Certain Professional Firearm Regulations after McDaniels

Number: AGO 2025-02

The Honorable Wilton Simpson
Commissioner of Agriculture
PL-10, The Capitol
Tallahassee, Florida 32399

Dear Commissioner Simpson:

Thank you for sharing my commitment to protecting and advancing the Second Amendment rights of law-abiding Floridians. As the Commissioner of Agriculture, you submitted a letter to my office on September 22, 2025, requesting an official opinion on what impact, if any, the First District Court of Appeal's ("First DCA") recent decision in *McDaniels v. State*[1] has on certain professions that you regulate in the course of your official duties.[2]

Specifically, you asked whether *McDaniels* impacts the requirement that private investigators and security officers licensed under Chapter 493, Florida Statutes, obtain a Class "G" license in order to bear a firearm while performing licensed activities.[3] Additionally, you asked whether *McDaniels* impacts the prohibition of recovery agents licensed under Chapter 493, Florida Statutes, from carrying firearms for any purpose while engaged in recovery activities.[4] In short, my answer to both questions is no. *McDaniels* did not address the requirements and restrictions on private investigators, security officers, and recovery agents licensed under Chapter 493, Florida Statutes.

Background

In *McDaniels*, the defendant was charged under section 790.053, Florida Statutes, for openly carrying a sidearm in a holster inside his waistband where the firearm was uncovered and visible.[5] Section 790.053(1), Florida Statutes, provided that "it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device." The defendant moved to dismiss the case arguing that the law violated his Second Amendment rights, but the trial court rejected that argument and the defendant was convicted and sentenced to probation and community service.

[6]On appeal, the First DCA overturned the defendant's conviction and vacated his sentence, holding that Florida's open carry ban in section 790.053, Florida Statutes, was unconstitutional because the Second Amendment protects the right of "ordinary, law-abiding, adult citizens" to openly carry firearms in public.[7] In reaching its holding, the First DCA applied the framework offered in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024), which requires that the State prove the firearm regulation in question "is consistent with this Nation's historical tradition of firearm regulation."[8] The State failed to carry its burden of providing a "founding-era law that broadly prohibited the open carry of firearms in public" or "any historical regulation imposing a burden or justification" like section 790.053, Florida Statutes.[9] The Court therefore declared the law unconstitutional and reversed McDaniels' conviction.[10]

I. Attorney General Guidance Memorandum

After *McDaniels*, I issued a guidance memorandum to Florida's law enforcement agencies and prosecuting authorities, instructing them that the First DCA's decision binds all Florida trial courts and effectively became the law of the State.[11] The memorandum noted, however, that *McDaniels* does not: (1) prevent enforcing laws against those who "exhibit [firearms] in a rude, careless, angry, or threatening manner" in public in violation of section 790.10, Florida Statutes; (2) restrict the State's authority to prohibit felons from possessing firearms; (3) implicate Florida's law listing certain locations where the open or concealed carrying of a firearm may be

unauthorized (§ 790.06(12)(a), Florida Statutes); or (4) supersede private property owner's long-standing legal prerogative to compel individuals carrying firearms to leave their premises.[12] *McDaniels* made Florida a "constitutional carry" state—permitless concealed *and* open carry for law-abiding citizens in most locations.

II. Other Firearms Regulations

Chapter 493, Florida Statutes, contains several other provisions that regulate firearms for the private security, investigation, and recovery professions. Pertinent here, section 493.6115, Florida Statutes, prevents private investigators and security officers from carrying a firearm *in connection with their duties* unless they first obtain a Class "G" license.[13] And section 493.6118(1)(x)(9), Florida Statutes, prevents a licensed recovery agent from carrying a firearm on his person *when on private property and performing duties under his license* regardless of whether the agent has a Class "G" license or a concealed carry license under section 790.06, Florida Statutes.[14] By enacting those provisions, the Legislature recognized that certain regulations were necessary to ensure the "interests of the public will be adequately served and protected" while understanding the inherent risk to public welfare if "untrained persons, unlicensed persons or businesses, or persons who are not of good moral character" are placed in positions of trust.[15]

Analysis

McDaniels does not impact the restrictions on private investigators, security officers, and recovery agents licensed under Chapter 493, Florida Statutes, when performing their professional duties. As explained above, *McDaniels* only addressed Florida's open carry ban in section 790.053, Florida Statutes, and the constitutionality thereof for "ordinary, law-abiding, adult citizens."[16] Put differently, *McDaniels* addressed *the manner* by which law-abiding and otherwise qualified citizens could carry a firearm; it did not address licensing and qualifications for those who seek to carry during and in aid of the performance of these specialized and unique professions. Given that the First DCA's analysis in *McDaniels* focused on "[f]ounding-era law that broadly prohibited the open carry of firearms in public," as applied to section 790.053, Florida Statutes, the constitutionality of the firearm regulations under Chapter 493, Florida Statutes, was neither considered nor addressed.[17] "[S]tare decisis doesn't apply to statutory interpretation unless the statute being interpreted is the same one that was being interpreted in the earlier case."[18]

And *McDaniels* did not declare the right to open carry "absolute or immune from reasonable regulation."[19] Private investigators, security officers, and recovery agents may of course exercise their open carry rights articulated in *McDaniels* when *not performing their licensed duties*. But the nature of their licensed work generally presents uniquely dangerous and confrontational personal interactions where the potential for violent escalation is ripe. Both section 493.6115's requirement that private investigators and security officers obtain Class "G" licensures when carrying a firearm in connection with their duties (which ensures, *inter alia*, basic firearm competency) and section 493.6118(1)(x)(9)'s proscription on recovery agents personally carrying on private property during licensed repossession activities are professional regulations, believed by the Legislature to serve private and public safety purposes.[20] In any event, *McDaniels* didn't address either.

Conclusion

Accordingly, I conclude that *McDaniels* does not affect the requirement that private investigators and security officers licensed under Chapter 493, Florida Statutes, obtain a Class "G" license in order to bear a firearm while performing licensed activities. Additionally, *McDaniels* does not affect the prohibition of recovery agents licensed under Chapter 493, Florida Statutes, from carrying firearms for any purpose while engaged in recovery activities on private property.

Sincerely,

James Uthmeier

[1] Case No. 1D2023-0533, 2025 WL 2608688 (Fla. 1st DCA Sept. 10, 2025).

[2] Under section 16.01(3), Florida Statutes, when a member of the Cabinet, such as the Commissioner of Agriculture, asks any question of law relating to his official duties, I am required to give an official opinion and legal advice in writing. *See* § 16.01(3), Fla. Stat.

[3] *See* Letter from Wilton Simpson, Commissioner of Agriculture, to James Uthmeier, Att'y Gen. of Fla., (Sept. 22, 2025) (on file with the Office of the Florida Attorney General).

[4] *Id.*

[5] *McDaniels*, 2025 WL 2608688, at *1. The Court noted that "McDaniels was not threatening anyone" in the way he openly carried his sidearm. *Id.*

[7] *Id.* at *11.

[8] *Id.* at *5.

[9] *Id*. at *7.

[10] *Id.* at * 11.

[11] https://www.myfloridalegal.com/sites/default/files/ag_guidance_letter_9.15.pdf.

[12] *Id.*

[13] *See* § 493.6115, Fla. Stat.

[14] § 493.6118(1)(x)(9), Fla. Stat.

[15] § 493.6100, Fla. Stat.

[16] *McDaniels*, 2025 WL 2608688, at *11.

[17] *Id*. at *7.

[18] *Bourdon v. U.S. Dep't of Homeland Sec.*, 940 F.3d 537, 548-49 (11th Cir. 2019) (quoting Bryan A. Garner *et al.*, *The Law of Judicial Precedent* 343 (2016); *see also United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (reasoning that a decision is "not a binding precedent" on a point that was not expressly discussed in the "opinion of the Court"); *Webster v. Fall*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.").

[19] *Id*. at *11; *see also D.C. v. Heller*, 554 U.S. 570, 626 (2008).

[20] I do not here address the *constitutionality* of the relevant provisions of Chapter 493, Florida Statutes. In truth, I harbor doubts whether these two statutory regulations—and particularly the carry prohibition for recovery agents—would pass constitutional muster under the *Bruen* framework. 597 U.S. 1, 17. For the same reasons the Legislature apparently adopted these restrictions, including the professions' heightened safety risks, § 493.6100, it strikes me these professionals shouldn't be stripped of their rights to constitutional self-defense. Nevertheless, this opinion is limited to the questions presented regarding the applicability of *McDaniels* to sections 493.6115 and 493.6118(1)(x)(9), Florida Statutes.