

RESOLUTION NO. 18-2504

**A RESOLUTION OF THE MAYOR AND TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, RATIFYING THE AUTHORIZATION AND DIRECTION 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 ARE INVALID, AND INVITING OTHER LOCAL GOVERNMENTS TO JOIN THE LAWSUIT; 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 Town would like to consider enacting, including the restricting of guns in Town facilities and parks, the placing of signs relating to guns in Town 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 Town 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 Town action and preventing the Town Commission from responding to the petitions and requests of the Town's residents to do something to protect against the dangers of firearms; and

**WHEREAS**, the Town Commission and its members desire to consider various reasonable measures related to firearms, including the restriction of guns in Town facilities and parks, the placing of signs related to guns in Town 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 Town 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 the members of the Town 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 are invalid ("Lawsuit"), and invited other local governments to join the Lawsuit; and

**WHEREAS**, the Town desires to join the Lawsuit and invite other local governments to join also; and

**WHEREAS**, the Town Commission believes it is in the best interest of the citizens and residents of the Town to file a lawsuit seeking a declaration that the Onerous Preemption Penalties are invalid and urging other local governments to join the lawsuit as plaintiffs with the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:**

**Section 1: Recitals.** The above Recitals are true and correct and incorporated herein by this reference.

**Section 2: Authorization.** The Town Commission hereby ratifies the authorization and direction to file a lawsuit naming the Town and those individual Members of the Commission in their official capacity who choose to participate, as plaintiffs (Mayor Daniel Dietch, Vice Mayor Daniel Gielchinsky, Commissioner Michael Karukin and Commissioner Tina Paul), seeking declaratory and other appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon any appropriate legal theories, including those set forth above.

**Section 3: Attorneys' Fee.** The Firm is hereby retained to represent the Town in this litigation. The Firm will charge the Town a flat fee of \$10,000 to represent the Town and the individual Members of the Commission in their official capacity who choose to participate as plaintiffs (Mayor Daniel Dietch, Vice Mayor Daniel Gielchinsky, Commissioner Michael Karukin and Commissioner Tina Paul), for the litigation, including all appeals. 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 Town 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 may be subject to execution of a retainer agreement between the Town and the Firm consistent with the terms set forth herein and which addresses any conflict of interest waivers.

**Section 4: Urging Other Local Governments.** The Town Commission invites and urges other local governments and elected officials to join the Town as plaintiffs in the lawsuit and to coordinate their efforts with the Town.

**Section 5: Town Clerk Responsibilities.** The Town Clerk is directed to distribute this Resolution to all local governments in Miami-Dade County.

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

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

**PASSED AND ADOPTED this 8<sup>th</sup> day of May, 2018.**

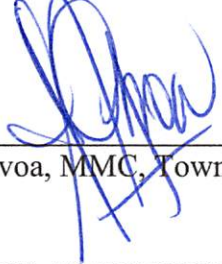
Motion by Commissioner Paul.  
Second by Vice Mayor Gielchinsky.



Commissioner Barry Cohen  
Commissioner Michael Karukin  
Commissioner Tina Paul  
Vice Mayor Daniel Gielchinsky  
Mayor Daniel Dietch

yes  
yes  
yes  
yes  
yes

  
\_\_\_\_\_  
Daniel Dietch, Mayor

**ATTEST:**  
  
\_\_\_\_\_  
Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE TOWN OF SURFSIDE ONLY:**

  
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Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney