



Via Electronic Mail

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CC: Members of the House and Senate Judiciary committees

Re: Unconstitutional state prohibition on open carry of firearms

Dear Mr. Speaker, Mr. President, and members of the House and Senate Judiciary Committees,

For years the State of Florida has unconstitutionally banned the exercise of the open carry of firearms. Florida recently had the opportunity to correct this statutory error and bring Florida's Code of Laws into alignment with the Second Amendment to the U.S. Constitution by repealing the open carry prohibition along with the enactment of permitless concealed carry, but Florida's lawmakers failed to do so.

It should be emphasized that this ban on the open carry of firearms is an unconstitutional infringement on the right to keep and bear arms as protected by the Second Amendment.

The Supreme Court ruled in *D.C. v. Heller* that the Second Amendment protects the right of law-abiding citizens to own weapons in common use by law-abiding citizens for self-defense, and in *New York State Rifle and Pistol Association v. Bruen* the Court recognized that the Second Amendment also protects the right to bear arms in public.

The Supreme Court also ruled in *Bruen* that a government wishing to infringe on rights protected by the Second Amendment – such as the right to carry firearms openly in public – must prove

that its regulations are consistent with the text, history, and tradition of the Second Amendment. To be clear, this burden is on the government to prove in order for the law to withstand Constitutional scrutiny.

The issue of permitless open carry is actively being litigated in *Baird v. Bonta*, an ongoing challenge to California's unlicensed open carry prohibition. A Ninth Circuit Court of Appeals panel recently reversed the district court's refusal to block this law specifically because the district court failed to properly apply the *Bruen* test. In this ruling, the panel stated:

“An ‘individual’s right to carry a handgun for self-defense outside the home’ under the Second Amendment is one such constitutional right. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2122 (2022). **A government may regulate the manner of that carry only if it demonstrates that the regulation is identical or closely analogous to a firearm regulation broadly in effect when the Second or Fourteenth Amendment was ratified.**

...

By denying Appellants’ motion to enjoin California’s general open-carry ban based solely on its conclusion that the public interest weighed against Appellants, the district court thus employed an incorrect legal standard for the issuance of a preliminary injunction, and therefore abused its discretion.” (emphasis added)

As this prohibition on the open carry of firearms is categorically opposed to the text, history, and tradition of the Second Amendment, this policy must fail any legal challenge where the Supreme Court’s precedent is faithfully applied.

Our legal foundation, the National Foundation for Gun Rights, is currently engaged in litigation aimed at overturning federal and state gun control laws and restoring Second Amendment freedoms to the American people as the founders intended when the right to keep and bear arms was enshrined in the Bill of Rights. Should Florida be unwilling to bring its own laws into compliance with the U.S. Constitution, we are prepared to force the issue in the federal courts.

Should any of you wish to examine the nature of the legal test you will be facing should you decide to defend Florida’s unconstitutional open carry ban in court, below is a list of our ongoing lawsuits. All of these cases are actively forcing various government entities into the impossible position of attempting to defend unconstitutional gun control based on the text, history, and tradition of the Second Amendment:

- *NAGR v. Grisham*, U.S. District Court, District of New Mexico (1:23-cv-00771)
- *Bevis v. Naperville IL*, 7th Circuit Court of Appeals (23-1353)
- *NAGR v. Lamont*, 2nd Circuit Court of Appeals (23-1162)
- *RMGO v. Superior*, U.S. District Court, District of Colorado (22-cv-2680)
- *Gates v. Polis*, U.S. District Court, District of Colorado (22-cv-01866)
- *Capen v. Healey*, U.S. District Court, District of Massachusetts (1:22-cv-11431)
- *NAGR v. Highland Park*, U.S. District Court, District of Illinois (1:22-cv-04774)

- *NAGR v. Lopez*, U.S. District Court, District of Hawaii (1:22-cv-00404)
- *TGR v. ATF*, U.S. District Court, Northern District of Texas (4:23-cv-00578)
- *NAGR v. ATF*, U.S. District Court, Northern District of Texas (4:23-cv-00830)

I would, in particular, draw your attention to the various Temporary Restraining Orders we have obtained in several of these lawsuits simply by a strict application of the *Bruen* standard – many of which have been granted by Democrat-appointed judges.

While many of our lawsuits are still in early stages, we anticipate the courts recognizing that there is no justification that can be offered to make gun control consistent with the Second Amendment.

I urge you to read and consider carefully the concerns stated above and to repeal this unconstitutional ban on permitless open carry forthwith. Should the Florida Legislature fail to take action in the next legislative session to remove this unconstitutional infringement on Floridians' right to bear arms, the National Foundation for Gun Rights will explore all legal options to force the State of Florida to comply with the Second Amendment in the federal courts in order to protect the constitutional rights of her citizens.

Regards,



Dudley Brown
President
National Foundation for Gun Rights