

>> THE NEXT CASE ON THE DOCKET  
IS NORMAN v. STATE.  
WHENEVER YOU'RE READY, COUNSEL.  
>> THANK YOU, YOUR HONOR.  
MAY IT PLEASE THE COURT.  
ERIC FRIDAY ON BEHALF OF  
PETITIONER DALE NORMAN.  
I WOULD ASK TO RESERVE FIVE  
MINUTES FOR REBUTTAL.  
THE FOURTH DCA MADE TWO ERRORS  
IN THIS CASE.  
IT CLAIMED INTERMEDIATE RATHER  
THAN STRICT SCRUTINY APPLIED AND  
SECOND IT CALLED WHAT IT  
INTERMEDIATE SCRUTINY WHEN IT  
WAS USING A RATIONAL BASIS  
ANALYSIS.  
THIS COURT HELD A RIGHT IS  
LISTED IN ARTICLE ONE OF FLORIDA  
CONSTITUTION AS ENUMERATED RIGHT  
THAT LAW REQUIRES THE  
APPLICATION OF STRICT SCRUTINY.  
ARTICLE I SECTION 8 OF THE  
FLORIDA CONSTITUTION IS ONE OF  
THESE FUNDAMENTAL RIGHTS.  
ALSO WELL-ESTABLISHED THAT HE  
DEPRIVING CITIZENS OF A  
SUBSTANTIVE RIGHT UNTIL THEY  
SEEK AND OBTAIN GOVERNMENT  
PERMISSION VIOLATES SUBSTANTIVE  
DUE PROCESS.  
>> CAN YOU READ FLORIDA  
CONSTITUTION EXACTLY WHAT IT  
SAYS VERSUS THE FEDERAL  
CONSTITUTION.  
THE WORDS ARE IT SAYS, CITIZEN  
HAS A FREESTANDING RIGHT TO BEAR  
ARMS, RIGHT?  
>> YES, YOUR HONOR.  
>> WHICH IS ACTUALLY MORE  
EXPLICIT IN THAT REGARD THAN THE  
FEDERAL CONSTITUTION.  
WHICH TALKS ABOUT THE MILITIA.  
>> YES, QUOTE--  
>> SECOND PART.  
>> ARTICLE I SECTION EIGHT READS  
THAT BY THE PEOPLE TO KEEP AND  
BEAR ARMS IN DEFENSE OF  
THEMSELVES AND THE STATE SHALL  
NOT BE INFRINGED BUT THE THAT

THE LEGISLATURE MAY REGULATE THE MANNER OF BEARING ARMS.

>> THAT'S A PRETTY, THAT HAS BEEN PART OF THE CONSTITUTION FOR-- SO I GUESS WHAT I'M ASKING YOU, DO YOU SEE THAT THE FLORIDA CONSTITUTION IS GIVING LESS RIGHTS THAN THE FEDERAL CONSTITUTION, MORE RIGHTS, OR THE SAME RIGHTS?

>> I THINK THE FLORIDA CONSTITUTION GIVES MORE RIGHTS, YOUR HONOR, BUT MORE IMPORTANTLY I THINK WE HAVE TO LOOK AT WHY THAT LAST PHRASE IS IN THE FLORIDA CONSTITUTION.

THAT LAST PHRASE, EVEN THOUGH THE RIGHT TO BEAR ARMS EXISTED IN THE FLORIDA CONSTITUTION FROM THE FIRST CONSTITUTION TILL TODAY WITH THE EXCEPTION OF THE 1865 MILITARY GOVERNMENT CONSTITUTION, THE 1885 CONSTITUTION WAS THE OFFICERS CONSTITUTION TO CONTAIN THIS IDEA OF REGULATING THE MANNER OF BEARING ARMS.

AND THE REASON IT WAS ADDED IN THERE, THIS WAS THE FIRST CONSTITUTION PASSED AFTER THE ENACTMENT OF THE 14th AMENDMENT.

AND THIS WAS THE MANNER WHICH R BY WHICH THE FLORIDA, BY WHICH FLORIDA ATTEMPTED TO REGULATE THE MANNER OF BEARING ARMS TO CERTAIN DISFAVORED CLASSES FROM BEARING ARMS.

IN FACT IT WAS SHORTLY THEREAFTER IN 1892 FLORIDA PASSED IT IS FIRST GUN CONTROL LAW, TO BASICALLY REQUIRE CERTAIN PEOPLE TO OBTAIN A LICENSE.

A JUSTICE OF THIS COURT NOTED THAT FACT IN 1941 WHEN HE POINTED OUT THAT THE ENTIRE HISTORY OF THE LICENSING LAW IN FLORIDA WAS TO CONTROL THE POPULATIONS OF AFRICAN-AMERICANS

IN THE TURPENTINE AND LUMBER CAMPS AN THAT WAS THE REASON WE HAD LICENSING IN FLORIDA IN THE VERY FIRST PLACE.

>> AND SO THAT, THAT'S, EXCEPT THAT THE MANNER OF BEARING ARMS MAY BE REGULATED BY LAW, ARE YOU SAYING THAT'S ONLY, THEY CAN REGULATE AFRICAN-AMERICANS BEARING ARMS?

>> THAT WAS THE INITIAL INTENT OF THAT PHRASE BEING ADDED.

>> YOU THINK THAT IS STILL THE INTENT?

>> NO, YOUR HONOR.

I THINK THE LANGUAGE THAT WAS INCLUDED IN RESPONSE TO THE 14th AMENDMENT WAS INITIALLY USED FOR THAT PURPOSE AND NOW USED FOR A MUCH MORE CONTENT-NEUTRAL PURPOSE, EXCUSE ME, MUCH MORE RACIALLY-NEUTRAL PURPOSE BUT STILL USED--

>> WHAT IS THE RACIALLY-NEUTRAL PURPOSE FOR THE LANGUAGE.

>> QUITE FRANKLY THAT, FOR THE LEGISLATURE, AT THIS POINT HAS DEPRIVED CITIZENS OF THEIR SUBSTANTIVE RIGHT TO BEAR ARMS.

>> I THINK, WHAT I HEAR YOU'RE SAYING ACTUALLY IS THAT, THAT IS WHY I ASKED YOU WHO HAS MORE RIGHTS, YOU KNOW, UNDER THE FLORIDA CONSTITUTION, OR UNDER THE FEDERAL CONSTITUTION AND IF HELLER HAD GONE THE WAY OF THE DISSENT CLEARLY THE FLORIDA CONSTITUTION WOULD HAVE GIVEN MORE RIGHTS BECAUSE IT TALKS ABOUT AN INDIVIDUAL'S RIGHT TO BEAR ARMS IN SELF-DEFENSE OF THE IT IS PRETTY CLEAR ABOUT WHAT IT'S FOR.

I DON'T GET THEN WHAT YOU'RE SAYING THAT THE OTHER PART OF THE CONSTITUTION, WHICH TALKS ABOUT, BUT THE LEGISLATURE SHALL REGULATE IT, WHICH IS IN THE CONSTITUTION, SEEMS TO ME YOU'RE ATTACKING THAT PART OF THE

FLORIDA CONSTITUTION AS BEING  
UNCONSTITUTIONAL UNDER THE  
FEDERAL CONSTITUTION?

>> NO, YOUR HONOR.

>> WHAT AM I MISSING?

BECAUSE WE HAVE TO GIVE, WE HAVE  
TO GIVE VALIDITY TO THAT PHRASE  
AND THIS COURT AS UNIFORMLY  
GIVEN VALIDITY.

>> YOUR HONOR THE WAY THE PHRASE  
HAS HISTORICALLY BEEN UNDERSTOOD  
THAT THE LEGISLATURE MAY  
REGULATE THE MANNER OF BEARING  
ARMS, THE WAY IT HAS BEEN  
HISTORICALLY UNDERSTOOD IN  
FLORIDA AT LEAST UP IN UNTIL  
1987, THAT THE STATE COULD  
REGULATE, LICENSE THE CONCEALED  
CARRY OF FIREARMS BUT THE NOT  
OPEN CARRY OF FIRE ARMS.  
THAT IS HOW IT WAS INTERPRETED  
UP UNTIL 198.

THIS OCCUR IN THE SUTTON CASE  
BACK IN THE 1800s, THE LAWS IN  
FLORIDA THAT OPEN CARRY IS THE  
RIGHT BUT THE LEGISLATURE CAN  
REGULATE THE MANNER OF BEARING  
ARMS TO SOME EXTENT.

YOUR HONOR, THE CRUX OF THIS  
CASE, THE ANSWER TO YOUR  
QUESTION WHICH ONE GIVES MORE  
RIGHTS PARTLY COMES TO US FROM  
THE HELLER DECISION.

THE HELLER DECISION WAS VERY  
CLEAR AND SO IS EVERY FEDERAL  
COURT THAT CONSIDERED THE SECOND  
AMENDMENT SINCE HELLER.

THERE IS A RIGHT TO BEAR ARMS  
AND IN THIS CASE THE STATE  
CONCEDED AND THE COURT BELOW  
FOUND THAT RIGHT EXTENDS OUTSIDE  
OF THE HOME.

THE RIGHT EXTENDS OUTSIDE OF THE  
HOME, THERE ARE ONLY TWO WAYS A  
PERSON CAN BEAR ARMS.

THEY CAN BEAR THEM OPENLY OR  
THEY CAN BEAR THEM CONCEALED.  
THE U.S. SUPREME COURT TOLD US  
AND EVERY FEDERAL COURT SAYS,  
CONCEALED CARRY IS NOT THE RIGHT

PROTECTED BY THE SECOND AMENDMENT.

THEY DIDN'T TAKE THE NEXT STEP AND EXPLICITLY SAYING OPEN CARRY IS THE RIGHT PROTECTED BUT THEY CITED FIVE OR SIX CASES EVERYONE OF WHICH HELD THE SAME CONSISTENTLY STATE AFTER STATE AFTER STATE, THAT OPEN CARRY IS THE RIGHT PROTECTED BY THE SECOND AMENDMENT AND WE WOULD SAY BY THE FLORIDA CONSTITUTION AS WELL.

WHAT THE VALID BASIS AND VALID PURPOSE BEHIND THE STATEMENT MAY REGULATE THE MANNER OF BEARING ARMS WOULD INCLUDE SUCH THINGS AS PROHIBITING THE CARRYING OF A UNHOLSTERED FIREARM.

PROHIBITING THE CARRYING OF A, PROHIBITING THE DISPLAY OF A RIFLE IN AN AGGRESSIVE OR THREATENING MANNER.

THOSE ARE THE TYPES OF REGULATIONS THAT CAN BE ALLOWED UNDER THE PHRASE.

>> A RIFLE, DISPLAYING IN A THREATENING MANNER WOULD BE AN ASSAULT.

SO OBVIOUSLY IT IS NOT PERMISSIBLE.

>> THAT WOULD BE A MANNER OF REGULATING BEARING OF ARMS AND HOW THEY WERE BEING BORNE AT THAT POINT.

>> DEFINE OPEN CARRY.

WHAT DOES THAT MEAN?

>> OPEN CARRY, YOUR HONOR, IS FIREARM READILY VISIBLE TO THE SIGHT OF ANOTHER PERSON OPPOSED TO CONCEALED CARRY WHICH IS FIREARM NOT READILY VISIBLE TO THE SIGHT OF AN ORDINARY PERSON.

>> WE SEE LAW ENFORCEMENT OFFICERS CARRYING A PISTOL ON THE SIDE, LEG, HOLSTER OR SOMETHING LIKE THAT?

>> THE WAY WHICH UNIFORM LAW ENFORCEMENT CARRIES IS CONSIDERED OPEN CARRY, YOUR

HONOR.

>> YOU COULD WALK DOWN THE STREET WITH A FIREARM IN YOUR HAND, THAT'S FINE.

>> THIS WOULD BE UP TO THE LEGISLATURE, YOUR HONOR.

>> BUT YOU'RE SAYING THAT THIS OPEN, THAT PROHIBITION AGAINST OPEN CARRY IS UNCONSTITUTIONAL, CORRECT?

>> YES, YOUR HONOR.

>> SO BUT OPEN CARRY WOULD THEN MEAN THAT ANY CITIZEN COULD GET, HAVE A GUN, IN THEIR HANDS JUST WALKING DOWN THE STREET?

>> ANY LAW-ABIDING CITIZEN, YOUR HONOR, BECAUSE THERE ARE CERTAIN RESTRICTION.

>> WE ASSUME CITIZENS ARE AND THAT THEY GO THROUGH, WHATEVER CHECK, TO GET A FIREARM, THEY HAVE A FIREARM.

ONCE YOU GET THAT FIREARM, YOU CAN JUST WALK DOWN THE STREET, EVERY CITIZEN AND HAVE A GUN IN THEIR HAND?

THAT'S, WHAT WOULD BE, WHAT WOULD HAPPEN IF WE SAY THAT THIS IS UNCONSTITUTIONAL, CORRECT?

>> TECHNICALLY, YOUR HONOR, YES, HOWEVER THE 45 OTHER STATES THAT HAVE OPEN CARRY, 30 OF THEM, CALLED CONSTITUTIONAL CARRY OR UNLICENSED OPEN CARRY AND 30 OF THOSE STATES AND 15 STATES THAT HAVE LICENSED OPEN CARRY, THOSE 45 STATES EXPERIENCE SHOW THAT IS NOT WHAT HAPPENS.

WHAT HAPPENS IS PEOPLE CARRY HOLSTERED HANDGUNS AND PEOPLE CARRY SOMETIMES LONG GUNS SHRUNK ON THEIR SHOULDERS.

>> WHAT PEOPLE DO AND WHAT PEOPLE CAN DO ARE TWO DIFFERENT THINGS.

THERE WOULD BE NOTHING THAT WOULD PROHIBIT YOU FROM HAVING IT IN YOUR HAND AND NOT IN A HOLSTER, IS THAT CORRECT?

>> WELL THAT WOULD BE, COULD

THE, THAT WOULD BE A MATTER OF THE LEGISLATURE REGULATING MATTER OF BEARING ARMS.

IF THE LEGISLATURE WANTED TO REQUIRE YOU CAN NOT CARRY IT IN YOUR HAND BUT MUST CARRY IN HOLSTER THEY COULD DO SO.

FOR EXAMPLE, JUSTICE QUINCE, A PRIOR COURT AT ONE TIME REQUIRED PEOPLE TO CARRY GUNS IN THEIR HANDS, RATHER THAN HOLSTERS TO MAKE IT MORE DIFFICULT FOR THEM TO OPEN CARRY.

THAT WAS ANOTHER LAW STRUCK DOWN.

>> YOU SAY IT IS UP TO THE LEGISLATURE TO DECIDE WHETHER PEOPLE CAN WALK AROUND WITH A GUN IN THEIR HAND OR NOT. WHAT THE DIFFERENCE BETWEEN THE LEGISLATURE BEING ABLE TO DO THAT AND WHAT THEY'RE DOING HERE?

>> WHAT THEY HAVE DONE HERE, YOUR HONOR, THEY HAVE TAKEN IT A STEP BEYOND JUST REGULATING MANNER OF BEARING ARMS. THEY ACTUALLY DENIED THE RIGHT OF TO BEAR ARMS UNTIL THE PERSON SEEKS TO OBTAIN GOVERNMENT PERMISSION.

THIS COURT WOULD NEVER STAND OF IDEA OF TRAINING CLASS, A FEE, AND A 90 OR MAYBE EVEN 180-DAY WAIT IN ORDER FOR A PERSON TO GET A LICENSE TO CARRY A CAMERA AND BE A PHOTOJOURNALIST.

THIS COURT WOULD NOT STAND FOR THAT OF TYPE OF RESTRICTION ON FIRST AMENDMENT OR PRIOR RESTRAINT OR ANTICIPATORY DISARMAMENT.

>> I DON'T THINK IN GENERAL, CAMERAS KILL PEOPLE, DO THEY? I DON'T KNOW.

>> WELL, YOUR HONOR, SO, SOME PHOTOS THROUGHOUT HISTORY HAVE BEEN VERY PROVOCATIVE AND HAVE CREATED SITUATIONS WHERE THEY HAVE LED TO PROBLEMS.

IT WOULD BE LIKE REQUIRING A LICENSE IN ORDER TO CARRY A PARTICULAR SIGN THAT WAS OFFENSIVE TO PEOPLE.

>> YOU HAVE MADE AN OVERBREATH ARGUMENT, RIGHT?

>> IT IS NOT OVERBREATH ARGUMENT.

THAT THE REGULATION AT ISSUE IS OVERLY BROAD AND IN BROAD BRUSH BRINGS WITHIN ITS SCOPE THE LAW-ABIDING AS WELL AS CRIMINAL.

>> HOW COULD IT BE CURED?

>> WELL, YOUR HONOR, IT COULD FIRST BE CURED BY SIMPLY STRIKING THE OPEN CARRY BAN WHICH IS UNCONSTITUTIONAL. STRIKING THE OPEN CARRY BAN, NOW LAW-ABIDING CITIZENS HAVE A METHOD OF CARRYING A FIREARM THAT IS CONSTITUTIONALLY PROTECTED AND THE STATE STILL CAN REGULATE THE CONCEALED CARRY OF FIREARMS JUST AS THE SUPREME COURT SAID IT CAN.

>> WHAT WOULD YOU CONSIDER AN APPROPRIATE REGULATION? FOR EXAMPLE, WOULD YOU CONSIDER IF THE STATE LEGISLATURE WERE TO REQUIRE ANYONE WHO HAS A PERMIT, PARTICULAR KIND, SIMILAR TO CONCEALED CARRY PERMIT, ONLY THOSE PEOPLE COULD CARRY IN A CERTAIN WAY AND IN CERTAIN PLACES, OPEN, IN AN OPEN SORT OF WAY?

IS THAT CONSTITUTIONAL?

>> YOUR HONOR, IT DEPENDS WHETHER THERE IS A METHOD OF EXERCISING THE RIGHT AS CONSTITUTIONAL RIGHT RATHER THAN A LICENSED PRIVILEGE.

TO GIVE AN EXAMPLE WHAT YOU'RE DISCUSSING WOULD BE MISSISSIPPI. MISSISSIPPI HAS CONSTITUTIONAL OPEN CARRY, SO NO PERMIT REQUIRED.

THEY HAVE A REGULAR PERMIT THAT IS ALMOST PRO-FORMA TO GET THAT ALLOWS US TO CARRY CONCEALED



FIREARM.

THEY HAVE ENHANCED CONCEALED CARRY PERMIT SIMILAR TO FLORIDA'S WITH TRAINING REQUIREMENTS THAT ALLOWS YOU CARRY IN PLACES INCLUDING SCHOOLS AND COURTHOUSES.

THEY HAVE A BROAD RANGE BUT AT THE END OF THE DAY THEY HAVE A CONSTITUTIONAL RIGHT WHERE THEY DO NOT HAVE TO SEEK GOVERNMENT PERMISSION AHEAD OF TIME, AS LONG AS THEY'RE A LAW-ABIDING CITIZEN THEY'RE ALLOWED TO CARRY A FIREARM.

>> DO THEY HAVE THE SAME CONSTITUTIONAL PART ABOUT THE LEGISLATURE'S RIGHT TO REGULATE? I MEAN I THINK THAT WAS A POINT MADE AGAIN, ASKING IF IT IS PERMISSIBLE, A STATE COT PRESUMABLY GIVE MORE RIGHTS UNDER THE SECOND AMENDMENT, NOT LESS RIGHTS?

THE.

>> I--

>> SO IT SEEMS TO ME THAT THE ISSUE AGAIN IT IS UNDER OUR FEDERAL CONSTITUTION. WOULD YOU MAKE THE SAME ARGUMENT THAT IT'S UNCONSTITUTIONAL UNDER THE SECOND AMENDMENT TO PROHIBIT OPEN CARRY?

>> YES, YOUR HONOR, I WOULD AGREE THE SECOND AMENDMENT MAKES, THE SECOND AMENDMENT SUFFICIENTLY MAKES THE PROHIBITION SO THAT FLORIDA'S RIGHT--

>> WHICH CASE OUT OF THE FEDERAL COURTS OUTSIDE OF HELLER IS BEST SUPPORT FOR THAT PROPOSITION?

>> AFTER HELLER I WOULD SUPPORT TO McDONALD WHICH CITED ALL SAME CASES WHICH CITED OPEN CARRY.

>> THOSE WERE COMPLETE BANS ON HUNDRED GUNS, CORRECT?

>> YES, YOUR HONOR.

THAT MAKES AN INTERESTING POINT,

IN THOSE CASES CITIES TRIED TO ARGUE, COURT, IT IS OKAY WE'RE BANNING HANDGUNS.

WE HAVE LET PEOPLE CARRY LONG GUNS AND SHOTGUNS AND RIFLES IN THEIR HOME.

WE CAN BAN HANDGUNS AS LONG AS WE ALLOW LONG GUNS.

BOTH HELLER AND McDONALD SAID, NO YOU CAN'T DO THAT.

>> THIS IS NOT A BAN.

IT IS BAN ON METHOD OF CARRYING THAT THE LEGISLATURE APPARENTLY DETERMINED PROTECTS PUBLIC SAFETY MORE THAN PEOPLE WALKING AROUND LIKE THEY'RE IN THE WILD WEST.

>> YOUR HONOR, FIRST OF ALL, WE DO HAVE A COMPLETE BAN ON THE BEARING OF LONG GUNS IN FLORIDA. THERE IS NO WAY, CONCEALED CARRY PERMIT ONLY ALLOWS YOU TO CARRY A HANDGUN.

JUST AS IN D.C. THE STATE OF FLORIDA HAS DONE THE SAME THING D.C. DID.

THEY HAVE TAKEN AN ENTIRE CLASS OF ARMS, ANY RIFLES OR SHOTGUNS EXCEPTED THEM FROM THE RIGHT TO BEAR ARMS.

>> HERE IS WHERE WE HAVE THE OVERBREADTH ISSUE BECAUSE MR. NORMAN, AND THERE IS A VIDEO OF HIM WALKING DOWN THE STREET, HE IS WEARING A WHITE T-SHIRT AND HE HAS GOT A HANDGUN IN A HOLSTER.

SO THE ISSUE OF WHETHER ANOTHER PERSON WHO'S GOING HUNTING AND TAKES THE GUN OUT OF HIS CAR OR HER CAR TO GO HUNTING AND HAS IT OPEN, GETS ARRESTED UNDER THIS LAW IS NOT AT ISSUE THE SO I GUESS THIS GOES BACK TO THE QUESTION OF, HOW DOES SOMEBODY WHO IS ARRESTED FOR OPEN CARRY OF A HANDGUN, WHICH, YOU KNOW, IS IT, IS IT BECAUSE HIS METHOD OF DRESS, THAT WE ARE DISCRIMINATING AGAINST PEOPLE

ARE DRESSED SCANTILY, THAT THEY CAN'T CONCEAL THEIR WEAPONS?

>> WELL, YOUR HONOR, TO SOME EXTENT THERE IS A DISCUSSION, A VALID DISCUSSION OF THAT.

AS WE ALL KNOW, FLORIDA GETS RATHER HOT IN THE SUMMER AND PEOPLE CURRENTLY ARE REQUIRED TO WEAR A CERTAIN TYPE OF DRESS TO COVER UP THEIR FIREARM.

THE IDEA, BASICALLY THE STATE'S ARGUMENT BOILED DOWN TO ITS ESSENCE IN THEIR BRIEF IS, THE LEGISLATURE'S MADE A VALID PUBLIC SAFETY JUDGMENT WE CAN BAN OPEN CARRY BECAUSE A PERSON OPENLY CARRYING MIGHT BE THE FIRST ONE TO BE ATTACKED, OR, BECAUSE THAT GUN MIGHT BE YANKED AWAY FROM THEM.

WE'VE GOT SOME COROLLARIES TO THAT.

WOMEN SHOULD NOT BE DRESSED REVEALING CLOTHING BECAUSE THAT MIGHT ENTICE A RAPIST OR PEOPLE SHOULD NOT WEAR EXPENSIVE JEWELRY BECAUSE THAT MIGHT TEMPT THEM TO BE STOLEN.

WE DON'T REGULATE BEHAVIOR AND CONDUCT OF LAW-ABIDING CITIZENS BASED ON WHAT CRIMINALS MIGHT TRY TO TAKE FROM THEM.

WE SHOULDN'T DO SO IN THIS CASE. YOUR HONORS, I HAVE NOT HAD A CHANCE TO ADDRESS APPROPRIATE LEVEL OF SCRUTINY.

WOULD I LIKE TO DO THAT.

>> YOU'RE IN REBUTTAL TIME AND YOU'RE WELCOME TO CONTINUE.

>> I UNDERSTAND.

I WOULD LIKE TO ADDRESS THE SCRUTINY ISSUE RECENTLY.

JUSTICE QUINCE IN THE JP CASE, MADE VERY CLEAR, QUOTING JUSTICE WELLS, THIS COURT, REGARDLESS WHAT FEDERAL COURTS DO, REGARDLESS WHAT OTHER STATES DO, RELIES ON A VERY FIRM RULE OF STARE DECISIS IN THIS COURT IN THE INTELLECTUAL HONESTY DEMANDS

WHEN THE COURT DEALING WITH  
FUNDAMENTAL RIGHT LIKE RIGHT TO  
BEAR ARMS IN THE U.S. OR FLORIDA  
CONSTITUTION THIS COURT EMPLOYS  
STRICT SCRUTINY IN ANALYZING  
THAT CASE AND I THINK ONCE THE  
COURT ANALYZES THIS CASE  
UNDER STRICT SCRUTINY DESPITE  
ANY CONFERENCE MAY BE AND WILD  
WEST APPELLATION IS OFTEN  
APPLIED WHEN STATES MOVE TO OPEN  
CARRY BUT WE HAD 45 STATES DO  
IT, NONE OF THEM HAD THE WILD  
WEST EXPERIENCE.

THE STATE, ATTORNEY GENERAL  
CAN'T POINT TO ANY STATES THAT  
HAVE HAD SUCH AN EXPERIENCE AND  
FACT IS, THEY HAVE OFFERED NO  
EVIDENCE AND NOT MET THEIR  
BURDEN THAT THEY ARE REQUIRED TO  
MEET UNDER STRICT SCRUTINY TO  
SHOW THERE IS SOME REAL HARM  
THAT'S BEING ADDRESSED BY THIS  
BAN AND THIS BAN IS NARROWLY  
TAILORED TO MEET SOME HARM.  
THANK YOU.

>> GOOD MORNING.

HEIDI BETTERNDORF FOR THE STATE  
OF FLORIDA.

ALTHOUGH APPELLANT HAS  
DIFFICULTY IN ACTUALLY  
CLARIFYING HIS POSITION IT IS  
THAT THERE IS A SECOND AMENDMENT  
CONSTITUTIONAL RIGHT TO OPEN  
CARRY, THE FOURTH DCA  
CHARACTERIZED IT AS THE ABILITY  
TO OPENLY CARRY A GUN OUTSIDE  
THE HOME FOR SELF-DEFENSE  
WITHOUT THE NEED FOR A PERMIT.  
FOR THIS COURT TO AGREE WITH THE  
APPELLANT YOU WOULD HAVE TO  
IGNORE JUSTICE SCHOOL'S  
STATEMENT IN HELLER THAT THERE  
IS NO UNFETTERED RIGHT UNDER THE  
SECOND AMENDMENT WHEN JUSTICE  
SCALIA, STATED SECOND AMENDMENT  
IS NOT A RIGHT TO KEEP AND CARRY  
ANY WEAPON WHATSOEVER IN ANY  
MANNER WHATSOEVER AND FOR  
WHATEVER PURPOSE.

YOU WOULD ALSO HAVE TO FIND THAT THE PROVISION OF ARTICLE I, SECTION 8, THAT YOU JUSTICE PARIENTE, WAS DISCUSSING WITH MY OPPONENT IS UNCONSTITUTIONAL. YOU WOULD HAVE TO FIND THAT THE 30-YEAR-OLD STATE STATUTE IN 760.053 IS ALSO UNCONSTITUTIONAL.

TAKING MY APPELLANT'S ARGUMENT TO ITS LAST LOGICAL CONCLUSION YOU WOULD HAVE TO COMPLETELY CHANGE THE DEFINITION OF SELF-DEFENSE FROM AFFIRMATIVE DEFENSE THAT REQUIRES OBJECTIVE REASONABLE FEAR OF A RIGHT TO INTIMIDATE.

SELF-DEFENSE IS THE ABILITY TO RESPOND TO A THREAT.

IT IS NOT THE RIGHT TO BE THE INTIMIDATOR IN FLORIDA.

THE FOURTH DC PROBABLY APPLIED--

>> LET ME ASK YOU THIS, COULD YOU SPECIFICALLY ARTICULATE THE PUBLIC PURPOSE BEHIND THE BAN ON OPEN CARRY?

WHAT IS THE LEGISLATIVE PURPOSE? NIGHT IS CONTAINED IN SECTION 790.25.

WOULD YOU LIKE ME TO SUMMARIZE FOR YOU OR READ WHAT THE LEGISLATURE PUT AS ITS PUBLIC POLICY?

>> SUMMARIZE, THAT'S FINE.

>> THE LEGISLATURE HAS DETERMINED THAT IT HAS AN IMPORTANT GOVERNMENT INTEREST IN FIREARM SAFETY, TO CURB AND PREVENT THE USE OF FIREARMS IN CRIME, TO PREVENT THE USE OF FIREARMS BY INCOMPETENT PERSONS, WITHOUT PROHIBITING THE LAWFUL USE IN DEFENSE OF LIFE, HOME AND PROPERTY.

>> BASICALLY IT IS PUBLIC SAFETY?

>> YES.

>> SO PUBLIC SAFETY JUSTIFICATION.

NOW ISN'T HISTORICALLY TRUE THAT THE CONCEALED CARRYING OF FIREARMS HAS BEEN VIEWED AS FAR AND AWAY THE MORE SERIOUS THREAT TO PUBLIC SAFETY?

>> I WOULD AGREE TO THE EXTENT IN THE ANTEBELLUM PERIOD THERE ARE TWO OR THREE CASES THAT ARE CITED IN THE HELLER OPINION THAT STAND FOR THE PROPOSITION THAT CONCEALED CARRY WAS THE EVIL THAT SOCIETY NEEDED TO PROTECT AGAINST AND THERE ARE SOME STATEMENTS IN THERE TALKING ABOUT THE TYPE OF PERSON THAT WOULD CONCEAL CARRY. CRIMINALS, NE'R-DO-WELLS, ETCETERA.

SO HOWEVER, HELLER ALSO, BESIDES TAKING JUST A SNAPSHOT OF THESE ANTEBELLUM CASES, HELLER ALSO ANALYZED THE STATE OF THE LAW FROM THE FOUNDING OF THE CONSTITUTION ALL THE WAY UP TO THE MODERN PERIOD.

AND JUSTICE SCALIA CERTAINLY DIDN'T STICK TO ONE PARTICULAR PERIOD IN TIME TO FIND THAT THERE WAS A RIGHT TO HAVE FIREARMS IN THE HOME.

PART OF HIS OPINION STATES THAT THE MODERN METHOD, THE MODERN WEAPON OF CHOICE FOR SELF-DEFENSE IS A PISTOL WHICH WAS NOT THE METHOD OF CHOICE FOR SELF-DEFENSE BACK AT THE TIME OF THE FOUNDING.

SO WHILE THERE ARE CERTAIN PERIODS OF TIME THAT YOU WOULD LOOK AT, IT IS THE TIME PERIOD AS A WHOLE, NOT OF A PARTICULAR SNAPSHOT OF ONE PERIOD OF TIME THAT SUPPORTS THE APPELLANT'S POSITION IN THIS CASE.

>> LET'S MOVE BEYOND THE HISTORY THEN.

COULD YOU EXPLAIN EXACTLY HOW IT IS THAT PUBLIC SAFETY IS SERVED BETTER BY ALLOWING CONCEALED CARRY THAN BY ALLOWING OPEN

CARRY?

>> YOUR HONOR, I WOULD SAY THAT IS A POLICY DECISION THAT'S MADE BY THE LEGISLATURE.

THE LEGISLATURE--

>> I UNDERSTAND THAT.

I UNDERSTAND THAT'S A POLICY DECISION THE LEGISLATURE HAS MADE BUT IN THIS CONTEXT THAT DOESN'T, THE FACT IT IS A POLICY DECISION, THAT HAS AN IMPACT ON THIS SECOND AMENDMENT RIGHT IS NOT THE END OF THE DISCUSSION. THERE HAS TO BE SOME KIND OF JUSTIFICATION FOR IT, WOULDN'T YOU AGREE?

>> IF I COULD ASK A QUESTION TO CLARIFY WHAT IT IS YOU'RE ASKING ME.

ARE YOU OF THE POSITION THERE IS A SECOND AMENDMENT TO--

>> YOU'RE NOT HERE TO ASK ME WHAT MY POSITION IS.

I WANT TO CLARIFY THAT.

>> COULD YOU REPEAT YOUR QUESTION, PLEASE?

>> I'VE GOT IT WRITTEN DOWN HERE.

SO I WILL REPEAT IT EXACTLY. HOW IS IT EXACTLY THAT PUBLIC SAFETY IS SERVED BETTER BY ALLOWING CONCEALED CARRY THAN BY ALLOWING OPEN CARRY?

>> THAT IS MY QUESTION.

>> YES, SIR, THAT IS POLICY DECISION THAT THE LEGISLATURE HAS MADE.

>> I HEARD THAT BEFORE. THAT IS ALL YOU'VE GOT TO SAY ABOUT THAT?

>> YES, SIR.

>> OKAY.

>> I THINK WHAT JUSTICE CANADY IS ASKING, IT IS NOT RATIONAL BASIS REVIEW AT THE VERY-- IT IS INTERMEDIATE SCRUTINY. I THINK THE STATE IS AGREEING IT SHOULD NOT BE RATIONAL BASIS, CORRECT?

>> THAT'S CORRECT.

>> SO WHEN IT IS INTERMEDIATE SCRUTINY, WHAT IS IT THAT THE STATE HAS TO SHOW IN ORDER TO JUSTIFY THE REGULATION?

>> WHEN IT IS INTERMEDIATE SCRUTINY, YOUR HONOR, THE STATE HAS TO SHOW THAT THE STATUTE IS SUBSTANTIALLY RELATED TO AN IMPORTANT GOVERNMENT INTEREST.

>> SO, NOW, WE'VE GOT THE IMPORTANT PUBLIC INTEREST, AND EVERYONE AGREES PUBLIC SAFETY IS AN IMPORTANT GOVERNMENT INTEREST.

SO I THINK WHAT JUSTICE CANADY IS ASKING YOU, BEYOND THE STATEMENT THAT IT'S PUBLIC SAFETY, IS THERE ANYTHING THAT-- THERE WAS DISCUSSION I THINK, I'M NOT SURE, IN THE FOURTH DISTRICT OPINION ABOUT A CONCERN THAT PEOPLE WILL BE FRIGHTENED, LITTLE KIDS SEEING PEOPLE WALKING AROUND WITH GUNS. THAT IF A WOMAN IS WALKING AROUND WITH A GUN IT IS MORE EASILY TAKEN AND, IS THERE ANY-- SO THAT IS THE KIND OF THING, AT LEAST I WOULD THINK ARE THE REASONS BEHIND THIS BECAUSE, YOU KNOW, THE LEGISLATIVE CONTINUED POLICY BUT I THINK YOU'VE GOT TO BE ABLE TO ARTICULATE MORE THAN, WELL, THE LEGISLATURE SAYS SO.

>> WELL, YOUR HONOR THE LEGISLATIVE POLICY IS CONTAINED IN 790 POINT 25, SUBSECTION 1. THAT IS ALL THAT WE HAVE. THERE IS NOTHING IN THE LEGISLATIVE HISTORY--

>> USUALLY, WHEN SOMEBODY IS TRYING TO DEFEND A LAW SOME ONE ATTACKING AS UNCONSTITUTIONAL THEY'RE ABLE TO SHOW SOMETHING ELSE THAT WILL JUSTIFY THE INFRINGEMENT ON THE CONSTITUTIONAL RIGHT.

FIRST OF ALL, DO YOU AGREE, DO YOU AGREE THIS IS AN



INFRINGEMENT ON THE  
CONSTITUTIONAL RIGHT?

>> THAT IS WHY I WAS ASKING FOR  
SOME CLARIFICATION FROM JUSTICE  
CANADY.

>> I THINK IT HAS BEEN TREATED  
BY THE FOURTH DISTRICT AS IT IS  
AN INFRINGEMENT ON THE  
CONSTITUTIONAL RIGHT.

>> MOST RESPECTFULLY WE NEED TO  
DEFINE WHAT THE CONSTITUTIONAL  
RIGHT IS.

IF YOU WOULD BEAR WITH ME FOR  
ONE SECOND.

I KNOW IT'S A LITTLE FRUSTRATING  
BUT I'M NOT GETTING AROUND YOUR  
QUESTION.

MY OPPONENT ARGUES THAT THE  
CONSTITUTIONAL RIGHT IS THE  
RIGHT TO OPEN CARRY OUTSIDE OF  
THE HOME.

THE STATE'S POSITION IS THAT THE  
CONSTITUTIONAL RIGHT IS THE  
RIGHT TO CARRY OUTSIDE THE HOME.

AND SO THERE FOR YOU CAN  
REASONABLY REGULATE UNDER THE  
FLORIDA CONSTITUTION AND UNDER  
HELLER, YOU CAN REGULATE THE  
RIGHT TO CARRY OUTSIDE OF THE  
HOME.

>> OKAY, NOW IF THAT'S THE CASE,  
THEN ARE YOU-- THEN IT WOULD  
BE-- IF IT IS NOT INFRINGING ON  
A CONSTITUTIONAL RIGHT THEN WHY  
WOULD THE STATE CONCEDE THAT IT  
IS INTERMEDIATE SCRUTINY?

WHY WOULDN'T IT BE JUST RATIONAL  
BASIS THEN?

>> YOUR HONOR, GOING BACK A  
LITTLE BIT BEFORE YOU DETERMINE  
WHETHER IT I AN INTERMEDIATE  
SCRUTINY OR STRICT SCRUTINY.  
THERE IS TWO STEP ANALYSIS  
APPLIED TO THAT WHICH WE AGREE  
WITH.

WHETHER THE LAW BURDENS CONDUCT  
PROTECTED BY SECOND AMENDMENT  
RIGHT BASED ON HISTORICAL  
UNDERSTANDING.

HELLER SAYS THERE IS AN

INDIVIDUAL RIGHT TO SELF-DEFENSE AND THE STATE AGREES THAT THAT RIGHT IS ALSO OUTSIDE OF THE HOME AS WELL AS JUST INSIDE OF THE HOME WHICH IS WHAT HELLER STANDS FOR.

THEN TO DETERMINE THE APPROPRIATE LEVEL OF SCRUTINY YOU DETERMINE HOW CLOSE THE LAW COMES TO THE CORE RIGHT IN THE SECOND AMENDMENT.

MY OPPONENT SAYS THAT THE CORE RIGHT IN THE SECOND AMENDMENT IS THE RIGHT TO OPEN CARRY.

IT IS OUR POSITION THAT THE CORE RIGHT IS THE RIGHT TO CARRY.

SO IF YOU DETERMINE THAT THE CORE RIGHT IS THE RIGHT TO OPEN CARRY, UNDER MY OPPONENT'S ARGUMENT, AND UNDER THE REASONING IN HELLER, IF YOU DETERMINE THAT OPEN CARRY IS THE CORE RIGHT, THEN YOU WOULD HAVE TO FIND THE STATUTE, 790.053, UNCONSTITUTIONAL BECAUSE IT COMPLETELY PROHIBITS OPEN CARRY IN THE STATE OF FLORIDA.

>> SO THE RIGHT TO CARRY IS ONLY FULFILLED BY A CITIZEN IN FLORIDA THROUGH PERMITTING PROCESS WITH A CONCEALED PERMIT, RIGHT?

>> IN FLORIDA CURRENTLY BUT THERE ARE ALSO SOME EXCEPTIONS FOR OPEN CARRY.

FLORIDA DOES MAKE EXCEPTION FOR OPEN CARRY OF GUNS IN THE HOME AND AT YOUR BUSINESS FOR THE PURPOSE OF SELF-DEFENSE.

>> SHOULD IT BE CONSIDERED OVERBROAD?

>> I DON'T BELIEVE IT'S OVERBROAD BECAUSE THERE IS NOT A PARTICULAR CLASS OF SIT IT APPLIES TO.

MY OPPONENT DIDN'T ACTUALLY MAKE A OVERBREADTH ANALYSIS.

HE JUST MADE AN ARGUMENT THAT WAS OVERLY BROAD.

WHILE HE MAY HAVE USED THE

BUZZWORDS HE DIDN'T ACTUALLY  
ENGAGE IN AN OVERBREADTH  
ANALYSIS.

>> IF WE GO BACK TO THE  
QUESTIONS THAT WERE ASKED  
EARLIER ABOUT INTERMEDIATE  
SCRUTINY, YOU HAVE SAID THAT  
THERE'S A STATED OBJECTIVE THAT  
IS SUFFICIENT, SIGNIFICANT  
SUBSTANTIAL, IMPORTANT RIGHT AND  
THAT THE STATE HAS THAT, HAS  
SHOWN THAT.

>> YES, THE STATE--

>> ONCE YOU'VE SHOWN THAT THE  
NEXT STEP IS, IS THE REGULATION  
A REASONABLE FIT TO, TO CARRY  
OUT THAT OBJECTIVE?

CORRECT?

>> YES.

>> SO I THINK THE QUESTIONS THAT  
WERE ASKED EARLIER IS, HOW IS  
THIS A REASONABLE FIT?  
WHY IS THE BAN ON OPEN CARRY A  
REASONABLE FIT?

>> WELL I WOULD SAY THAT THE  
LEGISLATURE'S DETERMINATION THAT  
CONCEALED CARRY EFFECTUATES THE  
PURPOSE OF THE SECOND AMENDMENT  
FOLLOWS ALONG WITH ITS PUBLIC--

>> IT EFFECTUATES IT IN WHAT  
WAY?

THAT'S THE REAL QUESTION.

>> FIRST WE HAVE FIREARM SAFETY.  
UNDER THE STATUTE A PERSON  
SEEKING A PERMIT MUST  
DEMONSTRATE COMPETENCE PRIOR TO  
THE ISSUANCE OF THE PERMIT.  
THEY MUST HAVE NO PHYSICAL  
INFIRMITY THAT PREVENTS SAFE  
HANDLING, NO MINORS UNDER THE  
AGE OF 21.

NO DRUG ADDICTS, NO ALCOHOLICS.  
I'M SPEAKING BROADLY.

>> I DON'T THINK I HEARD MR.,  
I'M SORRY MR. FRIDAY, SAY THAT  
THE PERMITTING PROCESS WAS  
UNCONSTITUTIONAL.

HE MAY HAVE SAID BUT LET'S  
ASSUME A PERMIT, SO, WHETHER  
IT'S OPEN OR CONCEALED.

SO LET'S GO PAST THE PERMIT  
PROCESS.

SO WHAT ELSE IS THE REASONABLE  
FIT THAT THE BAN, AGAIN, AND I,  
ON OPEN CARRY, BETTER PROMOTES  
PUBLIC SAFETY THAN A BAN ON  
CONCEALED-CARRY?

>> AND YOUR HONOR, I APOLOGIZE,  
THIS IS THE ANSWER I HAVE TO  
GIVE YOU, IT'S A LEGISLATIVE  
DETERMINATION AND THE BEST THAT  
WE HAVE OF THE LEGISLATURE  
DETERMINING THAT THIS IS THE  
BEST POLICY TO CARRY IT OUT IS  
IN SECTION 790.251.

ADDITIONALLY WE CAN LOOK AT THE  
HISTORY OF THE STATUTE WHICH IS  
IN, UP UNTIL 1977 THERE WAS OPEN  
CARRY IN THE STATE OF FLORIDA.  
UNTIL THE LEGISLATURE  
DETERMINED THAT IT WOULD BE  
CONCEALED-CARRY IN THE STATE OF  
FLORIDA.

THEN IN 1987--

>> WHAT HAPPENED IN 1977 THAT  
MADE THEM DETERMINE THAT?

>> WE DON'T KNOW.

AND--

>> IT WAS NEVER CHALLENGED  
FROM--

>> THIS STATUTE HAS NEVER BEEN  
CHALLENGED.

>> UNTIL TODAY.

>> UNTIL TODAY, YES, MA'AM.

AND THEN IN 1987 THE LEGISLATURE  
DETERMINED THAT THAT WE WOULD GO  
FROM CONCEALED CARRY WITH COUNTY  
ISSUING OF PERMITS TO A SHALL  
ISSUE STATE.

>> WHICH MEANS WHAT?

A MORE LIBERAL GRANTING OF  
PERMITS?

>> WE ARE THE MOST LIBERAL OF  
GRANTING OF PERMITS.

OUR SHALL-ISSUE PERMITTING CIVIL  
IS MOST LIBERAL GRANTING SYSTEM  
OF CONCEALED CARRY IN UNITED  
STATES AND IN 1987 AND  
AFTERWARDS WAS USED AS MODEL BY  
OTHER STATES FOR IMPLEMENTING

SHALL-ISSUE CONCEALED CARRY PERMIT SYSTEMS IN OTHER STATES.

>> SO MAYBE THE ISSUE WOULD BE, AND AGAIN, THIS IS A LEGISLATIVE ISSUE OR QUESTION.

IF WE'RE SO LIBERAL WHO WE GIVE GUNS TO, MAYBE THE QUESTION DOES SEEM LIKE IT'S A QUINTESSENTIAL LEGISLATIVE CHOICE, LESS LIBERAL ON THIS PERMITTING PROCESS AND LET CERTAIN PEOPLE WHO DEMONSTRATE SOMETHING ELSE, BE ABLE TO OPEN CARRY?

>> WELL, ADDITIONALLY, YOUR HONOR I WOULD ALSO--

>> I MEAN IS THAT, THAT'S A QUINTESSENTIAL ISSUE BETWEEN GIVING EVERYBODY A GUN THAT WANTS ONE IF THEY ARE NOT A FELON, AND A, BUT YOU GOT TO KEEP IT IN YOUR, IF YOU'RE A WOMAN, AND IN YOUR POCKETBOOK, IF YOU'RE A GUY, I GUESS INSIDE OF YOUR JACKET OR, PEOPLE WHEREVER THEY CARRY CELL PHONES AND WALLETS AND ALL THAT? I MEAN THAT'S THE CHOICE?

>> YES, MA'AM.

AND, SINCE 1987 THE LEGISLATURE HAS BEEN APPROACHED REPEATEDLY, AT LEAST TWO INSTANCES THAT I KNOW OF, TO IMPLEMENT A OPEN CARRY SYSTEM AND THEY, I BELIEVE IT IS AN OPEN CARRY PERMITTING SYSTEM, IF YOU HAVE A CONCEALED WEAPONS PERMIT YOU CAN OPEN CARRY AND THE LEGISLATURE HAS DECLINED TO DO THAT ON AT LEAST TWO OCCASIONS.

IN ADDITION TO THE POLICY STATEMENT WE HAVE IN 790.25, WE HAVE THAT SMALL LEGISLATIVE HISTORY THAT I HAVE JUST REFERRED YOU TO.

I WOULD ALSO POINT OUT IN FOOTNOTE 14 IN THE FOURTH DCA'S NORMAN OPINION THEY DID NOTE ABOUT REQUIRING EMPIRICAL PROOF OF REGULATION EFFICIENCY AND I'M GOING TO QUOTE FROM THEIR

FOOTNOTE.

RELIABLE SCIENTIFIC PROOF REGARDING THE EFFICACY OF PROHIBITED OPEN CARRY IS DIFFICULT TO OBTAIN AND THEY CITE FROM A OF THE CLA LAW REVIEW ARTICLE BY VOLICK, AND THEY QUOTE, THERE ARE NO CONTROL EXPERIMENTS THAT CAN PRACTICALLY AND ETHICALLY BE RUN.

NATURAL EXPERIMENTS STEMMING FROM DIFFERENCES IN POLICIES AND IN GUN OWNERSHIP RATES AMONG DIFFERENT CITIES, STATES OR COUNTIES ARE SUBJECT TO MANY CONFOUNDING FACTORS SUCH AS CULTURAL AND BACKGROUND CRIME RATES.

SO, I WOULD SUGGEST TO THIS COURT THAT, IT IS DIFFICULT AND ALMOST IMPOSSIBLE TO PROVE THAT ONE FORM OF OPEN-- OF CARRY, OPEN VERSUS CONCEALED, IS BETTER THAN A DIFFERENT, THAN THE OTHER FORM AND THAT THE LEGISLATURE WAS WELL WITHIN ITS, UNDER INTERMEDIATE SCRUTINY AND I WOULD EVEN SUGGEST UNDER STRICT SCRUTINY OF FURTHERING ITS PUBLIC POLICY OF PROTECTING THE PUBLIC AND PREVENTING CRIME.

>> DO YOU AGREE THAT THE STANDARD IS INTERMEDIATE SCRUTINY?

>> WE FEEL THAT THE STANDARD IS INTERMEDIATE SCRUTINY BECAUSE IT'S THE STATE'S POSITION THAT THE RIGHT IS THE RIGHT TO CARRY OUTSIDE OF THE HOME, NOT THE RIGHT TO OPEN CARRY OUTSIDE THE HOME.

AND I WOULD ALSO REPEAT TO THIS COURT WHEN I SAID IN MY OPENING WHICH IS THAT, MY OPPONENT WANTS YOU TO STRIKE DOWN 790 POINT 053.

WHEN YOU DO THAT IT WILL BE OPEN CARRY IN THE STATE OF FLORIDA. IT IS NOT PERMITTED AT THAT POINT.

IF YOU ASK HIM SPECIFICALLY  
WHETHER HE AGREES WITH  
PERMITTING AS TO OPEN CARRY, IF  
YOU READ HIS BRIEF HE  
SPECIFICALLY STATES THAT ANY  
REGULATION OF A RIGHT TURNS THE  
RIGHT INTO A PRIVILEGE.

SO THEREFORE ANY REGULATION  
UNDER HIS THEORY OF OPEN CARRY,  
ANY REGULATION, THE CARRYING BY  
CONVICTED FELONS, IN SENSITIVE  
PLACES, UNDER MY OPPONENT'S  
REASONING THAT WOULD NOT PASS  
CONSTITUTIONAL MUSTER.

IF THERE ARE NO FURTHER  
QUESTIONS, THE STATE REQUESTS  
THAT YOU UPHOLD THE  
CONSTITUTIONALITY OF SECTION  
790.053.

THANK YOU.

>> THANK YOU.

>> THANK YOU, YOUR HONORS.  
THE STATE TRIES TO JUSTIFY AND  
CLAIM A LEGISLATIVE INTENT FROM  
790.25.

FIRST OF ALL, THEY'RE USING A  
LAW THAT WAS PASSED IN THE  
'60s TO TRY AND JUSTIFY AND  
GIVE, BE THE LEGISLATIVE INTENT  
BEHIND A LAW PASSED IN 1987  
DURING A SPECIAL SESSION WITH NO  
COMMITTEE HEARING, NO PUBLIC  
COMMENT, DURING A SPECIAL  
SESSION CALLED FOR OTHER  
PURPOSES.

>> COULD YOU GO TO THIS ISSUE OF  
WHAT'S THE CORE RIGHT?

ARE YOU SAYING THERE'S A CORE  
CONSTITUTIONAL RIGHT UNDER THE  
SECOND AMENDMENT AND FLORIDA'S  
CONSTITUTION TO THE RIGHT TO  
OPEN CARRY?

>> THERE IS A CORE  
CONSTITUTIONAL RIGHT, YOUR  
HONOR, TO BEAR ARMS INSIDE AND  
OUTSIDE OF THE HOME.  
AND-- AND THE SUPREME COURT HAS  
TOLD US THAT CONCEALED CARRY,  
SUPREME COURT HAS TOLD US  
CONCEALED-CARRY IS NOT THAT

RIGHT.

>> YOU'RE VERY ARTICULATE.

I'M ASKING A QUESTION.

ARE YOU SAYING ON BEHALF OF YOUR CLIENT, THAT THE CONSTITUTIONAL RIGHT IS THE RIGHT TO OPEN CARRY?

>> YES, YOUR HONOR, THAT IS OUR POSITION.

>> OKAY.

DO YOU ALSO THEN AGREE THAT THAT RIGHT THAT THERE COULD NOT BE PERMITTING IN ORDER TO ALLOW PEOPLE TO OPEN CARRY?

THAT IT WOULD BE UNFETTERED RIGHT TO BEAR ARMS OPENLY?

>> IT WOULD BE UNFETTERED RIGHT FOR LAW-ABIDING CITIZENS TO OPENLY CARRY.

>> SO IN OTHER WORDS, WE WOULD TELL PEOPLE YOU CAN'T OPEN CARRY IF YOU'RE GOING TO COMMIT A CRIME?

>> IF YOU'RE LEGALLY, IF YOU'RE LEGALLY ALLOWED TO OWN FIREARMS, YOU SHOULD BE LEGALLY ALLOWED TO OPEN CARRY THAT FIREARM.

>> IS THE STATE CORRECT THAT FLORIDA HAS THE MOST LIBERAL PERMITTING LAW IN THE UNITED STATES?

>> NO, YOUR HONOR.

THEY ARE PATENTLY INCORRECT.

NUMBER ONE, EXCUSE ME, 30 STATES DON'T EVEN REQUIRE A LICENSE TO OPEN CARRY IN THE FIRST PLACE.

AND, OF THOSE STATES THAT REQUIRE A LICENSE TO CONCEAL CARRY, EXCUSE ME, MANY OF THOSE STATES DO NOT REQUIRE A LICENSE TO CONCEAL CARRY OR OPEN CARRY.

THERE ARE ALSO STATES SUCH AS ALABAMA THAT ONLY REQUIRE A BACKGROUND CHECK AND A FINGERPRINTING.

DO NOT REQUIRE ANY TRAINING REQUIREMENT.

GEORGIA DOES NOT REQUIRE ANY TRAINING REQUIREMENT.

>> AGAIN ANYTIME YOU TRY TO



COMPARE FLORIDA, ALABAMA,  
GEORGIA, I KNOW WE'RE IN  
TROUBLE.

>> WELL YOUR HONOR--

>> ONLY FOR FOOTBALL PURPOSES.

>> YES, YOUR HONOR, BUT I DO  
COMPARE IT TO COMPARING FLORIDA,  
QUITE FRANKLY TO NEW YORK,  
ILLINOIS, CALIFORNIA, AS THE  
ONLY OTHER THREE STATES THAT  
COMPLETELY BAN OPEN CARRY AT  
ALL.

>> IT IS INTERESTING.

THOSE ARE THE FOUR LARGEST  
STATES IN THE COUNTRY WITH THE  
MOST POPULOUS AND DIVERSE  
POPULATIONS.

>> AND, YOUR HONOR, ACTUALLY WE  
HAVE SURPASSED NEW YORK AT THIS  
POINT, AS I UNDERSTAND IT.  
BUT WE HAVE THE STATE HAS HAVE  
THEIR POLICY DONE WHAT THEY WANT  
TO DO.

BUT AS JUDGE POZNER, IT BECOME  
AS WHEN ALL STATES CLEARLY  
HEADED IN DIRECTION THERE COMES  
A TIME WHERE WE SHOULDN'T BE THE  
LAST ONE STANDING OUT THERE.  
JUDGE POZDER IN MADIGAN, FLORIDA  
IS THE, THAT WE'LL HAVE TO ALLOW  
CONCEALED CARRY BECAUSE WHAT  
HELLER AND McDONALD SAID.  
THE STATUTE THAT THE STATE TRIED  
TO USE--

>> IN THE EIGHTH AMENDMENT,  
WE'VE BEEN LOOKING AT THIS WITH  
CAPITAL PUNISHMENT.

WE'RE ONE OF THE LAST STATES TO  
NOT REQUIRE UNANIMOUS VERDICTS.  
IS THERE SOMETHING IN SECOND  
AMENDMENT JURISPRUDENCE THAT  
SAYS IF YOU'RE OUTLIER IN THE  
WAY YOU REGULATE FIREARMS THAT  
MAKES YOU UNCONSTITUTIONAL?

>> THERE ARE SOME MINOR  
DISCUSSION OF IT IN HELLER,  
McDONALD.

I BELIEVE THE MOST POIGNANT  
EXAMPLE OF IT WOULD BE MOORE  
VERY MADIGAN, JUDGE POZDER'S

OPINION.

790.25 THE STATUTE THEY TRY TO USE AS INTENDED LEGISLATIVE INTENT CLEARLY PROVIDES IT'S A SUPPLEMENTAL AND ADDITIONAL TO THE EXISTING RIGHT TO BEAR ARMS. A RIGHT AT THAT TIME, WHEN THAT STATUTE WAS PASSED INCLUDED OPEN CARRY.

I WOULD ALSO REMIND THIS COURT, OF THE CATANO DECISION, RECENTLY, RELEASED BY THE U.S. SUPREME COURT AS, EXCUSE ME, 8-0 PER CURIAM OPINION REVERSING ANOTHER STATE SUPREME COURT ON THE IDEA THAT ONLY MODERN RULES APPLY.

THE FACT IS, THE HISTORY OF THE SECOND AMENDMENT MATTERS, THE HISTORY OF THE OPEN CARRY MATTERS AND THIS COURT SHOULD CONSIDER THE ENTIRE HISTORICAL RECORD AS CITED BY U.S. SUPREME COURT IN ITS CASES.

WE ASK THIS COURT TO DO WHAT THE ATTORNEY GENERAL ASKED.

LOOK AT ANDREWS v. STATE AND NUNN v. GEORGIA.

ATTORNEY GENERAL ASKED UNITED STATES SUPREME COURT TO LOOK AT THOSE CASES PARTICULARLY ENCAPSULATING WHAT THE SECOND AMENDMENT MEANS.

BOTH OF THOSE CASES SAY THE SAME THING, YOU CAN NOT BAN OPEN CARRY.

YOU CAN ONLY REGULATE CONCEALED CARRY.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. THE COURT WILL BE IN RECESS FOR TEN MINUTES.