

## Florida court rules open-carry gun ban unconstitutional

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**Jim Saunders**

News Service of Florida

- A Florida state appeals court ruled that the state's ban on openly carrying guns is unconstitutional.
- The court's decision was based on a 2022 U.S. Supreme Court ruling that emphasizes the historical tradition of firearm regulation.
- Gov. Ron DeSantis has expressed support for repealing the open-carry ban, though the issue has previously faced opposition in the Legislature.

In a major decision, a state appeals court on Sept. 10 ruled that Florida's ban on openly carrying guns is unconstitutional.

A three-judge panel of the 1st District Court of Appeal, pointing to U.S. Supreme Court rulings on Second Amendment issues, said the open-carry ban is incompatible with the nation's "historical tradition of firearm regulation."

"No historical tradition supports Florida's open carry ban," Judge Stephanie Ray wrote in a 20-page opinion joined by Judges Lori Rowe and M. Kemmerly Thomas.

"To the contrary, history confirms that the right to bear arms in public necessarily includes the right to do so openly. That is not to say that open carry is absolute or immune from reasonable regulation. But what the state may not do is extinguish the right altogether for ordinary, law-abiding, adult citizens."

[In an X post](#), Florida Attorney General James Uthmeier said his "office fully supports the court's decision. This is a big win for the Second Amendment rights of Floridians. As we've all witnessed over the last few days, our God-given right to self-defense is indispensable."

Gov. Ron DeSantis, in [his own post](#) amplifying Uthmeier's, added that the "decision aligns state policy with my long-held position and with the vast majority of states throughout the union. Ultimately, the court correctly ruled that the text of the Second Amendment — "to keep and bear arms" — says what it means and means what it says."

More: [Florida's open carry ban for guns ruled unconstitutional. What's that mean for gun owners?](#)

The ruling came in a challenge filed by Stanley Victor McDaniels, who was convicted of openly carrying a gun on the Fourth of July in 2022 in Pensacola. It also came after years of legislative debate about potentially repealing the open-carry ban — a position supported earlier this week by DeSantis.

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The Florida Supreme Court in 2015 upheld the constitutionality of the open-carry ban. But in Wednesday's opinion, Ray said a 2022 U.S. Supreme Court decision in a case known as *New York State Rifle & Pistol Association v. Bruen* governs the issue. That decision focused on looking at the "historical tradition" of firearms regulation.

Ray wrote that the Florida Supreme Court's decision, which stemmed from a 2012 arrest in St. Lucie County, "does not provide controlling precedent, and this court must evaluate McDaniels' claim under the (U.S.) Supreme Court's text, history, and tradition standard."

"Because the Second Amendment's plain text encompasses the open carrying of firearms in public, that conduct is presumptively protected by the Constitution," Wednesday's opinion said.

"The state therefore bears the heavy burden of establishing a relevant historical tradition of firearms regulation that justifies its prohibition. The state has not met that burden. It is not enough to rely on a generalized tradition of firearms regulation, for at that level of abstraction almost any law could be sustained."

Florida has allowed people to carry concealed weapons for decades but has barred openly carrying firearms.

DeSantis on Sept. 8 said he would renew a push for lawmakers to end the open-carry prohibition. "We should be an open-carry state," DeSantis said during an appearance in Plant City.

But the issue has not made it through the Legislature in the past. For example, Senate President Ben Albritton, R-Wauchula, has pointed to opposition expressed by law-enforcement officers.

"Let me be clear about this, I've supported law enforcement my entire life. It's the way I was raised, and I've been super-consistent as a legislator to support law enforcement in

Florida. And I'd encourage you to check that record," Albritton told reporters in November. "And I stand with them today in opposition (of allowing people to openly carry guns). They oppose it. I trust my law-enforcement officials, and that's where I stand."

This week's opinion drew a distinction between allowing people to carry concealed weapons and openly carry guns. It said "open carry and concealed carry regulations may appear alike if the metric is simply 'manner of carry.' But under the proper metric — whether the regulation preserves the ability to bear arms as historically understood — they are not relevantly similar."

"The state has not shown that open carry and concealed carry were understood to be interchangeable," Ray wrote.

"To the contrary, the historical record, including the very sources the state invokes, demonstrates that the two were regarded as distinct, and that open carry was the default mode of bearing arms that preserved the core of the Second Amendment right."

*The USA TODAY NETWORK – Florida contributed reporting.*

*(This story was updated to add new information.)*