

Opinion: Florida – the ‘Gunshine State’

By David Cole

Ever since the brutal mass shooting at a gay nightclub in Orlando in the early morning hours on June 12, Florida has become the focus of nationwide concerns about easy access to guns, and the mayhem such access can produce.

That focus on the Sunshine State is even more appropriate than the American public understands. The state of Florida has long played a leading role in the establishment and expansion of the right to bear arms.

As constitutional rights go, the right to bear arms is of relatively recent vintage. In 1991, then-retired Chief Justice Warren Burger characterized the notion that the Second Amendment protects such a right as one of the greatest frauds perpetrated on the American public in his lifetime. In the uniform view of the federal courts for more than 100 years, the Second Amendment protected only the states’ prerogative to have militias. It afforded individuals no personal rights to own or carry firearms.

But In 2008, the Supreme Court ruled in *District of Columbia v. Heller* that the Second Amendment did in fact protect such an individual right to bear arms. What happened?

The answer lays in Florida – and the offices of Marion Hammer, a 4-foot-11-inch grandmother, now in her 70s, who never went to law school but happens to be the most powerful lobbyist in Florida.

Hammer was the first female president of the National Rifle Association. The NRA was primarily a marksmanship, hunting, and sport shooting organization for most of its history. It

did not even establish a political arm until 1975; about the same time Hammer became involved in the political fight for gun rights. Both developments were a response to the first major piece of federal gun legislation, the Gun Control Act, passed in 1968 after the assassinations of John and Robert Kennedy and Martin Luther King Jr. Hammer and the NRA saw the Gun Control Act as a threat to their liberty, but understood that the federal courts would not be receptive to a constitutional challenge, given their longstanding rejection of an individual right. Instead, the NRA found more sympathetic forums in the states, where gun control advocates were not organized, and where politicians responsive to rural constituents were especially receptive to the need for individuals to own guns for self-defense.

In no small part because of Hammer's early and effective advocacy, Florida became the NRA's go-to state, so much so that it is sometimes called the Gunshine State.

Under Hammer's direction, the NRA's state-by-state strategy started in its most hospitable state, and exported victories won there to other states. In Florida and then other states, NRA lobbyists fought for amendments to state constitutions to recognize an individual right to bear arms. They pressed for laws requiring state and local governments to issue individual licenses for concealed weapons. They successfully protected gun manufacturers from liability for injuries caused by illegal use of their weapons. These legislative victories created a new environment. By 2008, when the Supreme Court took up the question of a federal right to bear arms, the vast majority of states already protected individual gun ownership rights, thereby easing the way to recognition of a federal right.

In this way, recognition of an individual right to bear arms was not imposed from the top down by five justices, but developed from the bottom up, through decades of advocacy (in the legal academy, the executive branch and Congress)

sponsored by the NRA. And even after receiving the Supreme Court's imprimatur, Marion Hammer and her NRA colleagues, through their political influence in Washington and the state, remain the most significant guardians of the right to bear arms, notwithstanding the right's formal recognition in our constitutional law.

This story is not unique to the NRA and the Second Amendment. Often, the key actors in constitutional law are not the justices on the Supreme Court, but "we the people," acting in associations of like-minded citizens, and engaged in advocacy far beyond the federal courts. As Learned Hand, a legendary federal judge, once said, "Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it...while it lies there it needs no constitution, no law, no court to save it." Civil society organizations—on the left and the right, whether they are the ACLU or the NRA—help to ensure that liberty lies in our hearts, and is reflected in our constitutional law.

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