

## Firearms

### Florida Ban on Openly Carrying Guns Doesn't Violate Second Amendment

Florida's ban on openly carrying guns in the state is constitutional, the Florida Supreme Court held March 2 (*Norman v. Florida*, 2017 BL 65827, Fla., No. SC15-650, 3/2/17).

The Second Amendment right to bear arms for self defense is subject to intermediate scrutiny, which means it must reasonably be related to an important governmental interest, the court's opinion by Justice Barbara J. Pariente said.

The law's sponsor in the state legislature said that it was needed to make Florida "a safe place for individuals to live, and an excellent place for people to visit."

But the Sunshine State's gun-control scheme also requires it to liberally issue concealed weapon permits.

The open carry ban is a reasonable fit to protect the state's critical interest in public safety because an individual can still protect himself by carrying a concealed weapon, the court said.

Justices Charles T. Canady and Ricky Polston argued in dissent that the open-carry ban "is unjustified on any ground that can withstand even intermediate scrutiny."

**Room for Improvement.** From a policy standpoint, Florida's gun-control law has room for improvement, Hannah Shearer, staff attorney with the Law Center to Prevent Gun Violence, San Francisco, told Bloomberg BNA.

Noting the state's liberal policy to issue conceal-carry permits, she said a lot of people are slipping through the cracks. Those who shouldn't be getting permits, such as convicted felons, are getting them, she said.

Even so, Shearer said the opinion is important because it shows that states can regulate firearms with public safety in mind, and the regulations will be consistent with the Second Amendment. Where guns are taken out of the home, public safety becomes that much more important, she said.

**Second Amendment Applies?** The Florida Supreme Court accepted that the Second Amendment applies to the right to carry a firearm in public. That question, however, is debatable and is the subject of a petition before the U.S. Supreme Court.

In *Peruta v. California*, cert. filed, 85 U.S.L.W. 3363 (U.S. Jan. 24, 2017) (No. 16-894), the question is whether "the Second Amendment entitles ordinary law-abiding citizens to carry handguns outside the home for self-defense in some manner, including concealed carry when open carry is forbidden by state law."

Whether the right to bear arms protected by the Second Amendment extends outside the home is a question left open by *District of Columbia v. Heller*, 554 U.S. 570 (2008), UCLA School of Law Constitutional Law Professor Adam Winkler told Bloomberg BNA. *Heller* established an individual's right to have a firearm for self defense but "only involved handguns in the home," he said.

Lower courts are "split on whether there is right to carry guns in public," Winkler said. But the Second Amendment "refers to the right to 'keep and bear arms,' the most natural reading of which means a right to have and to carry arms," he said.

Since *Heller*, "most courts that have considered whether the right to bear arms extends outside the home have either assumed or decided that it does," Dan Peterson, an attorney in Fairfax, Va., who practices firearms law, told Bloomberg BNA. "Only a handful" of courts "have concluded that there is no right to bear arms outside the home," he said.

The Second Amendment "codified a pre-existing right to self-defense," Peterson said. When the amendment was ratified, there was no suggestion that right "was limited to the home," he said.

Even so, "there is a long tradition of state and local regulation of who can carry and under what circumstances," Winkler said.

Though the Supreme Court has had "several opportunities to take a public carry case," it has declined all of them, Winkler said. "Perhaps the justices will clarify the issue in *Peruta*," he added.

Eric J. Friday, Fletcher & Phillips, Jacksonville, Fla., represented the petitioner. Florida Attorney General Pamela Jo Bondi represented the state.

BY BERNIE PAZANOWSKI

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### FRIENDS OF LIBERTY IN FLORIDA

THIS IS VERY DISHEARTENING. HERE IS ANOTHER EXAMPLE OF WHAT I HAVE BEEN SAYING FOR A WHILE. THE STATE LEGISLATED AWAY ITS CITIZENS' RIGHTS AND THE COURTS GO AND UPHOLD IT. IT SEEMS THERE IS A COLLUSION BETWEEN THE LEGISLATIVE AND JUDICIAL BRANCHES OF THE STATE GOVERNMENT.

"COLLUSION" IS DEFINED IN BLACK'S LAW DICTIONARY 10TH EDITION AS: AN AGREEMENT TO DEFRAUD OR TO DO SOMETHING FORBIDDEN BY LAW. MAYBE THERE WASN'T A HANDSHAKE AGREEMENT BETWEEN THE BRANCHES, BUT JUST A PROVERBIAL NOD TO THE LEGISLATURE THAT "I GOT YOUR BACK ON THIS" WHEN THE CASE COMES TO MY COURT. 2ND AMENDMENT SAYS SHALL NOT BE INFRINGED - TO THE GOVERNMENT - SO TO BAN OPEN CARRY IS TO DO WHAT IS FORBIDDEN BY LAW, THE SUPREME LAW. THIS CASE MIGHT END UP IN A FEDERAL COURT AND THEY WILL RULE JUST LIKE THE 4TH CIRCUIT DID FEB. 21ST FOR MARYLAND'S ASSAULT WEAPONS BAN, THAT IT DID NOT VIOLATE THE SECOND AMENDMENT. HOW MANY LICKS TO THE CENTER OF THE LOLLIPOP? FLORIDA, WHY DO YOU LET YOUR LEGISLATURE TAKE YOUR LOLLIPOP??

*The Winter Soldier*

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### FRIENDS TO THE CONSTITUTION AND LIBERTY

UGH, NO SOONER DO I PERFORM THE LAST KEYSTROKE FOR MY LAST ARTICLE ON THIS ISSUE, AND ANOTHER BITE IS TAKEN OUT OF THE LIBERTY COOKIE. NO SOONER! THIS TIME BY FLORIDA'S SUPREME COURT AND THEY TOOK A BIG BITE BY MY ESTIMATES.

JUST AS THE PREVIOUS "LAW REPORTER" ARTICLE I WROTE ABOUT, HERE AGAIN IS ANOTHER EXAMPLE OF BLATENT DISREGARD FOR OUR OUR INDIVIDUAL LIBERTY AND BILL OF RIGHTS. HERE, AGAIN, IS ANOTHER EXAMPLE OF THE TYRANNY OF THE COURTS. HERE, AGAIN, WE SEE SEE THE LANGUAGE THE PERVERTERS OF OUR CONSTITUTION. THAT LANGUAGE IS THESE WORDS: "IMPORTANT GOVERNMENTAL INTEREST. OTHER VARIATIONS INCLUDE: "COMPELLING" OR "SUBSTANTIAL GOVERNMENTAL INTEREST." THE LEGISLATIVE BRANCHES CAN SLAP THAT LABEL ON ANY BILL AND THE COURTS WILL ALWAYS FIND IT CONSTITUTIONAL WHEN IT COMES TO GUN LAWS. IF THE STATE BANS OPEN CARRY, THEY CAN CONTROL WHO CAN CARRY GUNS OFF THEIR OWN PROPERTY THROUGH CONCEALED CARRY PERMITTING.

LIKE WE ALL KNOW, KEEPING AND BEARING ARMS SHALL NOT BE INFRINGED, BUT WHAT IS IT THAT THE GOVERNMENT DOESN'T UNDERSTAND ABOUT THAT WORD "INFRINGED"? THE LIBERTY COOKIE IS NEARLY GONE. "THE TWO ENEMIES OF THE PEOPLE ARE CRIMINALS AND GOVERNMENT, SO LET US TIE THE SECOND DOWN WITH THE CHAINS OF THE CONSTITUTION SO THE SECOND WILL NOT BECOME THE LEGALIZED VERSION OF THE FIRST." - THOMAS JEFFERSON. BUT WHAT DO WE DO WHEN THE BEAST LOOSENS ITS CHAINS AND BEGINS DEVOURING?

*The Winter Soldier*