Welcome to the Wild, Wild West!

BY MINDY T. CUMMINGS

When you think of the Wild West, your mind might drift to an image of a cowboy with his boots, spurs, hat, and a pistol visibly on his side. What you do not picture is the person pushing a grocery cart with a shotgun slung over their shoulder. Yet, these are the AI images appearing on social media after the recent

ruling in *McDaniels v. State of Florida* 117688141 (Fla. 1st DCA 2025) on September 10, 2025. In this recent ruling the Court held that §790.053, Florida Statutes, that banned the open carry of firearms, is unconstitutional and violates McDaniels' Second Amendment right to keep and bear arms. Florida now joins the 46 other states that allow some form of open carry, and people in Florida can carry a lawfully possessed firearm in plain sight or partially concealed (i.e., in a holster). Yet, this indelicate change in the law has now left some community associations across the State of Florida scrambling to understand their rights to prohibit the open carry of firearms in their communities. The ruling in *McDaniels* blurs that line; and until there is new legislation addressing this either way, this article intends to give guidance to associations for the adoption of rules related to the open carry of firearms.

While the ruling in *McDaniels* made it clear that the State cannot impose an outright ban on the open carry of firearms and found §790.053, Florida Statutes, to be unconstitutional, the facts of the case did not touch upon the

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rights of a private property owner to prohibit the open carry of firearms on their respective property. Whether it is a Chapter 720 HOA or a Chapter 718 condominium association, Florida law recognizes that associations have broad authority to pass reasonable rules and regulations for the regulation of its common areas; and neither the recording of protective covenants in the public records nor the possible enforcement of such covenants in state courts constitutes sufficient "state action" to render a private association's rules unconstitutional (see *Hidden Harbour Estates v. Norman*, 309 So. 2d 180 (Fla. 4th DCA 1975) and *Quail Creek Property Owners Ass'n v. Hunter*, 538 So. 2d 1288, 1289 (Fla. 2d DCA 1989)). Post-*McDaniels* an association may elect to adopt a rule that prohibits the open carry of firearms within association property or common elements. Most likely a challenge to that rule based on constitutional grounds would fail because the association's action does not amount to "state action." However, there is perhaps some question over whether the use of the courts to enforce such restrictions would be upheld or challenged as state action.

An association considering the adoption of a rule prohibiting the open carry of firearms should consider several factors when drafting their rule: 1) the classification of the areas where the open carry of firearms is prohibited (i.e., association property vs. common elements) and 2) what is the mechanism to enforce the rule. For example, a rule that prohibits the open carry of firearms in amenity areas, such as recreational areas, clubhouse, café, pool, or gym, can be easily signed; and access can be controlled at some expense and administrative burden. However, if the area is a common element and provides access to a unit owner's

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