Cases



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Civil Rights

Ban on Firing Ranges

Four days after the U.S. Supreme Court's ruling in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) (invalidating handgun ban ordinances as violative of the Second Amendment), the Chicago City Council adopted the Responsible Gun Owners Ordinance. This repealed the firearm ban and imposed a permitting regime that, among other things, required four hours of classroom instruction and one hour of firing-range training as a prerequisite to obtaining a permit for lawful gun ownership. However, at the same time, a provision in the City Code prohibited all firing ranges in the City, and also prohibited the "discharge [of] any firearm within the city." The firing-range ban did not apply to governmental agencies or private security companies. The City's position was that firing ranges posed a threat to health and safety, since using firearms meant a risk of injury from unintentional discharges, and there was also the issue of criminals seeking to steal firearms from range users and cars parked at the range.

Three Chicago residents, including Rhonda Ezell (the victim of three attempted burglaries), and several organizations challenged the ordinance on the basis that the Second Amendment protected the right to maintain proficiency in firearm use (including the right to practice at a range), and the City's total ban on firing ranges was unconstitutional; further, the ordinance severely burdened the core Second Amendment right to possess firearms for self-defense because it conditioned possession on range training but simultaneously prohibited range training throughout the City. They also argued that range training was protected expression under the First Amendment. The plaintiffs sought a preliminary injunction and declaratory relief invalidating the ban, which the district court denied, but which was granted on appeal.

In a ruling of first impression, the U.S. Court of Appeals for the Seventh Circuit found that (1) firing-range training was not categorically unprotected by the Second Amendment, and (2) to justify its ban, the City had to satisfy a heightened standard of judicial review. It failed to do so.

The appellate court noted that the district court's decision contained "several critical legal errors," and was "a bit hard to follow; standing and merits inquiries [were] mixed in with the court's evaluation of irreparable harm." Most of these errors were based in the district court's finding that there were ranges outside the City that the plaintiffs could use.

On standing, the Seventh Circuit found the court below erred in finding that the Second Amendment protected an individual right, not an organizational one. Further, the availability of range training outside the City neither defeated the organizational plaintiffs' standing nor had "anything to do with merits of the claim. The question is not whether or how easily Chicago residents can comply with the range-training requirement by traveling outside the city; the plaintiffs are not seeking an injunction against the range-training requirement. The pertinent question is whether the Second Amendment prevents the City Council from banning firing ranges everywhere in the city." This led to the error in mis-characterizing the plaintiffs' injury (having to travel outside the City to receive training) as not implicating the Second Amendment at all, or at most, only minimally. "This reasoning assumes that the harm to a constitutional right is measured by the extent to which it can be exercised in another jurisdiction. That's a profoundly mistaken assumption." Moreover, in a facial constitutional challenge, as was the case here (where the violation inhered in the terms of the statute, not its application), individual application facts did not matter. Once standing was established, the plaintiffs' personal situations became irrelevant.

On whether the training and target practice came within the scope of the Second Amendment, both of the Supreme Court's rulings (*D.C. v. Heller* and *McDonald*) suggested that broadly prohibitory laws restricting the core Second Amendment right were categorically unconstitutional. The City's evidence in this case fell far short of establishing that target practice was "wholly outside the Second Amendment as it was understood when incorporated as a limitation on the States." Addressing the appropriate standard of review to be used, the court held that reliance on First Amendment jurisprudence was most apt, and selected a more rigorous showing than intermediate scrutiny, if not quite strict scrutiny. The City had the burden of establishing a strong public-interest justification for its ban, one that showed "a close fit between the range ban and the actual public interests it serve[d], and also that the public's interests [were] strong enough to justify so substantial an encumbrance on individual Second Amendment rights." Because the City produced no empirical evidence whatsoever and rested its entire defense of the range ban on speculation about accidents and thefts, the firing-range ban was "wholly out of proportion to the public interests the City claim[ed] it serve[d]." *Ezell v. City of Chicago*, No. 10–35252011 WL 2623511 (7th Cir. July 06, 2011).

Public Official's Privacy Rights – Internal Report

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