

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02408-RPM

DEBBIE BONIDY,  
TAB BONIDY, and  
NATIONAL ASSOCIATION FOR GUN RIGHTS,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,  
PATRICK DONAHOE, Postmaster General, and  
STEVE RUEHLE, Postmaster, Avon, Colorado,

Defendants.

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**SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiffs Debbie Bonidy, Tab Bonidy, and the National Association for Gun Rights, by and through their undersigned attorney, hereby file this Second Amended Complaint against Defendants and allege as follows:

**NATURE OF THE CLAIMS**

1. Plaintiffs seek declaratory and injunctive relief for Defendants' deprivation of the right to keep and bear arms guaranteed by the United States Constitution.

### **JURISDICTION**

2. This Court has jurisdiction over Plaintiffs' claims for relief pursuant to 39 U.S.C. §§ 401(1) and 409(a), because this action is brought against the United States Postal Service. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331, because the claims arise under the United States Constitution.

### **VENUE**

3. Venue rests properly in this Court pursuant to 28 U.S.C. § 1391(b) and (e), because, *inter alia*, a substantial part of the events or omissions giving rise to the claims occurred within this judicial district and a defendant in the action resides within this judicial district.

### **PARTIES**

4. Plaintiff Debbie Bonidy is a citizen of the United States and a resident of Colorado. Mrs. Bonidy possesses a valid permit to carry a concealed handgun, issued in 2009 pursuant to Colorado's Concealed Carry Act, C.R.S. § 18-12-206. Mrs. Bonidy is a member of the National Association for Gun Rights ("NAGR").

5. Plaintiff Tab Bonidy is a citizen of the United States and a resident of Colorado. Mr. Bonidy possesses a valid permit to carry a concealed handgun, issued in 2009 pursuant to Colorado's Concealed Carry Act, C.R.S. § 18-12-206. Mr. Bonidy is a member of NAGR.

6. Plaintiff National Association for Gun Rights is a membership organization incorporated under the laws of Virginia with its principal place of business in Fredericksburg, Virginia. NAGR has members and supporters throughout the United States, including in Colorado. The purposes of NAGR include securing through education, outreach, and litigation the

constitutional and statutory right to privately own, possess, and carry firearms. NAGR brings this action on behalf of itself and its members.

7. Defendant United States Postal Service (“USPS”) is “an independent establishment of the executive branch of the government of the United States . . . .” 39 U.S.C. § 201. The USPS is responsible for providing “postal facilities of such character and in such locations, that postal patrons throughout the Nation will . . . have ready access to essential postal services.” 39 U.S.C. § 403(b)(3). USPS is authorized “to adopt . . . rules and regulations . . . as may be necessary in the execution of its functions.” 39 U.S.C. § 403(2). USPS, by creating and enforcing the policy complained of in this action, currently is depriving Plaintiffs of the right to keep and bear arms guaranteed by the United States Constitution.

8. Patrick Donahoe is the Postmaster General of the USPS. Defendant Donahoe is responsible for the administration of the USPS and, by creating and enforcing the policy complained of in this action, currently is depriving Plaintiffs of the right to keep and bear arms guaranteed by the United States Constitution. Defendant Donahoe is sued in his official capacity.

9. Steve Ruehle is the Postmaster of the Post Office at 111 West Beaver Creek Boulevard in Avon, Colorado. Defendant Ruehle is responsible for the administration of the Post Office at 111 West Beaver Creek Boulevard in Avon, Colorado, and, by enforcing the policies complained of in this action, currently is depriving Plaintiffs of the right to keep and bear arms guaranteed by the United States Constitution. Defendant Ruehle is sued in his official capacity.

### **STATEMENT OF FACTS**

10. The Second Amendment to the United States Constitution provides: “A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.”

11. The Second Amendment guarantees individuals a fundamental right to possess functional firearms—including handguns, rifles, and shotguns—for purposes of self-defense.

12. The Second Amendment guarantees, *inter alia*, “the individual right to possess and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554 U.S. \_\_\_, 128 S. Ct. 2783, 2797 (2008); *McDonald v. Chicago*, 561 U.S. \_\_\_, 130 S. Ct. 3020, 3036 (2010).

13. With certain limited exceptions not applicable to Plaintiffs, USPS regulations prohibit law-abiding individuals from carrying functional firearms, openly or concealed, onto any real property under the charge and control of the USPS. 39 C.F.R. § 232.1(l).

14. Violation of 39 C.F.R. § 232.1(l) is punishable by fine, imprisonment, or both. 39 C.F.R. § 232.1(p)(2).

15. The Bonidys live in rural Colorado and they do not have home mail service.

16. The local Post Office—at 111 West Beaver Creek Boulevard in Avon, Colorado—provides the Bonidys and their neighbors with post office boxes at no charge.

17. Security personnel do not electronically screen persons entering the Avon Post Office to determine whether persons are carrying firearms, or weapons of any kind.

18. Security personnel do not restrict access to the Avon Post Office to only those persons who have been screened and determined to be unarmed.

19. The Bonidys must drive approximately 10 miles roundtrip from their home to reach the Avon Post Office to pick up their mail.

20. The Bonidys drive automobiles or motorcycles when traveling to and from the Avon Post Office. Some of the Bonidys' motorcycles do not have locking storage compartments.

21. There is a public parking lot adjacent to the Avon Post Office; the parking lot is located on real property under the charge and control of the USPS.

22. West Beaver Creek Boulevard is designated an emergency snow route; thus, parking on West Beaver Creek Boulevard is prohibited whenever snow accumulation exceeds two inches. Because of this restriction, public parking on West Beaver Creek Boulevard is often disallowed and is therefore sporadic and unpredictable throughout the winter.

23. The public USPS parking lot adjacent to the Avon Post Office is the only public parking consistently available to patrons of the Avon Post Office.

24. The Bonidys lawfully own handguns, which they are licensed to carry pursuant to Colorado's Concealed Carry Act, C.R.S. § 18-12-201 *et seq.* Mr. and Mrs. Bonidy presently intend to possess a handgun for self-defense when traveling to, from, through, and on USPS property but are prevented from doing so by Defendants' active enforcement of 39 C.F.R. § 232.1(I).

25. The Bonidys have met all the requirements of Colorado's Concealed Carry Act, which creates a comprehensive statewide regulatory system for the concealed carry of handguns. They are residents of Colorado, are over 21 years old, have no history of substance abuse or criminal activity, are not subject to a protection order, have demonstrated competency with a

handgun, and have been approved by the Eagle County Sheriff to carry a concealed handgun almost everywhere in the State. *See* C.R.S. § 18-12-203.

26. On July 22, 2010, the Bonidys, through counsel, contacted the USPS to inquire as to whether they would be subject to prosecution pursuant to 39 C.F.R. § 232.1(*l*) if they carried a firearm on USPS property or stored a firearm in their cars when they parked on USPS property when picking up their mail. A copy of this letter is attached hereto as Exhibit 1.

27. On August 3, 2010, Senior Vice President and General Counsel Mary Anne Gibbons responded, on behalf of then-Postmaster General John Potter, to the Bonidys' July 22, 2010, letter. Ms. Gibbons stated, "the regulations governing Conduct on Postal Property prevent the Bonidys from carrying firearms, openly or concealed, onto any real property under the charge and control of the Postal Service. . . . There are limited exceptions to this policy that would not apply here." A copy of this letter is attached hereto as Exhibit 2.

**FIRST CLAIM FOR RELIEF**  
**(Parking Lot Firearms Ban)**  
**(Right to Keep and Bear Arms)**  
**(Declaratory and Injunctive Relief)**

28. Plaintiffs hereby reallege and incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

29. The right to keep and bear functional firearms for the core lawful purpose of self-defense is guaranteed by the Second Amendment to the United States Constitution.

30. USPS regulations prohibit law-abiding individuals, including the Bonidys and NAGR's members, from possessing a functional firearm, openly or concealed, on any real property under the charge and control of the USPS, including firearms stored in private vehicles parked in the public parking lot adjacent to the Avon Post Office. 39 C.F.R. § 232.1(*l*).

31. By prohibiting Plaintiffs from possessing a functional firearm in a private vehicle parked on real property under the charge and control of the USPS, Defendants currently maintain and actively enforce a set of laws, customs, practices, and policies that deprive Plaintiffs of the right to keep and bear arms, in violation of the Second Amendment.

32. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional laws, customs, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

**SECOND CLAIM FOR RELIEF**  
**(Post Office Firearms Ban)**  
**(Right to Keep and Bear Arms)**  
**(Declaratory and Injunctive Relief)**

33. Plaintiffs hereby reallege and incorporate the allegations in the preceding paragraphs as if the same were fully set forth here.

34. The right to keep and bear functional firearms for the core lawful purpose of self-defense is guaranteed by the Second Amendment to the United States Constitution.

35. USPS regulations prohibit law-abiding individuals, including the Bonidys and NAGR's members, from carrying a functional firearm, openly or concealed, onto any real property under the charge and control of the USPS, including inside the Avon Post Office. 39 C.F.R. § 232.1(l).

36. By prohibiting Plaintiffs from carrying a functional firearm inside the Avon Post Office, Defendants currently maintain and actively enforce a set of laws, customs, practices, and policies that deprive Plaintiffs of the right to keep and bear arms, in violation of the Second Amendment.

37. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional laws, customs, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that 39 C.F.R. § 232.1(*l*) deprives Plaintiffs of the right to keep and bear arms for self-defense guaranteed by the Second Amendment, by prohibiting possession of functional firearms on any real property under the charge and control of the USPS;
- B. Permanently enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them, from enforcing 39 C.F.R. § 232.1(*l*), which prohibits possession of functional firearms on any real property under the charge and control of the USPS;
- C. Award Plaintiffs their costs, attorneys' fees, and other expenses in accordance with law;
- D. Award Plaintiffs any further relief this Court deems just and equitable.

DATED this 8th day of April 2011.

Respectfully Submitted By:

/s/ James M. Manley  
James M. Manley, Esq.  
Mountain States Legal Foundation  
2596 South Lewis Way  
Lakewood, Colorado 80227  
(303) 292-2021  
(303) 292-1980 (facsimile)  
jmanley@mountainstateslegal.com

Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of April 2011, I served a true and accurate copy of the foregoing SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF on counsel for Defendants by sending said copies by electronic mail and U.S. mail, certified, return receipt requested, postage pre-paid, and addressed to the following:

Lesley Farby  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW, Room 7220  
P.O. Box 883  
Washington, DC 20044  
Lesley.Farby@usdoj.gov

/s/ James M. Manley  
James M. Manley

# Exhibit 1



MOUNTAIN  
STATES  
LEGAL  
FOUNDATION

2596 South Lewis Way  
Lakewood, Colorado 80227  
303-292-2021 • FAX 303-292-1980  
www.mountainstateslegal.org

July 22, 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED 7004 2510 0006 1985 8680**

John Potter  
Postmaster General  
United States Postal Service  
475 L'Enfant Plaza SW, Room 10022  
Washington, D.C. 20260-0010

Re: Postal Service Firearms Ban, 36 C.F.R. § 232.1(l)

Dear Postmaster General Potter:

I write on behalf of my clients, Tab and Debbie Bonidy. The Bonidys live in rural Colorado and because they do not have home mail service, the local Post Office, in Avon, Colorado, provides the Bonidys and their neighbors with post office boxes at no charge. They must drive approximately 10 miles roundtrip from their home to reach the Post Office to pick up their mail. Mr. and Mrs. Bonidy are both licensed pursuant to Colorado law to carry a handgun, and they both regularly carry a handgun for self-defense.

The Bonidys intend to exercise their right to bear arms on Postal property, but are prevented from doing so by the Postal Service's regulatory firearms ban, 39 C.F.R. § 232.1(l). The Bonidys fear prosecution under 39 C.F.R. § 232.1(l) if they carry a firearm on Postal property. Moreover, the threat of prosecution remains even if they store their firearms in their cars when they pick up their mail, because they normally must park on Postal property.

The Postal Service's total ban on firearms possession violates "the individual right to possess and carry weapons in case of confrontation" protected by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. \_\_\_, 128 S. Ct. 2783, 2797 (2008); *McDonald v. Chicago*, 561 U.S. \_\_\_, slip op. at 31 (2010). This regulatory prohibition is broader than the federal statute governing firearms on federal land, which recognizes the right of individuals to possess firearms in most federal facilities "incident to hunting or other lawful purposes." 18 U.S.C. § 930(d)(3).

Postmaster General John Potter  
July 22, 2010  
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The broad reach of 39 C.F.R. § 232.1(l) “makes it impossible for citizens to use [firearms] for the core lawful purpose of self-defense and is hence unconstitutional.” *Heller*, 128 S. Ct. at 2819. The Postal Service’s regulatory ban effectively denies the right to keep and bear arms not just on Postal property, but everywhere a law-abiding gun owner travels before and after visiting Postal property. My clients’ right to bear arms is violated by 39 C.F.R. § 232.1(l) when they are traveling to, from, or through publicly-accessible Postal property because the regulatory ban does not even allow individuals to safely store a firearm in their vehicles. An individual who has a hunting rifle or shotgun in his trunk, or a handgun in his glove compartment for self-defense, would violate the Postal Service ban simply by driving onto Postal property.

My clients respectfully request that the Postal Service recognize their right to bear arms by repealing or amending 39 C.F.R. § 232.1(l). If I do not receive confirmation within the next thirty days that you intend to repeal the regulation in question, my clients will avail themselves of other legal remedies available to them.

Thank you for your consideration in this matter.

Sincerely,

MOUNTAIN STATES LEGAL FOUNDATION



James M. Manley  
Staff Attorney

cc: Ms. Mary Anne Gibbons  
Senior Vice President, General Counsel  
United States Postal Service  
475 L’Enfant Plaza, SW, Room 6004  
Washington, D.C. 20260-1100

Mr. Sylvester Black  
Postal Service Area Vice President  
United States Postal Service Western Area Office  
1745 Stout Street, Suite 500  
Denver, Colorado 80299-6200

Mr. Selwyn Epperson  
Colorado/Wyoming District Manager  
United States Postal Service Colorado/Wyoming District  
7500 East 53rd Place, Room 2204  
Denver, Colorado 80266-9998

# Exhibit 2

MARY ANNE GIBBONS  
SENIOR VICE PRESIDENT, GENERAL COUNSEL



August 3, 2010

James M. Manley  
Staff Attorney  
Mountain States Legal Foundation  
2596 South Lewis Way  
Lakewood, Colorado 80227-1980

RE: Postal Service Firearms Ban, 36 C.F.R. § 232.1(l)

Dear Mr. Manley:

Thank you for your letter to the Postmaster General on behalf of your clients, Tab and Debbie Bonidy, asking that the Postal Service amend its regulations to recognize their individual right to bear arms under the Second Amendment to the U.S. Constitution. Mr. Potter has asked that I respond to your letter on his behalf.

You are correct that the regulations governing Conduct on Postal Property prevent the Bonidys from carrying firearms, openly or concealed, onto any real property under the charge and control of the Postal Service. 39 C.F.R. § 232.1(l) ("Notwithstanding the provisions of any other law, rule or regulation, no person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes.") There are limited exceptions to this policy that would not apply here.

We have reviewed this prohibition in the past, and we believe that 18 U.S.C. § 3061 provides the Postal Service with the legal authority for our current policy. See 18 U.S.C. § 3061(c)(4)(A) (authorizing the Postmaster General to "prescribe regulations necessary for the protection and administration of property owned or occupied by the Postal Service and persons on the property"). We also note that the U.S. Court of Appeals for the Fifth Circuit held this prohibition to be constitutional under the presumptively lawful category of "sensitive place" regulations acknowledged in District of Columbia v. Heller, 128 S. Ct. 2783 (2008). See United States v. Dorosan, 350 F. App'x 874 (5th Cir. 2009) (per curiam), cert. denied, 130 S. Ct. 1714 (March 1, 2010) (affirming an employee's conviction for storing a handgun in a car parked on postal property).

Nevertheless, we intend to seek review of our policy from the Department of Justice on the issues you have raised and look forward to hearing their response to that request. Thank you again for bringing this concern to our attention.

Sincerely,

A handwritten signature in cursive script that reads "Mary Anne Gibbons".

Mary Anne Gibbons

475 L'ENFANT PLAZA SW  
WASHINGTON, DC 20260-1100  
202-268-2950  
FAX: 202-268-6981  
E-MAIL: MARY.ANNE.GIBBONS@USPS.GOV  
WWW.USPS.COM

- 2 -

cc Mr. Potter  
Mr. Black  
Mr. Epperson