BREAKING: Federal Appeals Court Strikes Down Florida 'Docs vs. GLOCKs' Law

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February 16, 2017

Elbert P. Tuttle Courthouse, Atlanta, home of the 11th Circuit Court of Appeals.

On Thursday, the 11th Circuit Court of Appeals struck down key parts of Florida's Firearm Owners Privacy Act (a/k/a the "Docs vs. GLOCKs" law, and "FOPA"*) holding that the act's provisions violated the First Amendment's ban on abridgments to freedom of speech.

Enacted by the Florida Legislature in 2011, FOPA was intended to stop physicians and other healthcare providers from asking questions about firearms unrelated to medical treatment. In the current case, *Wollschlaeger v. Governor of Florida*, the 11th Circuit examined four specific provisions of the law that barred physicians from:

(1) asking questions relating to firearms ownership that were unrelated to a patient's medical treatment,

(2) recording information relating to patients' firearms ownership that were unrelated to medical treatment,

(3) unnecessarily harassing a patient about firearm ownership during an examination, and

(4) discriminating against a patient solely on the basis of the patient's ownership and possession of a firearm.

Violations of the Act were potentially punishable by a fine of up to $10,000 per offense, a letter of reprimand, probation, suspension, compulsory education, or license revocation.

The law was always in tension with the First Amendment, which commands that Congress (and, through the Fourteenth Amendment, the several States,) can "make no law…abridging the freedom of speech," but lawmakers couched the act as a regulation of *professional conduct*, expressing concern that physicians might use the context of a doctor-patient consultation to propagandize against gun ownership.

Given that organizations such as the American Academy of Family Physicians have taken official stands in favor of gun control laws, this wasn't an idle concern. As Dr. Arthur Przebinda expressed rather cogently in TTAG last year, regulations of professional conduct in the doctor-patient setting, particularly when it comes to matters irrelevant to medical treatment, are hardly beyond the constitutional pale.

Indeed, the *Atlanta Journal-Constitution* reported:

One Florida legislator said during the 2011 debate his daughter's pediatrician asked him to remove his gun from his home. Another lawmaker said a doctor refused to treat a constituent's child because there were guns in the house. Yet another Florida legislator recounted a complaint from a constituent that his health care provider falsely told him that disclosing firearm ownership was a Medicaid requirement.

The case had already been before a three judge panel from the 11th Circuit Court of Appeals in 2014, which *upheld* the law, stating that FOPA "simply codifies that good medical care does not require inquiry or record-keeping regarding firearms when unnecessary to a patient's care…."

The Appellate Court, however, decided to re-hear the case *en banc* — before the entire Court of Appeals — and heard oral arguments from both parties last summer. It was very clear that, the full Court was concerned–rhetorically, at least–about the law's infringements on the freedom of speech.

"The record-keeping and inquiry provisions expressly limit the ability of certain speakers—doctors and medical professionals—to write and speak about a certain topic—the ownership of firearms," wrote Judge Adalberto Jordan in one of the majority opinions in the case. (Oddly, there were two majority opinions in this case, one by Judge Jordan, and the other by Marcus.)

"[T]here was no evidence whatsoever before the Florida Legislature that any doctors or medical professionals have taken away patients' firearms or otherwise infringed on patients' Second Amendment rights," wrote Judge Jordan.

In the end, **the court struck down three FOPA provisions** relating to: doctor inquiries about patient firearm ownership, the ban on record-keeping, and the anti-harassment provision as violating the First Amendment. **It upheld, however, the ban against discrimination,** construing that provision as the regulation of an act, not speech. **It also let stand several other provisions of the law that are not insignificant:**

(1) the provision relating to firearm inquiries **by emergency medical technicians and paramedics,**

(2) the provision allowing patients to decline to answer questions or provide information about firearm ownership (although doctors still remain authorized to choose his or her own patients),

(3) the provision "prohibiting insurers from denying coverage, increasing premiums, and otherwise discriminating against an applicant or insured based on the lawful ownership of firearms or ammunition, but allowing insurers to consider the fair market value of firearms or ammunition in setting premiums for scheduled personal property coverage…"; and

(4) FOPA's disciplinary provisions.

(It's likely that the ban on EMT speech was allowed to stand because it simply wasn't challenged at this point.)

From my personal point of view, that ban against increasing insurance premiums simply because of firearms ownership is far more significant when the rubber hits the road in my life than any ban on professional speech.

It isn't clear how big of an impact this will have on the gun rights movement. After all, there was some opposition among gun rights advocates — yes, even here at TTAG — toward the law in the first place on civil liberties grounds. At the same time, the 'culture war' concerns raised by Dr. Przebinda were pretty well grounded, too.

It is also unclear at this point whether the State of Florida will try to take the fight to the Supreme Court. As always, stay tuned.