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# ZONING AND PLANNING LAW REPORT

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## IN THE ZONE OF FIRE: LAND USE RESTRICTIONS FOR SHOOTING RANGES, GUN DEALERS, AND SIMILAR USES

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Shooting ranges often raise concerns among surrounding property owners about noise, safety, and lead contamination, and they tend to be viewed as an undesirable land use, especially when located near residential areas. Although zoning and planning regulations have long been implemented at the local level to address these problems, the recent Supreme Court decisions in *District of Columbia v. Heller* and *McDonald v. Chicago* clarified the reach of the Second Amendment and brought many local ordinances under renewed scrutiny. This article will discuss the present state of Second Amendment jurisprudence as it relates to zoning and land use, as well as providing information about other constitutional and statutory limits on the use of zoning to control the development of firearms-related property uses.

### Zoning and the Second Amendment

In 2008, the Supreme Court held in *District of Columbia v. Heller* that municipalities may not ban an entire class of firearms or effectively make it impossible for individuals to use lawful weapons for self defense. Applying this rule, the Court struck down the District of Columbia's ban on handguns as well as its requirement that any lawful firearms stored in the home be disassembled or bound by a trigger lock.<sup>2</sup> Two years later, in *McDonald v. Chicago*, the Court held that the Second Amendment applies to the states through incorporation, thereby clarifying that *Heller* extended to the states.<sup>3</sup> Since these rulings, a growing body of case law has begun to address the particular issues that arise with regard to municipal gun control laws and the Second Amendment, including zoning and land use regulations restricting firearms-related property uses such as shooting ranges and dealerships.

Relying on *Heller* and *McDonald*, the lower courts have applied a two-pronged test to Second



Amendment challenges, asking first whether the challenged law burdens conduct traditionally protected by the Second Amendment, and if it does, then whether the government's justifications for regulating the activity are reasonable and narrowly tailored. While the standard of review is usually described as intermediate scrutiny or a slightly more rigorous test, the exact level of scrutiny depends on how important the regulated behavior is under a historical understanding of the Second Amendment and on how severely the challenged restrictions burden this behavior.<sup>4</sup> Regulations restricting the right to bear arms outside the home are generally considered to be more acceptable than those that affect the ability to provide for self-defense and defense of the home, for example. Regarding the historical treatment of these types of firearms restrictions, one court explained that "as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense."<sup>5</sup>

The Seventh Circuit applied *Heller* to zoning

laws in the 2011 case *Ezell v. Chicago* and concluded that the city's ban on shooting ranges violated the Second Amendment when considered in conjunction with the city's requirement of range training as a prerequisite to lawful gun ownership. The ban on firing ranges amounted to an effective ban on gun ownership, the court found, and the regulations could not be saved by the availability of firing ranges located within 50 miles of the city limits.<sup>6</sup>

Following the Seventh Circuit's decision in *Ezell*, Chicago enacted a comprehensive regulatory scheme for shooting ranges that included licensing and construction requirements, as well as zoning and environmental regulations. The plaintiffs again challenged these restrictions under the Second Amendment, and the District Court for the Northern District of Illinois issued a lengthy decision in 2014 that upheld parts of the city's regulatory framework and struck down other provisions. Of particular note, the court struck down the zoning provision that limited shooting ranges to manufacturing districts, which effectively banned them from about 90% of available commercial land. This regulation, the court found, failed to meet the heightened standard of review under the Second Amendment because it did not have a "close fit" with the public interests it purportedly served, namely preventing crime caused by thieves seeking to steal firearms and limiting environmental damage caused by lead-contaminated air released from firing ranges. As the court explained, the city failed to present any data or empirical evidence linking shooting ranges to criminal activity or tending to show that the zoning restrictions would reduce those criminal impacts, and it similarly failed to provide any evidence that its lead contamination concerns were realistically addressed by the zoning law. The other zoning restriction challenged by the plaintiffs, which required shooting ranges to be at least 500 feet away

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from residential zones and other sensitive uses, placed a meaningfully lesser burden on the exercise of the plaintiffs' Second Amendment rights than the manufacturing zone restriction, and was therefore not required to meet the "close fit" standard of review. The court noted that various precedents have upheld firearms restrictions in sensitive areas and found that the 500 foot separation provision survived intermediate scrutiny.<sup>7</sup>

Challenges to Chicago's gun laws have considered zoning restrictions on firearms dealers as well as shooting ranges. The Northern District of Illinois struck down the city's zoning restrictions on firearms sales in 2014, concluding that the Second Amendment encompasses the right to acquire as well as to possess firearms. As the court concluded in that case: "Chicago's ordinance goes too far in outright banning legal buyers and legal dealers from engaging in lawful acquisitions and lawful sales of firearms, and at the same time the evidence does not support that the complete ban sufficiently furthers the purposes that the ordinance tries to serve."<sup>8</sup> In another case from the Northern District of Illinois decided in 2013, the court found that even if the sale of firearms is not directly protected by the Second Amendment, firearms dealers could still establish standing to challenge restrictions on the sale of guns on behalf of their customers.<sup>9</sup>

Not all of the lower federal courts have agreed with the Seventh Circuit's expansive view of the Second Amendment, suggesting instead that *Heller* may leave more room for municipal gun control laws. A federal district court in West Virginia, for example, opined that "the Seventh Circuit's reasoning seems to begin with the proposition that the right to bear arms for protection means there is also a right to acquire and maintain proficiency. This reasoning is flawed and also seems to ignore early laws limiting where firearms could be

discharged." The case involved a county decision requiring a shooting range to shut down after stray bullets were found in a nearby residential area, and the court held that the permit revocation was lawful and constitutional. Interestingly, the court also found support for its position by looking to the First Amendment as an analog, explaining that "each citizen generally has the right to speak regarding public issues. This does not mean that each citizen has a corresponding right to maintain a school teaching people how to speak properly, regardless of safety or zoning issues."<sup>10</sup>

Regardless of exactly how the intermediate scrutiny test is interpreted, various cases have made it apparent that zoning and other local laws will frequently pass constitutional muster under the Second Amendment. In 2013, for example, a federal court in California upheld an ordinance that banned gun shops within 500 feet of any residential district, school, existing gun store, or liquor store. The court concluded that the ordinance passed the intermediate scrutiny test required by *Heller* because it was based on important governmental objectives and there was a reasonable fit between the ordinance and those objectives. As the court explained, "while keeping a gun store 500 feet away from a residential area does not guarantee that gun-related violence or crimes will not occur, the law does not require a perfect match between the Ordinance's means and objectives, nor does the law require the Ordinance to be foolproof."<sup>11</sup> Restrictions on the locations of gun dealerships were also upheld in an Eighth Circuit case even though the plaintiff argued that the regulations effectively eliminated the ability of firearms dealers to relocate within the city limits. The court found it sufficient that the city had prepared a list of properties that were appropriately zoned for retail gun sales and noted that "Even when obligated under a constitutional standard to provide reasonable alternatives, a municipal-

ity is not obligated to ensure all interested parties are able to occupy a location for any purpose at any given time.”<sup>12</sup>

### Other zoning concerns and constitutional issues affecting firearms uses

Aside from challenges under the Second Amendment, regulations restricting the location of shooting ranges and firearms dealers are subject to the same constitutional and statutory limitations as other zoning and licensing laws. Challenges involving the use of property for gun sales and training have been based on the First Amendment, equal protection, procedural due process, preemption, environmental laws, and the zoning enabling acts. These issues are considered below.

#### FIRST AMENDMENT

It has been argued in some cases that the operation of shooting ranges and other firearms uses is an expressive activity entitled to protection under the First Amendment, but these claims have generally been dismissed. The Fourth Circuit denied a gun club’s request for a preliminary injunction against a cease and desist order in a 2014 case, for example, because it was “not convinced that the plaintiffs’ operation of a gun range is expressive speech.” As the court concluded, the gun club failed to identify any cases holding that the operation of a shooting range constituted protected speech, and even if such precedents existed, the cease and desist order would satisfy the constitutional test for commercial speech because “it was within the power of the government to issue the orders, the orders further the substantial government interest of public safety, and the orders are unrelated to the incidental restriction on the plaintiffs’ First Amendment freedoms.”<sup>13</sup> Several other cases have also doubted the expressive quality of operating shooting ranges or gun dealerships.<sup>14</sup> In the colorful words of the Wisconsin Supreme

Court: “we do not see how running the range or pulling the trigger comes within a country mile of the constitutional protection [of free speech].”<sup>15</sup>

#### EQUAL PROTECTION

Zoning ordinances can lawfully treat shooting ranges and firearms dealers differently from other types of commercial uses provided that the difference in treatment is supported by some reasonable basis. This is usually a fairly easy standard to meet given the particular adverse impacts typically associated with firearms uses. As the Eighth Circuit explained in a 2006 case, there is an “obvious difference in implications for public safety between gun shops and other retail establishments” and “the implications for public safety warrant regulating and zoning firearms dealerships differently than other retail establishments and gun shows, neither of which stores weapons or ammunition for extended periods of time.”<sup>16</sup> A case decided by the Ninth Circuit in 2013 similarly rejected a gun shop’s equal protection claims, noting that the plaintiffs’ were “simply wrong” in arguing that they were similarly situated to other retailers that did not sell weapons and finding that they failed to meet any of the criteria to successfully allege a “class of one” violation.<sup>17</sup>

#### PROCEDURAL DUE PROCESS

As with other zoning laws, restrictions on shooting ranges and gun dealers must comply with the statutory and constitutional requirements for procedural due process, including notice and hearings,<sup>18</sup> findings,<sup>19</sup> and other zoning procedures.<sup>20</sup> In a Tennessee case decided in 2007, for example, the court held that a resolution reclassifying the property owners’ land to allow a shooting range was void *ab initio* because “the unexplained, nine-fold alteration to the ‘rezoning request’ was so substantial that there should have been a resubmission of the proposed amendment to the planning

commission.” As the court explained, the commission’s failure to provide notice and hold a new public hearing after expanding the reclassification from ten acres to ninety acres was fatal to its jurisdiction.<sup>21</sup>

It should be noted that procedural due process claims raised in relation to shooting ranges and similar uses have sometimes been dismissed by the federal courts on the basis that the right to operate such businesses is not a protected liberty or property interest.<sup>22</sup> Federal court review may also be refused based on the more stringent standard of review applied to federal due process claims. The District Court for the Southern District of West Virginia, for instance, dismissed a 2014 case based on the lack of any protected property interest in a revoked shooting range permit. The court found that claim also failed on the merits given the county’s lengthy investigation into complaints about the shooting range prior to the permit revocation and the limited duration of the cease and desist order. Under the circumstances, the court concluded that the county’s actions simply could not be considered arbitrary or outrageous enough to satisfy the minimum requirements for federal due process protection.<sup>23</sup>

#### *FIREARMS PROTECTIONS UNDER STATE CONSTITUTIONAL LAW*

Some state constitutions contain specific provisions relating to the right to hunt or the right to bear arms, and these provisions may be interpreted independently from and with more force than the Second Amendment.<sup>24</sup> The Supreme Court of Delaware, for example, struck down a regulation in 2014 that prohibited residents from carrying guns in the common areas of public housing facilities, finding that the restriction was overbroad under the state constitution and unnecessarily burdened the right to bear arms.<sup>25</sup>

#### *STATE LAW PREEMPTION*

Comprehensive firearms statutes have been enacted in some states that preempt local governments from regulating shooting ranges and similar activities, but these laws often include specific and limited authorizations for local governments to impose zoning and licensing controls.<sup>26</sup> The Michigan Sport Shooting Range Act, for example, does not expressly preempt local regulations and it has been held that it does not occupy the field or “free sport shooting range operators from local zoning controls regarding construction of new facilities.”<sup>27</sup>

Preemption sometimes arises in the context of publicly owned property. In a California case decided in 2002, for instance, the court held that the county was not preempted from banning gun shows on county-owned property because the state had not intended to occupy the entire field of gun show regulation. Although the gun show statutes regulated the sale of guns at firearms shows, and therefore implicitly acknowledged the legality of such sales, the court nevertheless concluded that the county law did not directly conflict with the statute. The court also emphasized that implied preemption would have been inappropriate given that significant local interests were at play and “the costs and benefits of making firearms more available through gun shows to the populace of a heavily urban county such as Los Angeles may well be different than in rural counties, where violent gun-related crime may not be as prevalent.”<sup>28</sup>

Cases involving firearms restrictions on public property have arisen in a variety of other circumstances. Another California case addressed whether a county had the authority to ban the possession and use of guns in county parks, and the court held that the regulation was not preempted by the state’s firearms licensing law.<sup>29</sup> In 2015 a Florida court similarly rejected a preemption claim asserted

against a state university policy that prohibited firearms in university housing.<sup>30</sup>

Preemption can also arise with regard to the siting of publicly-owned shooting ranges, depending on the different statutory siting authority given to different public agencies and government bodies. In a California decision reviewing this sort of regulatory conflict, the Los Angeles city charter was found to preempt the city's zoning provisions with respect to the construction of a firearms training facility on the grounds of the city's police academy, and the city council was therefore not required to obtain a conditional use permit.<sup>31</sup> A different result was reached, on the other hand, in a Connecticut case where a city had established a police firearms training facility on property located in another town. The court held that the facility was subject to the town's zoning ordinances just as it would have been if it were owned by a private entity, and the city had no right to an exemption from the town's zoning laws simply because it called the range a "municipal facility."<sup>32</sup>

Although much less common than state law preemption challenges, federal preemption has also been raised as a basis for blocking the municipal regulation of firearms uses. An Indiana court, for example, found that a city was not preempted under the federal Protection of Lawful Commerce in Arms Act from bringing a public nuisance suit against a gun manufacturer, because the city adequately alleged that the manufacturer had violated statutes regarding the sale and distribution of firearms.<sup>33</sup>

#### STATE AND FEDERAL ENVIRONMENTAL LAWS

State and federal environmental laws are another consideration that often comes into play in cases involving shooting ranges. The construction or modification of shooting ranges may trigger environmental review procedures under federal<sup>34</sup> or state law,<sup>35</sup> for example, and

claims have also been brought against shooting ranges under federal environmental laws such as the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA). The Second Circuit concluded in a 1993 decision, for instance, that lead shot and clay targets were hazardous wastes that constituted an imminent and substantial threat to health and the environment under RCRA.<sup>36</sup> On the other hand, a 2008 case from the Northern District of Illinois dismissed RCRA and CWA claims brought against a government-operated firing range that alleged that spent lead bullets constituted a nuisance and had damaged the surrounding land and waters. The court found that the plaintiff failed to provide sufficient evidence of standing, although it acknowledged that with a proper showing, injuries to aesthetic interests such as "enjoying wildlife and the natural environment, can be sufficient to confer standing."<sup>37</sup>

#### EXCLUSION OF FIREARMS USES

Although a complete ban on shooting ranges or other firearms uses throughout a municipality will likely lead to Second Amendment problems under *Heller*, regulations that prohibit firearms uses in some but not all districts have been found to be valid and constitutional.<sup>38</sup> As a California case explained, because "the operation of a firearm dealership is a commercial enterprise, there is a rational basis for confining that operation to commercially zoned areas. In addition, because dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas, schools, liquor stores and bars."<sup>39</sup>

#### DISCRETIONARY AUTHORITY UNDER THE ZONING ENABLING ACTS AND ORDINANCES

Firing ranges and gun dealers are frequently required to obtain special use permits, variances, or other zoning approvals prior to com-

mencing operations.<sup>40</sup> These procedures are designed to take into account the likely impacts of the proposed use on nearby properties, including possible adverse effects as well as mitigating conditions and any other criteria listed in the ordinance. The courts have found a wide variety of public health and safety concerns to be relevant in this regard, including noise,<sup>41</sup> dangers caused by stray bullets and other safety hazards,<sup>42</sup> and concerns about lead contamination.<sup>43</sup> Where reasonable, the courts have also approved of various types of permit conditions intended to limit the negative impacts of firearms uses.<sup>44</sup> Decisions as to whether to permit a shooting range may also be required to be consistent with the municipality's comprehensive plan.<sup>45</sup>

Whether zoning permits or other approvals are required for shooting ranges often depends on the definitions provided in the zoning ordinance, and contentions are therefore frequently raised on this issue. A New York court, for example, held that it was arbitrary and capricious for a zoning board to determine that a gun club was not a conditionally permitted "club" because the definition of club should have been interpreted broadly to encompass "any association which may reasonably be considered a nonprofit membership club[.]"<sup>46</sup> In a Pennsylvania case, the determination similarly hinged on whether an indoor shooting range could be classified as a conditionally permitted "recreational facility." The appellate court held that this was an appropriate zoning designation because a shooting range reasonably fell within the ordinance's definition of recreational facilities as "establishment[s] offering recreation, sports, games of chance, skill or leisure time activities to the general public or private membership for a fee or charge."<sup>47</sup> Other cases have addressed the appropriateness of classifying shooting ranges as "camps,"<sup>48</sup> "recreational uses,"<sup>49</sup> and "vocational training."<sup>50</sup>

Property owners in some cases have sought

to avoid permit requirements and other restrictive zoning provisions by arguing that their proposed shooting ranges qualified as permissible accessory uses. While this tactic has sometimes been successful,<sup>51</sup> most courts have rejected attempts to classify shooting ranges as accessory uses where the principal use of the property was for residential or agricultural use.<sup>52</sup> Shooting ranges and other similar uses may also be exempted from zoning requirements if they can demonstrate that they are lawful nonconforming uses.<sup>53</sup>

## Conclusion

Although zoning can help to ensure that firearms-related property uses are developed in accordance with municipal planning policies and local gun control priorities, municipalities must be careful to stay within the bounds of the Second Amendment and to avoid creating undue obstacles that would violate residents' freedom to bear arms. Local governments must also be aware of the restrictions on firearms regulations contained in state law and local zoning procedures, and they must of course respect principles of due process and equal protection. Despite the various constitutional and statutory considerations, however, gun control has emerged as an increasingly important public concern, and zoning provides an effective opportunity for local governments to proactively manage the development of shooting ranges, gun dealers, and other firearms-related land uses.

## ENDNOTES:

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<sup>2</sup>*District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). In 2015, the Supreme Court declined certiorari

to review an ordinance in the City of Highland Park, Illinois, that banned the manufacturing, selling, and possession of assault weapons. *Friedman v. City of Highland Park, Ill.*, 136 S. Ct. 447, 193 L. Ed. 2d 483 (2015). Some lower courts have upheld these sorts of municipal assault weapon bans, and the Court's decision not to review the case may be an indication that these laws are valid and constitutional under *Heller*, which explicitly recognized a historical and long-standing pattern of regulating "dangerous and unusual weapons" that are "not typically possessed by law-abiding citizens for lawful purposes." See, e.g., *Wilson v. County of Cook*, 2012 IL 112026; see also Tanvi Misra, *The Supreme Court Just Left the Door Open for Local Bans on Assault Weapons*, *The Atlantic Citylab*, Dec. 7, 2015, <http://www.citylab.com/crime/2015/12/scotus-supreme-court-chicago-assault-weapon-ban-highland-park/419196/>.

<sup>3</sup>*McDonald v. Chicago*, 561 U.S. 3025 (2010).

<sup>4</sup>See, e.g., *Nichols v. Harris*, 17 F. Supp. 3d 989 (C.D. Cal. 2014) ("the Ninth Circuit formally adopted a two-step inquiry to be applied in Second Amendment challenges. First, the court "asks whether the challenged law burdens conduct protected by the Second Amendment" as historically understood. Second, if the challenged law does burden protected conduct, or if the lack of historical evidence in the record renders the court unable to say that the Second Amendment's protections did not apply to the conduct at issue, the court "must assume" that the plaintiff's Second Amendment rights "are intact" and "apply an appropriate level of scrutiny."); *Wilson v. County of Cook*, 2012 IL 112026 ("The threshold question we must consider is whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee. . . . If the government can establish that the challenged law regulates activity falling outside the scope of the second amendment right, then the regulated activity is categorically unprotected. However, "if the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected—then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights."").

<sup>5</sup>*Sundowner Ass'n v. Wood County Com'n*, 2014 WL 3962495 (S.D. W. Va. 2014).

<sup>6</sup>*Ezell v. City of Chicago*, 651 F.3d 684 (7th

Cir. 2011).

<sup>7</sup>*Ezell v. City of Chicago*, 70 F. Supp. 3d 871 (N.D. Ill. 2014).

<sup>8</sup>*Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928 (N.D. Ill. 2014).

<sup>9</sup>*Kole v. Village of Norridge*, 941 F. Supp. 2d 933 (N.D. Ill. 2013). See also David B. Kopel, *Does the Second Amendment Protect Firearms Commerce?*, 127 *Harv. L. Rev. F.* 230, Apr. 11, 2014, <http://harvardlawreview.org/2014/04/does-the-second-amendment-protect-firearms-commerce/>.

<sup>10</sup>*Sundowner Ass'n v. Wood County Com'n*, 2014 WL 3962495 (S.D. W. Va. 2014).

<sup>11</sup>*Teixeira v. County of Alameda*, 2013 WL 4804756 (N.D. Cal. 2013).

<sup>12</sup>*Koscielski v. City of Minneapolis*, 435 F.3d 898 (8th Cir. 2006).

<sup>13</sup>*Sundowner Ass'n v. Wood County Com'n*, 2014 WL 3962495 (S.D. W. Va. 2014).

<sup>14</sup>See, e.g., *Perkins v. City of St. Paul*, 982 F. Supp. 652 (D. Minn. 1997) ("This case is different from those involving adult bookstores or theaters, where the product being sold is protected by the First Amendment. Here, the product, firearms, does not receive such protection."); *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1st Dist. 1997) ("The laws at issue here. . . do not regulate speech; they regulate the activity of selling firearms. Appellants appear to claim that because sales of weapons are commercial in nature, or because sales generally involve some verbal communication, sales of weapons are entitled to the protections accorded "commercial speech." Appellants misconstrue the nature of commercial speech in the First Amendment context.").

<sup>15</sup>*Town of Richmond v. Murdock*, 70 Wis. 2d 642, 235 N.W.2d 497 (1975).

<sup>16</sup>*Koscielski v. City of Minneapolis*, 435 F.3d 898 (8th Cir. 2006).

<sup>17</sup>*Teixeira v. County of Alameda*, 2013 WL 4804756 (N.D. Cal. 2013).

<sup>18</sup>See, e.g., *Hartland Sportsman's Club, Inc. v. Town of Delafield*, 35 F.3d 1198 (7th Cir. 1994) (rejecting the gun club's procedural due process claim regarding its amended permit, which included stricter permit conditions than the original permit, because the parties had already attended a series of hearings and were "abundantly familiar with the relevant issues,

and the notice clearly stated that the reason for the hearing was to consider alterations to the 1968 conditional use permit. The formal nature of the December hearing [was] also apparent from the face of the document.”); *Nazarco v. Zoning Com’n of Town of East Lyme*, 50 Conn. App. 517, 717 A.2d 853 (1998) (reversing the zoning commission’s approval of a skeet shooting range because the published notice of the public hearing was inadequate and misleading); *Osage Conservation Club v. Board of Sup’rs of Mitchell County*, 611 N.W.2d 294 (Iowa 2000) (holding in favor of the club, which operated a rifle and pistol range adjacent to the plaintiffs’ land, because the board of supervisors approved the plaintiffs’ request for rezoning without holding a special hearing or publishing notice in the local newspaper, as required by state law).

<sup>19</sup>See, e.g., *Clifford v. Harrison County Bd. of Adjustment*, 2007 WL 29426 (Ky. Ct. App. 2007) (reversing the grant of a conditional use permit to operate a sportsman’s club/shooting range because the board of adjustment failed to make findings of fact sufficient for a reviewing court to conduct a meaningful review, thus violating procedural due process requirements); *Mumford v. Chief Edward Tolin*, 2012 WL 4108882 (Me. Super. Ct. 2012) (remanding the shooting range permit application because the municipality relied on inadequate findings); *White Bear Rod and Gun Club v. City of Hugo*, 388 N.W.2d 739 (Minn. 1986) (reversing the city’s decision to deny an amendment to the gun club’s special use permit to relax the noise restrictions because although the city was not required to issue formal findings of fact, it failed to meet the minimum requirement that it record the reasons for its decision in more than a conclusory manner).

<sup>20</sup>See, e.g., *WSG Holdings, LLC v. Bowie*, 429 Md. 598, 57 A.3d 463 (2012) (reversing the grant of a special permit for a firing range and office building because the board improperly conducted an on-site inspection of the property that violated various procedural and open meetings law requirements); *Schweihofer v. Zachary*, 103 Mich. App. 792, 303 N.W.2d 896 (1981) (upholding the grant of a special use permit to operate a trap shooting range because the board of zoning appeals made its decision after receiving a written recommendation from the planning board, as required by local law).

<sup>21</sup>*Edwards v. Allen*, 216 S.W.3d 278 (Tenn. 2007).

<sup>22</sup>See, e.g., *Edwards v. Allen*, 216 S.W.3d 278 (Tenn. 2007) (holding that a violation of a state procedural law was insufficient to support a substantive due process violation regarding new conditions placed on the sportsman’s club and even if it was, the claim was barred because the club failed to pursue state remedies or show that state remedies would be inadequate); *Perkins v. City of St. Paul*, 982 F. Supp. 652 (D. Minn. 1997) (“Minnesota law simply does not provide a protected property interest in a firearms license.”).

<sup>23</sup>*Sundowner Ass’n v. Wood County Com’n*, 2014 WL 3962495 (S.D. W. Va. 2014).

<sup>24</sup>See, e.g., *Orion Sporting Group, LLC v. Board of Supervisors of Nelson County*, 68 Va. Cir. 195, 2005 WL 3579067 (2005) (holding that there was no right to sporting clays under the state constitution because it only protected the right to hunt game, not objects such as sporting clays).

<sup>25</sup>*Doe v. Wilmington Housing Authority*, 88 A.3d 654 (Del. 2014).

<sup>26</sup>See, e.g., *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1st Dist. 1997) (“The City of Lafayette enacted an ordinance requiring persons seeking to sell, transfer or lease weapons to obtain land use permits and police permits in addition to the licenses already required by state and federal law. . . . We find that local governments are not generally excluded by state law from imposing additional licensing requirements on firearm dealers.”); *Peter Garrett Gunsmith, Inc. v. City of Dayton*, 98 S.W.3d 517, 19 A.L.R.6th 865 (Ky. Ct. App. 2002) (“we conclude the trial court correctly ruled that the statute did not prohibit zoning regulations that affected gun shops. . . . While the Bellevue and Dayton zoning ordinances regulate the locations where gun shop businesses may operate, they do not “occupy any part of the field of regulation of the transfer, ownership, possession, carrying or transportation of firearms, ammunition, or components of firearms or combinations thereof.” These ordinances do not represent regulations in the field of firearm regulation prohibited by KRS 65.870. Rather, they represent regulations in the field of land use, a field of regulation that cities have authority to control.”); *Conrady v. Lincoln County*, 260 Or. App. 115, 316 P.3d 413 (2013), review denied, 355 Or. 567, 329 P.3d 770 (2014) (OR App. 12/18/2013) (holding that the county’s conditional use permit requirement

for “firearms training facilities” was not precluded by three state statutes concerning the preemption of local firearms regulations; the legislative history was ambiguous and, were the court to hold otherwise and interpret the statutes to prohibit all zoning restrictions on shooting ranges, such a decision would lead to the absurd result where local governments could not prevent the establishment of commercial shooting ranges next to homes or schools or other sensitive uses); *Town of Avon v. Oliver*, 2002 WI App 97, 253 Wis. 2d 647, 644 N.W.2d 260 (Ct. App. 2002) (holding that the state statute “does not prohibit municipalities from enacting and enforcing zoning ordinances that apply to sport shooting ranges, and that [the statute] does not prohibit the Town of Avon from applying its zoning ordinance to Oliver’s sport shooting range unless that was a lawful use under the ordinance as of [the date of the statute’s enactment].”).

<sup>27</sup>*Fraser Twp. v. Linwood-Bay Sportsman’s Club*, 270 Mich. App. 289, 715 N.W.2d 89 (2006).

<sup>28</sup>*Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853, 118 Cal. Rptr. 2d 746, 44 P.3d 120 (2002).

<sup>29</sup>*Calguns Foundation, Inc. v. County of San Mateo*, 218 Cal. App. 4th 661, 160 Cal. Rptr. 3d 698 (1st Dist. 2013).

<sup>30</sup>*Florida Carry, Inc. v. University of Florida*, 180 So. 3d 137, 325 Ed. Law Rep. 1118 (Fla. 1st DCA 2015).

<sup>31</sup>*Simons v. City of Los Angeles*, 72 Cal. App. 3d 924 (1977). See also *Simons v. City of Los Angeles*, 72 Cal. App. 3d 924, 140 Cal. Rptr. 484 (2d Dist. 1977) (holding that the county had the power to site and build a law enforcement firearms training building with immunity from local zoning regulations, but that there was no such immunity under the county commissioners act for the facility’s outdoor shooting ranges because the county’s authority to override local regulations was limited to buildings and indispensable ancillary land uses, and because the outdoor shooting ranges were not indispensable to the building’s use for indoor training and support); *Oswald v. Westchester County Park Commission*, 234 N.Y.S.2d 465 (Sup 1962), order aff’d, 18 A.D.2d 1139, 239 N.Y.S.2d 862 (2d Dep’t 1963) (finding that the county had statutory authority to build a sportsman’s center on county land without regard to the town’s zoning requirements).

<sup>32</sup>*City of New London v. Zoning Bd. of Appeals of Town of Waterford*, 29 Conn. App. 402, 615 A.2d 1054 (1992).

<sup>33</sup>*Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. Ct. App. 2007).

<sup>34</sup>See, e.g., *Guam Pres. Trust v. Gregory*, 41 ELR 20221, Civ. No. 10-00677 (D. Haw. 2011) (refusing the defendants’ request to remand the plaintiffs’ NEPA and NHPA claims for further consideration of possible locations for the firing range complex).

<sup>35</sup>See, e.g., *Fickewirth v. County of Placer*, 2006 WL 2567998 (Cal. App. 3d Dist. 2006), unpublished/noncitable (reversing the county’s decision to issue a mitigated negative declaration for a hunting club under the California Environmental Quality Act because an environmental impact report was required to address noise concerns, and upholding the trial court’s order requiring more information to be provided on the issue of lead shot contamination, although suggesting that there would be no significant adverse effect requiring an EIR based on the evidence in the record); *Association for a Cleaner Environment v. Yosemite Community College Dist.*, 116 Cal. App. 4th 629, 10 Cal. Rptr. 3d 560 (5th Dist. 2004), as modified, (Mar. 4, 2004) (“we conclude that the closure and removal of the MJC Range, the cleanup activity, and the transfer of shooting range activity and classes to another range are all part of a single, coordinated endeavor. As a result, those activities constitute the whole of the action that we consider for purposes of determining the existence of a “project” for purposes of CEQA. . . . Thus, the District’s activities are a “project” and should have been the subject of an initial environmental study.”).

<sup>36</sup>*Connecticut Coastal Fishermen’s Ass’n v. Remington Arms Co., Inc.*, 989 F.2d 1305 (2d Cir. 1993).

<sup>37</sup>*Pollack v. U.S. Dept. of Justice*, 2008 WL 4286577 (N.D. Ill. 2008), aff’d, 577 F.3d 736 (7th Cir. 2009). See also *Simsbury-Avon Preservation Soc., LLC v. Town of Simsbury*, 2007 WL 1677550 (Conn. Super. Ct. 2007) (rejecting plaintiffs’ private nuisance claims because the preservation society did not own affected land, the individual property owners had presented no evidence that lead from the shooting range had interfered with their property interests, and because, under a state statute, the shooting range was immune from civil liability for noise or noise pollution); *Hale v. Ward County*,

2014 ND 126 (2014) (“We agree with the district court’s analysis on remand that Robert Hale’s use of County Road 12 once or twice a month to visit friends does not demonstrate the range was specially injurious to him in a manner different from other members of the public. . . so as to entitle him, as a private person, to maintain an action for a public nuisance.”); *Kruger v. State*, 2013 WL 781135 (Tenn. Ct. App. 2013) (finding that the appellees had to demonstrate special injuries from a proposed shooting range in order to have standing).

<sup>38</sup>See, e.g., *Downie v. Liverpool Tp. Trustees*, 1988 WL 49413 (Ohio Ct. App. 9th Dist. Medina County 1988) (holding that the denial of an application to operate a shooting range in an industrial district was not arbitrary or capricious because the ordinance was not targeted only at shooting ranges but rather excluded all non-industrial activities that would be hazardous to the public health, safety, or welfare).

<sup>39</sup>*Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1st Dist. 1997).

<sup>40</sup>See, e.g., *Lamartina v. City of New Melle*, 2014 U.S. Dist. LEXIS 176222, No. 4:13CV1458 RLW (E.D.Mo. 2014) (holding that the plaintiff, the owner of a retail gun shop and firearm range, failed to exhaust available remedies after the city issued a cease and desist order because the plaintiff filed, but then withdrew, a conditional use permit application and did not take the requisite steps to re-apply or to seek an order of inverse condemnation through the state courts); *Smolarz v. Colon Tp.*, 2005 WL 927144 (Mich. Ct. App. 2005) (finding that the township had statutory authorization to enact a zoning ordinance requiring a special permit for hunt clubs, gun clubs and firing ranges).

<sup>41</sup>See, e.g., *Crooked Creek Conservation and Gun Club, Inc. v. Hamilton County North Bd. of Zoning Appeals*, 677 N.E.2d 544 (Ind. Ct. App. 1997) (upholding the board’s denial of the gun club’s application for a special exception to allow it to build a shooting range on property zoned for residential and agricultural because the board had significant discretion and because it relied on substantial evidence that the shooting range would be a public health hazard and that the noise would impair property values); *Borglum v. Waseca County Bd. of Comm’rs*, 2008 WL 5135781 (Minn. App. 2008) (upholding the planning commission’s

decision denying the property owner’s conditional use permit application for an armored vehicle recreational facility and shooting range based on its findings concerning setbacks, noise, safety, and property values); *Gowan v. Ward County Comm’n*, 2009 ND 72 (upholding the denial of a rezoning request to allow a residential subdivision on land in close proximity to a law enforcement firing range and a private shooting and archery range because the county made extensive and detailed findings that a buffer would not mitigate concerns regarding hampered recreational activities and harm to wildlife or alleviate noise problems); *Coppechan Fish & Game Club v. Zoning Hearing Board*, 32 Pa. Commw. 415 (1977) (upholding the zoning board’s denial of a special exception for the fish and game club to build a three-shotgun trap range because the new range would be much closer to nearby residential uses than the club’s existing one-shotgun trap range, there was no buffer, and the noise from the proposed trap range would likely cause substantial detrimental impacts on the community’s health and safety).

<sup>42</sup>See, e.g., *Greene v. Hamblen County Bd. of Zoning Appeals*, 2009 WL 3614562 (E.D. Tenn. 2009) (upholding denial of variance for shooting range because it was not akin to permitting a “swimming pool or tennis court” and because the community reported problems with noise, explosions, and shrapnel escaping the property and killing livestock); *Johnson v. Stafford Planning and Zoning Com’n*, 1993 WL 28877 (Conn. Super. Ct. 1993) (reversing the grant of a special permit for a skeet shooting range because it failed to comply with provisions in the NRA Range Manual, which had been incorporated by reference into the zoning regulations for shooting ranges); *County of St. Clair v. Caseyville Rifle & Pistol Club, Inc.*, 406 Ill. App. 3d 1226, 376 Ill. Dec. 181, 998 N.E.2d 723 (5th Dist. 2011), for text, see, 2011 WL 10483265 (Ill. App. Ct. 5th Dist. 2011) (granting the county’s request for a preliminary injunction prohibiting operation of the rifle and pistol club close to an Air Force runway because the county “sufficiently alleged that the location of the Rifle Club’s shooting range places at risk human lives on the ground and in the air and jeopardizes the health, safety, and welfare of the community.”); *Kolstad v. Rankin*, 179 Ill. App. 3d 1022, 128 Ill. Dec. 768, 534 N.E.2d 1373 (4th Dist. 1989) (upholding a preliminary injunction ordering defendant to refrain from operating a private

firing range on his property because the trial court reasonably found an infringement on the residential neighbors' use of their property due to noise and the safety danger posed by errant bullets and shells).

<sup>43</sup>See, e.g., *Star Vector Corp. v. Town of Windham*, 146 N.H. 490, 776 A.2d 138 (2001)) (upholding denial of developer's site plan application to build an indoor shooting range because the planning board relied on substantial evidence regarding the dangers of lead contamination).

<sup>44</sup>See, e.g., *Neighbors for Responsible Action v. County of Butte*, 2005 WL 1232430 (Cal. App. 3d Dist. 2005), unpublished/noncitable, (May 24, 2005) (upholding the board's grant of a use permit where the imposed conditions included restricting the trap range to 8 hours per week, restricting shotgun load and shot sizes, restricting occupancy to 60 people and 15 cars, prohibiting shooting matches, contests, and other special events, limiting law enforcement use of the facility, and requiring the club to adhere to its own rules); *Janiak v. Planning Bd. of Town of Greenville*, 159 A.D.2d 574, 552 N.Y.S.2d 436 (2d Dep't 1990) (upholding the approval of petitioner's site plan for a private hunting reserve on the condition that the only weapons to be used on the property would be shotguns, because the board found the restriction necessary to address the danger posed to adjacent landowners from stray bullets); *Bucks Cove Rod & Gun Club, Inc. v. Texas Tp. Zoning Hearing Bd.*, 2011 WL 10878954 (Pa. Commw. Ct. 2011) (holding that a temporary use permit fee for an event at a private shooting range was an unreasonable and invalid revenue generating tax because the township did not provide any additional services justifying the fee); *In re Kostenblatt*, 161 Vt. 292, 640 A.2d 39 (1994) (holding that the board could not impose conditions related to the number of shooters, shots, or vehicles because the only express limits in the conditional use permit concerned the days and months of operation); *Wilson v. Henry County Bd. of Zoning Appeals*, 69 Va. Cir. 255, 2005 WL 3557838 (2005) (concluding that the board had no authority to attach as a condition of a special use permit for a shooting range that the road providing access to the property had to be restricted to one-way traffic because "there is no statutory authorization for the BZA to regulate traffic under the guise of a special use permit.").

<sup>45</sup>See, e.g., *Fickewirth v. County of Placer*,

2006 WL 2567998 (Cal. App. 3d Dist. 2006), unpublished/noncitable (upholding the board's permit for a shooting range because it properly considered the goal of the general plan to preserve agricultural land and encourage uses that were compatible with agriculture and there was no abuse of discretion in finding that the project was compatible with the general plan); *Little v. Winborn*, 518 N.W.2d 384 (Iowa 1994) (reversing the rezoning of the shooting association's land from A-1 to A-2 in order to build a shooting house and a target house because rezoning the parcel would have constituted spot zoning and because it would have been inconsistent with the goal of the comprehensive plan to "identify and seek means to protect prime agricultural land from scattered development" and the purpose of the zoning district to "protect agricultural land from encroachment of urban development").

<sup>46</sup>*Willow Wood Rifle & Pistol Club, Inc. v. Town of Carmel Zoning Bd. of Appeals*, 115 A.D.2d 742, 496 N.Y.S.2d 548 (2d Dep't 1985).

<sup>47</sup>*Aldridge v. Jackson Tp.*, 983 A.2d 247 (Pa. Commw. Ct. 2009).

<sup>48</sup>See, e.g., *Georgia Outdoor Network, Inc. v. Marion County, Ga.*, 652 F. Supp. 2d 1355 (M.D. Ga. 2009) (holding that the definition of "outdoor recreation camps" was sufficiently specific and not impermissibly vague).

<sup>49</sup>See, e.g., *Fickewirth v. County of Placer*, 2006 WL 2567998 (Cal. App. 3d Dist. 2006), unpublished/noncitable (holding that the project was compatible with the agricultural zoning because a "hunting club" qualified as a permitted "rural recreation" use, and other uses such as RV parking, a snack bar, a meeting hall, and a retail store were accessory to the hunting club; but finding that the hunting club's proposed facilities for raising game birds qualified as a "chicken/turkey ranch," not a permitted "game preserve," and therefore required a conditional use permit); *Platform I Shore, LLC v. Village of Lincolnwood*, 2014 IL App (1st) 133923, 384 Ill. Dec. 641, 17 N.E.3d 214 (App. Ct. 1st Dist. 2014) (holding that a shooting range was permitted as of right as it fell under the classification of a "health club or private recreation" as defined in the ordinance); *Byrd v. Franklin County*, 765 S.E.2d 805 (N.C. Ct. App. 2014), review on additional issues denied, 771 S.E.2d 293 (N.C. 2015) and decision rev'd, 368 N.C. 409, 778 S.E.2d 268 (2015) (agreeing with petitioners that shooting ranges did not fall within the "open air games"

classification because the ordinance defined this category of uses as “fitness and recreational sport centers” and if the county had intended shooting ranges to be included it could have included this in the code description of the classification); *In re Scheiber*, 168 Vt. 534 (holding that a conditional use permit was not required for a shooting range consisting of an earthen berm and small platform because the use was not substantial enough to constitute a “private club,” despite being used by the local chapter of the American Pistol and Rifle Association, because meetings were infrequent and usually did not involve shooting; and it was not a “private outdoor recreation use” because it was not sufficiently extensive to be considered analogous to specified private outdoor recreation uses such as yacht clubs, golf courses, and skating rinks).

<sup>50</sup>*Fort v. County of Cumberland*, 761 S.E.2d 744 (N.C. Ct. App. 2014), review denied, 367 N.C. 798, 766 S.E.2d 688 (2014) (a facility designed to provide weapons training and firearm safety primarily to the government, military, law enforcement, and corporate organizations did not constitute a “vocational” school under the ordinance and because the ordinance failed to specifically prohibit the use of land as a firing range, it was allowed as a use by right).

<sup>51</sup>See, e.g., *Boone County Area Plan Com’n v. Kennedy*, 560 N.E.2d 692 (Ind. Ct. App. 1990) (granting summary judgment in favor of the plaintiffs, who sought to construct a private recreational skeet and trap range, because the proposed range was found to be an accessory, rather than primary, use); *Aldridge v. Jackson Tp.*, 983 A.2d 247 (Pa. Commw. Ct. 2009) (deferring to the board of supervisors’ determination that a retail gun and supply store, a club room, a gunsmith, and training rooms were accessory uses to an indoor shooting range and were allowed under the shooting range’s conditional use permit).

<sup>52</sup>See, e.g., *Diguglielmo v. Greenwich Planning and Zoning Bd. of Appeals*, 1994 WL 65313 (Conn. Super. Ct. 1994) (“The ZBA’s finding that the dressmaking shop was retail in nature, that the antique gun shop contained tools not customarily found in a home, and that the plaintiffs’ occupations were not incidental to the dwelling’s residential use are amply supported by the record.”); *Morris v. Franklin Tp. Zoning Hearing Bd.*, 2014 WL 1273899 (Pa. Commw. Ct. 2014), for text, see, 87 A.3d 398 (Pa. Commw. Ct. 2014) (refusing

to allow the storage of explosives to be considered an accessory use to a canine training facility); *Orion Sporting Group, LLC v. Board of Supervisors of Nelson County*, 68 Va. Cir. 195, 2005 WL 3579067 (2005) (holding that sporting clays did not qualify as an accessory use customarily incidental to a game preserve because the proposed sporting clays operation “is a use that is equal to or superior to the hunting preserve or the corporate training facility because it is undertaken the entire year as an alternative to the hunting preserve.”); *Town of Avon v. Oliver*, 2002 WI App 97, 253 Wis. 2d 647, 644 N.W.2d 260 (Ct. App. 2002) (“We conclude that in order to establish that his sport shooting range is an accessory use to the principal use of general farming, Oliver must show that the sport shooting range is reasonably associated with general farming, but minor in significance compared to general farming (‘incidental’), and is commonly and by long practice established as reasonably associated with general farming in the area of the property (‘customary’).”).

<sup>53</sup>See, e.g., *Brandon v. Litchfield Zoning Bd. of Appeals*, 53 Conn. L. Rptr. 4, 2011 WL 6318536 (Conn. Super. Ct. 2011) (upholding the zoning board of appeals’ determination that the shooting range was a lawful nonconforming use, even though the plaintiffs presented substantial evidence that it was an unlawful expansion of a nonconforming use, because the decision was fairly debatable); *Milerton Properties Associates v. Town of North East Zoning Bd. of Appeals*, 227 A.D.2d 562, 643 N.Y.S.2d 169 (2d Dep’t 1996) (“Since the petitioners commenced operation of their rod and gun club in accordance with the Board’s. . . determination prior to the amendment of the zoning code, they may have a vested right to continue operating the rod and gun club and to maintain the clubhouse in the manner allowed under the Board’s determination. However, any right the petitioners may have to continue operating the rod and gun club or the clubhouse may not be extended or enlarged.”); *Residents Defending Their Homes v. Lone Pine Hunters’ Club, Inc.*, 155 N.H. 486 (2007) (holding that the state statute protecting shooting ranges from retroactive laws did not preclude the town from denying site plan approval for the shooting range because the statute only applied to shooting ranges that were in compliance with all relevant laws prior to the statute’s enactment, and the shooting range in this case did not meet this require-

ment); *Land v. Village of Wesley Chapel*, 206 N.C. App. 123, 697 S.E.2d 458 (2010) (holding that the property owner's shooting range was a lawful nonconforming use because the prior zoning ordinance did not specifically prohibit shooting ranges and holding that there had been no "material alteration" that would have rendered the shooting range an illegal nonconforming use); *Sec. Security Services Northwest, Inc. v. Jefferson County*, 144 Wash. App. 1002, 2008 WL 1723629 (Div. 2 2008)(holding

that the nonconforming use of a security and firearms training business was limited to activities that were undertaken on the property prior to the county's enactment of zoning regulations, and remanding the case for additional findings regarding the property's prior uses and any lawful extensions of those uses).

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