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Moving Targets: Protecting a Michigan Township's Zoning Regulations Caught in Constitutional Crosshairs

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The journey of *Oakland Tactical Supply, LLC v. Howell Township* presents a compelling illustration of what happens when a case encounters a landmark shift in constitutional doctrine amid litigation. Our firm had the unique opportunity to defend Howell Township as its regulation and classification on commercial indoor and outdoor shooting ranges became a test case for the application of the Supreme Court's revision of Second Amendment jurisprudence in *New York State Rifle & Pistol Association v. Bruen*.

The Beginning: Direct Aim at Reasonable Zoning Regulations

In 2018, firearms retailer Oakland Tactical Supply, LLC, leased property in Howell Township's Agricultural-Residential District with plans to construct an outdoor shooting range offering target shooting at distances up to 1,000 yards. It quickly learned that such a commercial use was not permitted in that zoning district due to the mixed residential and agricultural uses spreading across various tracts of land. Oakland Tactical sought a text amendment to allow such uses throughout the district without sufficient safeguards. After the Township declined the proposed text amendment, Oakland Tactical and several individual plaintiffs filed a federal lawsuit generally claiming the ordinance violated their Second Amendment right to train at long-distances with various firearms.

At the time of filing, the applicable framework was a two-step framework akin to analyzing First Amendment free speech challenges. Courts determined whether the regulated activity fell within the scope of the Second Amendment's protections. If it did, courts applied means-ends scrutiny to assess the constitutionality of the regulation.

Under this framework, the Township first argued that zoning regulations governing the location of commercial shooting ranges did not substantially burden the core Second Amendment right to possess firearms for self-defense, particularly since the Township permitted shooting ranges in other districts and allowed target practice on private property throughout the Township. The standard was particularly conducive to dismissal at the pleading stage because of the vast amount of unregulated shooting that was possible within the Township on private property or within commercial established facilities that could be constructed and operated within four districts of the Township. Judge Bernard Friedman agreed and summarily dismissed the lawsuit. Oakland Tactical appealed.

The Doctrinal Earthquake: *Bruen* Changes Everything

Time on appeal favored Oakland Tactical. In June 2022, while Oakland Tactical's appeal from Judge Friedman's dismissal was pending in the Sixth Circuit, the Supreme Court completely changed the analysis when deciding *Bruen*. The Court rejected the means-ends balancing test that had guided lower courts for over a decade. In its place, the Court established a new test focused exclusively on constitutional text and history:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

Adding to the complexity of this constitutional upheaval, our lead attorney Chris Patterson and his wife Cassandra welcomed their first son into the world just a week before the Bruen decision was issued—leaving Chris with little time to ponder which was more life-altering: a landmark decision resulting in a remand with 30 days to address the impact of *Bruen*, or the arrival of a newborn. Such is the reality of legal practice, where significant cases unfold alongside the milestones of our personal lives and the demands of other matters on our dockets. As any seasoned litigator knows, the practice of law rarely pauses for life's most important moments, and the most consequential legal developments often arrive at the least convenient times. Fortunately, we had already established a valuable network of Second Amendment resources during this pivotal shift in constitutional doctrine.

Overnight, our litigation strategy changed to meet the higher competing demands of *Bruen*. Arguments about the reasonableness of the Township's zoning scheme or the interests underlying the land use regulations—previously central to our defense—became less significant at the threshold inquiry. Instead, two entirely new questions became paramount: (1) whether the "plain text" of the Second Amendment covered the construction and use of a 1,000-yard outdoor shooting range; and (2) if so, whether historical evidence demonstrated that zoning restrictions on shooting ranges were consistent with traditional firearm regulations.

The Sixth Circuit recognized this seismic shift and vacated Judge Friedman's dismissal, remanding the case with instructions to reconsider Oakland Tactical's claims under the new *Bruen* framework.

Navigating Uncharted Waters: First Impressions of *Bruen*

On remand, we faced the challenge of being among the first cases arguing about ancillary rights to apply Bruen in the context of local land use regulation. With no roadmap from other courts, we immediately recognized it was an issue of first impression and developed a workable standard and theory that was beyond just a remedy for the facts presented so that any reviewing court would understand the intersection of zoning authority and Second Amendment rights in the post-*Bruen* landscape.

Our strategy intentionally focused first and primarily on the "plain text" inquiry rather than diving deep into historical analogues. This strategic choice recognized that the textual argument provided the most straightforward path in such a multifaceted case, potentially allowing courts to resolve the matter without navigating the more complex and less-charted territory of historical Second Amendment analysis that *Bruen* now called for. It also provided for additional time before that issue was potentially presented in the Township's case, allowing new decisions to explore and define the second step of *Bruen*.

We argued that while the Second Amendment's text guarantees the right to "keep and bear Arms," it says nothing about the right to construct a commercial shooting range at a particular location. We emphasized that the Township's Zoning Ordinance

did not prohibit individuals from possessing firearms, carrying them for self-defense, or even practicing with them on private property. Rather, it only regulated where commercial shooting ranges could be located within the Township, and even allowed for it in four land use districts.

Judge Friedman again agreed with our approach, holding the Second Amendment does not guarantee a right to a shooting range as proposed by Oakland Tactical and the individual plaintiffs. Oakland Tactical appealed again.

The Constitutional Divide: A Split Decision

On appeal, the case produced a significant split opinion that highlighted the difficulty courts faced in applying Bruen's new framework. In a 2-1 decision, the Sixth Circuit affirmed Judge Friedman's dismissal, but the panel disagreed about how to apply *Bruen*'s first step.

Writing for the majority, Judge Helene White acknowledged that "at least some training is protected" by the Second Amendment, but concluded that the plaintiffs' specific proposed conduct—"(1) engaging in commercial firearms training in a particular part of the Township; and (2) engaging in long-distance firearms training within the Township"—was not protected by the Second Amendment's plain text. These proposed courses of conduct were not necessary to effectuate the core right as recognized in *Heller*, Judge White reasoned.

Judge Raymond Kethledge dissented, opining that once it is recognized that training with firearms is protected by the Second Amendment, the Township should have been required to justify its zoning restrictions through historical evidence rather than having the case dismissed at the plain-text stage. That would have been a burdensome task, to say the least.

This split in this case highlighted a fundamental tension in applying *Bruen*: How should courts define the "proposed course of conduct" at the plain-text stage? Should they frame it narrowly (as the majority did) or broadly (as the dissent advocated)? The answer to this question often determines whether a case proceeds to historical analysis or ends at the plain-text inquiry—a crucial distinction in Second Amendment cases now. Oakland Tactical sought *en banc* rehearing.

Petition for Certiorari: The Final Chapter

After the Sixth Circuit denied rehearing *en banc*, Oakland Tactical petitioned the Supreme Court for certiorari, arguing that the Sixth Circuit's decision created a circuit split with the Third and Seventh Circuits' treatment of similar zoning restrictions on shooting ranges pre-*Bruen*. The petition presented the question of "[w]hether the Second Amendment presumptively protects against restrictions burdening the right to train with firearms commonly possessed for lawful purposes."

In our opposition, we emphasized that the panel majority had already answered that question in the affirmative by recognizing that some training with firearms is protected under the Second Amendment. We argued that the actual dispute was over whether the plain text extends to training in a particular location or at extremely long distances.

In November 2024, the Supreme Court denied certiorari, bringing this six-year legal journey to a close. The denial left intact both the Sixth Circuit's recognition that some firearms training is protected by the Second Amendment and its conclusion that zoning regulations on where commercial ranges may be located do not infringe on that right.

Lessons Learned: Litigating *Oakland Tactical Supply*

In our view, litigating this case provided several valuable lessons for attorneys navigating evolving constitutional doctrines:

First, prepare to adapt quickly when fundamental changes in legal frameworks occur. While we began with traditional arguments about the reasonableness of zoning regulations, we had to pivot to historical research and textual analysis with the new *Bruen* framework.

Second, when helping shape the application of new constitutional tests, focus on providing courts with clear and workable standards that are beyond just the facts presented in your case.

Third, recognize that being a case of first impression brings both challenges and opportunities. While we had few precedents to guide us, we also had the opportunity to help shape how courts would apply *Bruen*. Embrace the clean slate!

Fourth, recognize the value of academic and expert consultation in constitutional cases of first impression. When courts are interpreting new doctrinal frameworks, perspectives from scholars and specialists can provide critical theoretical foundations.

Fifth, remember that constitutional litigation often has impacts far beyond the immediate parties. This case helped clarify for municipalities throughout the Sixth Circuit the extent to which their zoning authority intersects with Second Amendment protections post-*Bruen*.

Finally, appreciate that constitutional litigation—like life—rarely follows a conventional timeline.

Looking Ahead: *Oakland Tactical Supply* as Precedent

For now, the law in the Sixth Circuit is settled: zoning ordinances that regulate where commercial shooting ranges may be located, without preventing individuals from training with firearms altogether, should be upheld. Whether the Supreme Court will eventually take up this question in another case remains to be seen, but this newly established precedent will continue to influence how courts, advocates, and local governments understand the Second Amendment in the post-*Bruen* era.