

Second Amendment & Zoning The Other Side of Concealed Carry

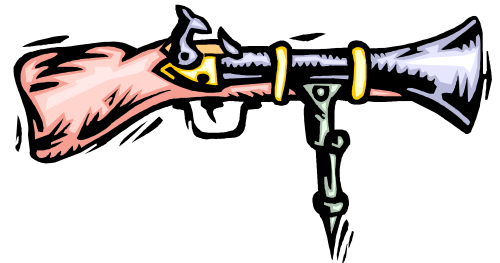
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Local Government Committee Seminar 2014

The Second Amendment

- “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.”
- Militia Right or Individual Right?



The Second Amendment

- *Heller* and *McDonald*
 - Fundamental Right to have a Handgun for Self-Defense, Especially in the Home
- Analytical Frameworks
 - Two Part Test (3d, 4th, 7th, 10th, D.C. Circuits)
 - Substantial Burden Test (9th Circuit)

The Second Amendment

- Two Part Test
 - Burden on conduct within scope of Second Amendment Guarantee?
 - Level of Scrutiny Based on Degree of Burden on Second Amendment

The Second Amendment

- Two Part Test
 - Burden on conduct within scope of Second Amendment Guarantee?
 - Core Right
 - Indirect Impact – Activity which affects ability to exercise Second Amendment rights
 - Presumptively lawful regulatory measures

The Second Amendment

- Two Part Test
 - Burden on the Activity Affected by Exercise of Second Amendment Right
 - Heightened Scrutiny: narrowly tailored, substantial relationship to important government interest



Analogize to Judicial Test of First Amendment Regulations

- “Secondary Effects Doctrine”
 - Regulation motivated by the content of the expression is subject to strict scrutiny and is presumed unconstitutional
 - Regulation motivated by the secondary effects of expression is considered content-neutral

Does the Second Amendment Extend Outside the Home?

- No.
 - *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 83 (2d Cir. 2012).
- Yes.
 - *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012).



Zoning and The Second Amendment

- Considerations for the Regulation of Gun-Related Land Uses



Ezell v. City of Chicago

651 F.3d 684 (7th Cir. 2011)

Facts:

- City ordinance requires firing range training to obtain permit
- City ban on gun firing ranges within the City limits.

Outcome:

- Heightened Scrutiny (“not quite strict”)
- Ordinance struck down

Illinois Ass'n of Firearms Retailers v. City of Chicago

2014 WL 31339 (N.D. Ill. Jan. 6, 2104)

Facts:

- City ordinance prohibits sale or transfer of firearms except in the case of inheritance
- Challenged by gun dealers located within City

Outcome:

- Court applied “heighted scrutiny” because the ordinance affected activity protected by the Second Amendment
- Ordinance struck down

Kole v. Village of Norridge

Facts:

- Village reduced number of dealer licenses to zero
- Challenged by firearms dealer

Outcome:

- Court expresses intent to apply heightened scrutiny (failure to establish important govt. interest?)
- Case is pending following amendment to Village ordinance which applies sensitive place separation requirement to licensing scheme

Is your community next?

Bloomingtondale gun range plan rejected by panel

By Robert Sanchez

A controversial plan to bring a shooting sports facility to Bloomingtondale has suffered a setback.

Daily Herald – April 16, 2014



Available Zoning Techniques

- Issue of Total Exclusion?
- Statutory Limitations
- Distribution/Buffer Zones
- District limitations (commercial, industrial, manuf.)

Statutory Limitations

- Prohibited Areas
 - schools
 - areas within 1,000 feet of school grounds
 - day cares
 - government buildings
 - jails
 - hospitals
 - public transit vehicles
 - establishments primarily serving alcohol
 - public gatherings requiring a local permit
 - playgrounds
 - parks
 - universities
 - racetracks and casinos
 - stadiums
 - libraries
 - airports
 - amusement parks
 - zoos
 - museums

Distribution/Buffer Zones

- Teixeira v. Cnty. Of Alameda (Cal.)
 - Court upheld ordinance requiring gun sales to occur at least 500 feet away from schools, residences, liquor licensees and other gun stores

District Limitations

- It is presumptively reasonable to limit the location of gun shops to specific zoning districts, provided the application of the ordinance does not result in total exclusion
 - Under Adult Use jurisprudence, municipality is not required to make sites available; operators must compete in the market like other commercial uses

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