result of the illegal suspension. Plaintiffs further request the return of the unlawfully seized casings.

Plaintiffs request that SBHC be enjoined from enforcing any preempted bylaw, Student Code of Conduct provision, or other POLICY or

disciplining any student based on such POLICIES. This includes preempted POLICIES related to the lawful possession of legal items preempted and not prohibited by law, as well as the wearing of protected items of clothing, jewelry or accessories protected under Sec. 1006.07, Fla. Stat.

Plaintiff requests an award of damages, costs, attorney's fees and all other relief deemed just and equitable.

COUNT II-violation of Sec. 790.33, Fla. Stat., by Defendant, AYRES

Plaintiff re-alleges paragraphs 1 through 64 as if set forth in full and further alleges:

65. Defendant, AYERS was at all times material an employee of the SBHC.

66. Defendant, AYERS as the superintendent of the SBHC was the appointed agency head under whose jurisdiction the knowing and willful enactment and enforcement of the illegal POLICIES against J.S. occurred.

67. Defendant, SBHC under the authority and within the jurisdiction of AYERS enacted and/or enforced POLICIES, written and unwritten regarding firearms and ammunition specifically including but not limited to:

- a. Defining an individual ammunition component(s) as “ammunition”;

- b. Defining or treating ammunition as a “weapon”;
- c. Defining or treating ammunition components as a “weapon”;
- d. A POLICY prohibiting the possession of “ammunition” on SBHC property or in a school safety zone or bus stop;
- e. A POLICY prohibiting the possession of an ammunition component on SBHC property
- f. A POLICY of disciplining students for lawful possession of an ammunition component on SBHC property;
- g. A POLICY of disciplining students for possessing ammunition on SBHC property.

68. These POLICIES were enforced in violation of Sec. 790.33, Fla. Stat.

69. The knowing and willful violation of Sec. 790.33, Fla. Stat., under the jurisdiction of AYERS is a violation subjecting AYER to a fine of not more than \$5,000.00

WHEREFORE, Plaintiff requests a declaratory judgment that enactment and enforcement of the POLICIES was knowing and willful and in violation of Sec. 790.33, Fla. Stat., and occurred under the jurisdiction of

Ayers as the appointed agency head. Upon such determination the Court shall fine AYERS in the amount of not more than \$5,000.

Demand for Jury Trial

Plaintiff demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via eService or email this Sunday, 1st day of December 2024 to the following:

James J. Porter, Esq.
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KINGRY & FRIDAY

/s/ Eric J. Friday _____
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