Preferred PGIT GOVERNMENTAL INSURANCE TRUST

**Today's Webinar: "Understanding Open Carry in Florida: What Local Governments Need to Know!"**

**Presented by: Cindy Townsend, Esquire – Roper Townsend Sutphen**

**WELCOME & PLEASE REVIEW THE FOLLOWING:**

- **We will be disabling mic/camera functions for all attendees during todays webinar presentation. Doing so will allow each attendee to be able to hear/view the presenter/presentation without the distraction of attendee background noises/camera feeds.**

- **Please submit any questions you may have by utilizing the chat feature. All questions will be addressed directly after the presentation.**

- **If you are joining us via phone, this may not be an option, therefore feel free to contact your Preferred Loss Control Consultant after the presentation.**

**THANK YOU AND THE PRESENTATION WILL BEGIN SHORTLY…**

# FLORIDA'S OPEN CARRY LAW RULED UNCONSTITUTIONAL

## The *McDaniels* Decision

- On September 10, 2025, the First District Court of Appeal ("First DCA") decided *McDaniels v. State of Florida*, which overturned the State of Florida's ban on the open carry of firearms ruling it was unconstitutional.

# WHAT HAPPENED IN *MCDANIELS*?

- On July 4, 2022, McDaniels stood at a major intersection in downtown Pensacola, holding a copy of the United States Constitution and waving at vehicles that drove by with his other hand.
- He also had a loaded handgun tucked inside his pants using an inside-the-waistband holster, which was visible to anyone who passed by.
- McDaniels had a valid concealed carry permit on him. Law enforcement advised him that concealed carry was lawful, but open carry was not.
- Law enforcement removed his firearm, but returned his holster to him.
- Officers later obtained a warrant for McDaniels' arrest.
- On July 10, 2022, after learning about the existence of the warrant, McDaniels turned himself in.

# WHAT HAPPENED IN *MCDANIELS*?

- McDaniels was charged with violating Section 790.053, Florida Statutes which criminalized open carry.
- Prior to trial, McDaniels moved to dismiss the charge and to have Florida's Open Carry Ban declared unconstitutional under the Second Amendment to the United States Constitution.
- The trial court denied his motion, but certified this issue as a question to the First District Court of Appeal ("DCA") as one of great public importance.
- Notably, McDaniels only challenged Florida's Open Carry Ban solely under the Second Amendment to the United States Constitution, not Florida's Constitution.

# WHAT HAPPENED IN *MCDANIELS*?

- The State of Florida did not dispute that the Open Carry Ban targeted conduct protected by the Second Amendment's plain text.
- The Second Amendment protects the right to "keep" and "bear" arms. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 31, 32 (2022). The definition of "bear" arms extends to both carrying "upon the person" or to carrying "in the clothing or in a pocket." *Heller*, 554 U.S. at 584.
- After evaluating the text and history of the Second Amendment, the First DCA ruled that no historical tradition supported Florida's Open Carry Ban.
- The court held that Section 790.053 violated the Second Amendment of the U.S. Constitution under *Bruen*, 597 U.S. 1 because it is inconsistent with the "Nation's historical tradition of firearm regulation." Op. 11-12.

# THE FLORIDA ATTORNEY GENERAL'S POSITION

- Following the *McDaniels* decision, on September 15, 2025, the Florida Attorney General, James Uthemier, issued a Guidance Memorandum to Florida law enforcement agencies and prosecuting authorities stating that his office will no longer defend convictions and prosecutions under Section 790.053(1) in cases comparable to McDaniels'.
- He further recommended that prosecutors and law enforcement personnel refrain from arresting or prosecuting law-abiding citizens who openly carry a firearm in a manner visible to others.
- He did note, however, that the *McDaniels* decision does not permit individuals to intimidate or menace others with a firearm in public, nor does it affect Florida laws that designate certain locations as off-limits for carrying of firearms.

# THE FLORIDA ATTORNEY GENERAL'S POSITION

- Specifically, the Attorney General noted that "the Court's decision neither considered nor implicated Florida's law listing certain locations where the carrying of a firearm – open or concealed – may be unauthorized."
- He specifically referenced Section 790.06(12)(a), Florida Statutes.
- Additionally, he mentioned that private property owners still "maintain the long-standing legal prerogative to compel individuals carrying firearms to leave their premises."
- He further noted that "Any person carrying a firearm who violates the private property owner's warning to depart will be committing armed trespass, a third-degree felony."

# OLD LAW VS. NEW LAW

- Previously, under Florida Statute 790.053, it was “unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device.”
- A violation of the statute constituted a second-degree misdemeanor, punishable by up to sixty days in jail or a fine of up to $500.
- The *McDaniels* decision has effectively legalized open carry of firearms within the State of Florida.
- The First DCA’s decision became final and effective on Thursday, September 25, 2025.

# OTHER FIREARM RESTRICTIONS STILL APPLY

- Other firearm-related restrictions remain fully in effect.
- For example:
  - **Section 790.10** prohibits displaying a firearm in a “rude, careless, angry, or threatening manner,” unless done in lawful self-defense.
  - **Section 790.115** prohibits the possession of firearms “at school-sponsored events, on school property, buses, and within 1,000 feet of elementary, middle, or secondary schools during school hours or sanctioned activities, unless authorized by law or school-sanctioned activities.”

# OTHER FIREARM RESTRICTIONS STILL APPLY

- **Section 790.15** prohibits discharging a firearm in public places, on public roadways, or over occupied buildings.
- **Section 790.151** prohibits the use of a firearm while under the influence of alcohol, chemical substances, or controlled substances to the extent one's normal faculties are impaired. The law does not apply when exercising the right to self-defense or defense of property.

# PLACES WHERE IT IS STILL ILLEGAL TO CARRY A FIREARM

- While individuals may now lawfully carry firearms openly in **publicly accessible** areas, it is still illegal to carry firearms in the following places:
  - Places of nuisance, such as buildings where prostitution, gambling, or criminal gang activity occurs;
  - Law enforcement facilities (police, sheriff, or highway patrol station);
  - Correctional facilities (detention facility, prison, or jail);
  - Courthouses;
  - Polling places;

# PLACES WHERE IT IS STILL ILLEGAL TO CARRY A FIREARM

- Government meeting locations (any meeting of the governing body of a county, public school district, municipality, or special district);
- Legislature or a committee thereof;
- School, college, or professional athletic events not related to firearms;
- Any elementary or secondary school facility or administration building;
- Career centers;

# PLACES WHERE IT IS STILL ILLEGAL TO CARRY A FIREARM

- Places licensed to dispense alcoholic beverages for consumption on the premises;
- College or university facilities;
- Passenger terminals and sterile areas of airports; and
- State and federal government buildings.

*See* Section 790.06 (12), Florida Statutes.

# A FIGHT IS BREWING

- Now that the Open Carry Ban has been declared unconstitutional, there are several inconsistencies and confusion that the legislature will need to address.
- For instance, the existing firearms statutes prohibit guns in sensitive locations such as courthouses, schools, police stations, government board meetings, etc.
- Already, there is disagreement about whether open carry is banned in those sensitive areas.

# A FIGHT IS BREWING

- Gun rights advocates disagree and have taken the position that the *McDaniels* decision casts doubts on those restrictions.
- Eric Friday, the general counsel for Florida Carry, has already stated “We do not believe that every place currently listed as a prohibited place is constitutionally allowed to be a prohibited place” and has deemed this conundrum as a “very open question.”

# THE LONG GUN LOOPHOLE

- Following the *McDaniels* decision, a potential loophole has emerged regarding the open carry of long guns in places where firearms were previously prohibited.
- The confusion arises because the existing firearms statutes prohibiting guns in sensitive locations specifically mention handguns, but do not explicitly mention long guns such as rifles and shotguns.
- So, what does this mean?

# THE LONG GUN LOOPHOLE

- Essentially, the statutes prohibiting weapons in sensitive areas are arguably outdated by the *McDaniels* decision.
- Because long guns are not explicitly referenced in these statutes, the *McDaniels* decision has created a legal inconsistency that the legislature will need to address.
- This means a fight is likely on the horizon between gun rights activists and gun safety advocates over what will be allowed in this new legal landscape.

# LEGISLATIVE ACTION

- On September 30, 2025, House Bill 63 was filed by Representative Christine Hunschosky of Parkland, Florida.
- HB 63 was filed to remove the distinction in state law between open and concealed, licensed or unlicensed carry and to keep the current locations where firearms are prohibited.
- On October 7, 2025, the bill was referred to the Criminal Justice Subcommittee and the Judiciary Committee.
- More legislation is expected seeking to either expand or further restrict open carry and other gun laws.

# WHAT TO EXPECT FROM LAW ENFORCEMENT AGENCIES

- Since this is all relatively new, the law enforcement agencies, especially, are trying to determine:
  - What can be enforced; and
  - How to enforce the law without running afoul of *McDaniels*.
- Some agencies are taking the approach that open carry is allowed everywhere, even in those sensitive locations that we believe they are still prohibited, and therefore, they will not prevent open carry in those areas or make any arrests.
- Some agencies are taking the approach that they will arrest anyone who is open carrying a weapon in those areas listed as prohibited in Section 790.06 (12).

# WHAT TO EXPECT FROM LAW ENFORCEMENT AGENCIES

- With respect to the “long gun loophole,” some agencies are going to allow long guns to be open carried in the sensitive locations.
- Some agencies are prohibiting all firearms, including both handguns and long guns.
- Some agencies are allowing long guns to be brought into governmental board meetings, but placing a law enforcement officer in close proximity to closely monitor the individual.

# EMPLOYMENT POLICIES PROHIBITING WEAPONS IN THE WORKPLACE

- The *McDaniels* decision does not address, and therefore, does not affect, an employer's policy regarding the possession of weapons in the workplace. Accordingly, any internal policy prohibiting employees from carrying weapons while on duty should remain in effect.
- You may want to consider updating your policies if they specifically only prohibit concealed weapons.
- Instead, revise the policy to include all firearms, including both concealed and open carry, as well as long guns.
- Provide refresher training to employees concerning workplace violence, the prohibition on weapons in the workplace, workplace safety and how to deal with members of the public who are open carrying guns.

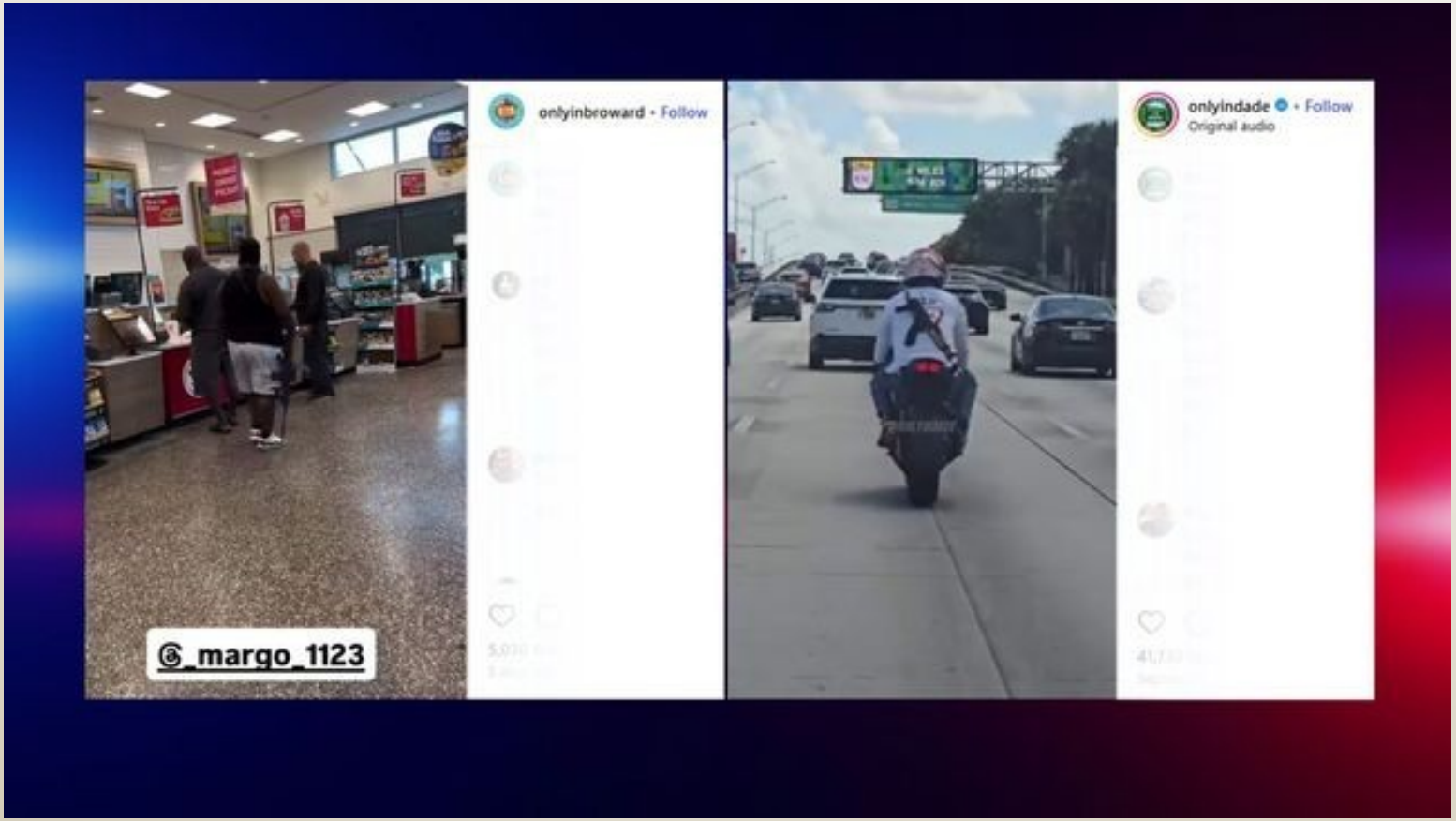
# “GUNS IN PARKING LOTS” LAW

- Florida’s “guns in parking lots” law, Section 790.251, Florida Statutes:
  - prohibits employers from banning any customer, employee, or invitee from possessing a legally-owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot;
  - and when the customer, employee, or invitee is lawfully in such area.

# SECOND AMENDMENT AUDITORS

- Who are they?  Antagonists pushing law enforcement towards making an arrest which could ultimately lead to costly lawsuits.
- Testing the limits of the new law is on the rise.
- There are already viral videos of a man walking into a Broward County gas station with a rifle hanging from his hip.
- Another video shows another man riding a motorcycle down I-95 with a long gun slung across his back.

# SECOND AMENDMENT AUDITORS



# SECOND AMENDMENT AUDITORS

- Sheriff Deputies in Okaloosa County were recently challenged by a gun activist trying to test law enforcement and the limits of Florida's open carry post-*McDaniels.*

# SECOND AMENDMENT AUDITORS

- https://www.youtube.com/watch?v=Rgn29JSaZh4
- All things considered, the Okaloosa Sheriff’s Office deputies handled this situation well.

# SECOND AMENDMENT AUDITORS

- A few days later, auditors were seen in Holmes County trying to elicit a response from Deputies. The auditor is again wearing body armor and carrying an AR-15 walking along the road with the cameraman in tow.

# SECOND AMENDMENT AUDITORS

# PRIVATE BUSINESS OWNERS

- Private business owners can set their own rules by either telling customers that no guns are allowed or posting signs that state no guns are allowed.
- Anyone not following those directives could potentially face trespassing charges.
- Most notably, Publix is allowing open carry in all of its stores in Florida.

# PRACTICAL CONSIDERATIONS

- **Stay Calm and Observant**
  - If you observe someone openly carrying a firearm, remain calm. Open carry is now legal in many public settings.
- **Do Not Engage**
  - Avoid initiating conversations or confrontations regarding the firearm. Do not attempt to enforce or interpret the law yourself.
- **Report Suspicious Behavior**
  - If the individual appears to be acting in a threatening, aggressive, or unsafe manner, or if you feel unsafe:
    - Immediately contact 911, depending on the severity of the situation.
    - Provide a clear description of the individual and the behavior.

# KEY TAKEAWAYS

- Different law enforcement agencies may take different approaches.
- Contact your local law enforcement agency to determine how they plan to approach situations where members of the public are open carrying firearms and their position regarding the long gun loophole.
- Seeing firearms in public areas will become more common.
- Do not attempt to confront or attempt to disarm anyone.
- If the firearm is properly holstered and the person is calm, then remain calm and quietly observe.
- Call 911 if the person is brandishing, waving or aggressively handling the firearm.
- Remember, open carry is legal, but threatening behavior is not.

# WHAT'S NEXT?

- This is an evolving legal issue and it remains to be seen whether the Florida Supreme Court and/or the Florida Legislature will issue rulings/amendments in light of the *McDaniels* decision.
- Continue to expect auditors to test the limits of the law.

# QUESTIONS?