

Third Circuit Breaks New Ground for the Second Amendment in New Jersey

On August 17, 2021, the U.S. Court of Appeals for the Third Circuit weighed in on the uncharted boundaries of rights afforded under the Second Amendment, namely whether restrictions on where citizens can purchase or practice with firearms implicate the right to bear arms, and whether zoning rules interfere with that right.

In a precedential decision that tracked historical frameworks and recent U.S. Supreme Court jurisprudence, the Third Circuit reversed a U.S. District Court ruling that dismissed a challenge to two zoning ordinances that limited the types of firearms with which one could practice at gun clubs and also limited for-profit ownership of such a facility. In doing so, the Third Circuit reinstated the lawsuit seeking an injunction against the enforcement of those two ordinances.

Although the Third Circuit's opinion in *Drummond v. Robinson Township* stopped short of a general prohibition against such restrictions, it opened the door to challenges against anti-firearm zoning far wider than it had ever been opened before. Prior to the ruling, neither the Supreme Court nor the Third Circuit had confronted a Second Amendment claim challenging a restriction on firearms purchase or practice. The Third Circuit decided that if a zoning ordinance "has the effect of depriving would-be gun owners of the guns and skills commonly used for lawful purposes like self-defense in their homes," it would likely be unconstitutional. Drawing comparisons to free speech legislation and prohibitions that were previously struck down in Chicago and the District of Columbia, the Third Circuit held that such an ordinance will only be valid if (1) it serves a "significant, substantial, or important" government interest, and (2) "the fit between the asserted interest and the challenged law" is reasonable and "does not burden more conduct than is reasonably necessary."

Key Takeaways for Municipalities & Firearms Businesses

The Third Circuit's opinion is binding on federal courts in New Jersey, Pennsylvania, Delaware, and the U.S. Virgin Islands, but it serves as a guide for the remaining eleven circuits throughout the country. The ruling's impact as it relates to restrictive zoning laws that are commonplace in many municipalities throughout New Jersey is that governing bodies should prepare for costly – and likely unsuccessful – constitutional challenges in court unless they amend their ordinances to "preserve[] avenues for citizens to acquire weapons and maintain proficiency in their use." According to the Gifford Law Center, New Jersey state and local laws are among the toughest in the nation, second only to California. These laws include multiple town ordinances that prohibit the sale of firearms and ammunition within city limits. The Third Circuit's opinion in *Drummond* undoubtedly weakens the legs upon

which those zoning ordinances rest.

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