

COMMISSION AGENDA:

2.26.13 # 7

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Notice of New Lawsuit and Defense of the Same by the County Attorney
in the Case of Tamara Jensen v. Pinellas County Board of County
Commissioners, in Their Official Capacity
Federal Case No. 8:13-cv-233-T-27AEP

DISTRIBUTION: Virginia Holscher, Bureau Director, Risk Management

DATE: February 26, 2013

NOTICE: THIS IS TO ADVISE THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE-REFERENCED LAWSUIT WAS FILED AGAINST THE COUNTY AND THE COUNTY ATTORNEY'S OFFICE WILL DEFEND THE SAME.

DISCUSSION: Ms. Jensen has filed suit in federal court seeking injunctive relief as well as attorney's fees and costs. Plaintiff challenges the waiting period imposed by "Chapter 86, Division 3 of the Pinellas County Code of Ordinances" violates Florida Statutes, §790.33 and seeks an injunction to prohibit further enforcement of that code provision. Plaintiff additionally asserts the aforementioned provisions of the Pinellas County Code violate equal protection clause of the United States Constitution by treating holders of concealed weapons permits differently than those without such permits. Plaintiff further seeks attorney's fees and costs for this action.

Plaintiff was previously a plaintiff in a similar challenge filed in state court, *Jensen v. Pinellas County Board of County Commissioners*, Case No. 12-009391-CI-007, which the County continues to defend.

A copy of the Complaint (without attachments) is attached hereto.

JLB:CDP:gm

Attachment

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TAMARA JENSEN,

Plaintiff,

vs.

Case No. 8:13-CV-233-T-27AEP

PINELLAS COUNTY BOARD OF
COUNTY COMMISSIONERS,
in its official capacity.

Defendant.

COMPLAINT

COMES NOW, Plaintiff TAMARA JENSEN, and sues Defendant PINELLAS BOARD
OF COUNTY COMMISSIONERS, in its official capacity, and as grounds therefore would state:

JURISDICTION AND VENUE

1. This is a claim for injunctive relief brought pursuant to 42 U.S.C. § 1983 and Florida Statute § 790.33. This Court has jurisdiction over the federal claim pursuant to 28 U.S.C. § 1331 and jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.
2. Defendant, PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS, is a governmental entity located in Pinellas County, Florida. Venue is appropriate in the Middle District of Florida, Tampa Division.
3. Plaintiff TAMARA JENSEN is a resident of Pinellas County, Florida.

GENERAL ALLEGATIONS

4. Plaintiff TAMARA JENSEN is entitled to the protections and benefits conferred upon her by the United States Constitution, the Florida Constitution, and Florida Statutes.
5. Plaintiff is entitled to the right to keep and bear arms conferred upon her by the Second

Amendment to the United States Constitution and Article I, section 8 of the Florida Constitution. This is a fundamental federal and state constitutional right.

6. Plaintiff is entitled to the right to acquire, possess and alienate property conferred upon her by the United States Constitution and the Florida Constitution. This right is also fundamental.
7. Plaintiff is entitled to the right of equal protection and treatment under the law pursuant to the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Florida Constitution.
8. Plaintiff is a law abiding citizen who is not prohibited from possessing or purchasing firearms by Florida Statute § 790.065 or federal law.
9. Plaintiff does not possess a concealed weapons permit.
10. Plaintiff has purchased firearms in the past and desires to purchase and/or sell additional firearms or component parts in a non-commercial manner in the future. Plaintiff's past purchases have been subject to the regulations of Chapter 86, Division 3 of the Pinellas County Code of Ordinances, as will her future purchases.
11. The Florida Legislature, by enacting Florida Statute § 790.33, has declared the intent to occupy the entire field of firearms regulation, including the regulation of component parts and has forbid local governments from regulating firearms and component parts except where explicitly authorized by the Florida Constitution.
12. Contrary to this statute, Defendant maintains a code of ordinances, specifically Chapter 86, Division 3, which regulates the possession and sale of firearms and component parts.
13. Defendant enforces the firearms regulations found in Chapter 86, Division 3 by threatening to imprison those violating the ordinance for up to sixty days and/or the

imposition of fines.

14. Defendant further enforces Chapter 86, Division 3 by mandating that law enforcement officers within Pinellas County take action against those who are found to have violated Chapter 86. Law enforcement officers cannot use their discretion in determining whether they will enforce the provisions of Chapter 86, Division 3.
15. Plaintiff is a licensed professional whose state-issued license may be adversely affected if she were arrested and/or imprisoned.
16. Plaintiff has been inconvenienced in the past by the provisions of Chapter 86, Division 3, and will be inconvenienced in the future.

COUNT I-CLAIM FOR INJUNCTIVE RELIEF

Plaintiff, pursuant to § 790.33 and 42 U.S.C. § 1983 sues for injunctive relief, and in support thereof would state:

17. Florida Statute § 790.33(3)(b) provides that if any local government violates § 790.33, the court shall issue a permanent injunction against enforcement of the ordinance, regardless of whether the local government had acted in good faith or not.
18. Injunctive relief is available as a remedy pursuant to 42 U.S.C. § 1983 to protect an individual's federal constitutional rights.
19. Chapter 86, Division 3 violates § 790.33 because it exceeds the permissible scope of regulation permitted by the Florida Constitution.
20. Chapter 86, Division 3 violates the equal protection clause of the United States Constitution because it treats holders of concealed weapons permits differently than those without concealed weapons permits. There is no rational reason why those persons who possess concealed weapons permits should be excused from the three day waiting period mandated by Chapter 86, Division 3, while those who do not possess a

concealed weapons permit must wait three days before taking possession of a purchased firearm.

21. Chapter 86, Division 3 violates Plaintiff's aforementioned fundamental rights to keep and bear arms, as well as her right to acquire, possess, and alienate property by:

- a. Depriving her of her right to keep and bear purchased firearms for three days
- b. Inhibiting her ability to take possession of her purchased property
- c. Inhibiting her ability to alienate her property

22. Plaintiff will suffer irreparable harm if she is imprisoned for violating Division 3, Chapter 86 of the Pinellas County Code of Ordinances by doing an act which would otherwise be the free exercise of fundamental constitutional rights.

23. This irreparable harm includes loss of liberty, harm to Plaintiff's reputation in the community, and harm to Plaintiffs' professional license and/or activity.

24. An injunction would serve the public interest by prohibiting the County from violating the constitutional rights of its residents and visitors.

WHEREFORE, Plaintiff TAMARA JENSEN, respectfully request that this Honorable Court enter a judgment permanently enjoining Defendant from enforcing Division 3 of Chapter 86 of the Pinellas County Code of Ordinances.

COUNT II – CLAIM FOR ATTORNEY'S FEES AND COSTS

25. Plaintiff, should she prevail in this action, is entitled to an award of attorney's fees and costs pursuant to Florida Statute § 790.33 and 42 U.S.C. § 1988.

WHEREFORE, Plaintiff TAMARA JENSEN respectfully requests that this Honorable Court award attorney's fees and costs should she prevail in this action.

/s/ Jeffrey D. Jensen
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