

Bond Case Briefs

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ZONING & PLANNING - PENNSYLVANIA

Drummond v. Robinson Township

United States Court of Appeals, Third Circuit - August 17, 2021 - F.4th - 2021 WL 3627106

Gun rights organization, gun club, and would-be operator of gun club filed § 1983 action against township and township zoning officer, alleging violation of plaintiffs' Second Amendment rights by stalling club operator's zoning application to allegedly zone gun club out of existence, among other claims.

The United States District Court for the Western District of Pennsylvania granted defendants' motion to dismiss and denied plaintiffs' motion for preliminary injunction as moot. Plaintiffs appealed. The Court of Appeals affirmed in part, vacated in part, and remanded. On remand, the United States District Court for the Western District of Pennsylvania granted defendants' motion to dismiss for failure to state a claim. Plaintiffs appealed.

Holdings: The Court of Appeals held that:

- As a matter of first impression, zoning restrictions lacked historical foundations, as would support heightened scrutiny;
- Intermediate scrutiny, rather than strict scrutiny, applied;
- Defendants failed to establish a close fit between challenged rules and actual public benefits they served; and
- Reassignment to another district judge was unwarranted.

Township's zoning restrictions barring training with common weapons in areas where firearms practice was otherwise permitted and preventing businesses in certain areas from selling guns or range time at a profit lacked historical foundations, as would support heightened scrutiny on facial Second Amendment challenge pursuant to § 1983, even though ordinance shared some features with traditional antecedents of dividing township into districts, excluding firearms purchase and practice from residential areas, and designating certain areas for center-fire practice and commercial ranges.

Township's zoning ordinance prohibiting commercially-operated gun clubs and forbidding center-fire cartridges, did not ban firearms purchase and practice in township, but rather preserved avenues for citizens to acquire weapons and maintain proficiency in their use, thus implicating intermediate scrutiny, rather than strict scrutiny, on Second Amendment facial challenge pursuant to § 1983; ordinance allowed non-profit gun clubs, allowed citizens to train with forms of ammunition other than center-fire cartridges, and opened two districts to commercial ranges and center-fire rifle training.

Township failed to establish a close fit between challenged zoning ordinance prohibiting commercially-operated gun clubs and forbidding center-fire cartridges and actual public benefits they served of preventing use of powerful ammunition, reducing noise, increasing safety, and moderating intensity of use, and thus township failed to establish that ordinance withstood intermediate scrutiny on § 1983 Second Amendment facial challenge at the motion to dismiss for failure to state a claim stage; there were no parallels for the challenged rules whether in history or in contemporary practice, there was no evidence tying challenged rules to asserted interest, and

township neglected to explain why it eschewed more targeted alternatives.

Reassignment to another district judge was unwarranted for § 1983 Second Amendment case challenging township's zoning ordinance prohibiting commercially-operated gun clubs and forbidding center-fire cartridges; district court did not disregard Court of Appeals' prior order which directed district court to follow two-step framework for Second Amendment challenges, and which did not direct district court to reach a particular result at either step.