IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM DRUMMOND, GPGC LLC, and SECOND AMENDMENT FOUNDATION, INC. Plaintiffs, v. ROBINSON TOWNSHIP and MARK DORSEY, Robinson Township Zoning Officer, in his official and individual capacities, Defendants	)	Civil Action No. 2:18-cv-1127-MRH

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

AND NOW COME Defendants, by and through counsel, Trisha A. Gill, Esquire, and Sean R. Riley, Esquire and the law firm of Litchfield Cavo, LLP, and file the following Memorandum of Law in Opposition to Motion for Preliminary Injunction as follows:

I. FACTUAL BACKGROUND

This matter arises out of a dispute between Plaintiff, William Drummond ("Drummond"), and Robinson Township ("the Township"), relating to Drummond's desire to operate a commercial gun shop/ shooting range on property not zoned for such use. At all times material hereto, the operation of commercial shooting ranges in Robinson Township has been an allowed use within both *Special Conservation* and *Industrial* zoning districts. *See, Ex. A,* at Art. VI §602 Art. II, §§202, Table 202A; §209, Table 209A (2017). Commercial shooting ranges must be located on lots greater than 50 acres. See *Ex. A,* Art. III §304. The Zoning Ordinance

distinguishes between commercial shooting ranges and smaller shooting ranges owned or operated by non-profit conservation/sportsman's organizations. See *Ex. A*, Art. VI §602; Art. III §311. Sportsman's Clubs have been an allowed use in areas zoned as *Agricultural* districts, *Special Conservation* districts, and *Interchange Business Development* districts. See *Id.* Art. II, §§202-03; 207-08 (2017).

On February 19, 2018, the Township implemented Resolution 08-2018 which amended the Ordinance relating to Sportsman's Clubs. See Exhibit B.[1] First, the "Definitions" Section was amended to define "Sportsman's Club" as a nonprofit entity formed for conservation of wildlife or game, and to provide members with opportunities for hunting, fishing or shooting. See Ex C. Second, §311 would limit outdoor shooting activities to pistol range, skeet shoot, trap and skeet, and rim-fire rifles. *Id*. Third, Table 208(A) was amended so that the operation of a Sportsman's Club would be Conditional Use rather than Permitted Use. *Id*.

Plaintiffs aver that on December 17, 2017, William Drummond entered into a lease for a 265-acre parcel located in Robinson Township that was zoned as an *Interchange Business Development* district. Drummond avers that he intended to operate a gun club, sale of firearms, and operating a shooting range. The gun range would permit patrons to shoot ordinary firearms of all kind in common use for traditional lawful purposes, including pistols, shotguns, and center-fire rifles up to .50 caliber. Plaintiffs do not aver that Mr. Drummond made any effort to pursue such a business venture within any *Special Conservation* or *Industrial* districts.

[1] As discussed in detail below, pursuant to Pennsylvania's pending ordinance doctrine, "zoning ordinances that are pending before the City Council are treated as law even if they are not yet adopted." *Berger v. Cushman & Wakefield of Pennsylvania, Inc.*, 2014 WL 2892408, at *3 (E.D. Pa. 2014).

On March 15, 2018, Drummond submitted an Application for Zoning Permit, representing that he intended to operate a Sportsman's Club on the premises. See Ex. D. The Application made no mention of operating a center-fire rifle range, or selling guns or ammunition. On April 9, 2018, The Board of Supervisors enacted Ordinance 01-2018. Plaintiffs have stipulated that there was no defect in the enactment thereof. See Ex. E, at p. 6:10-21.

On April 13, 2018, Defendant Dorsey advised Drummond that his Application was denied, as it did not indicate that the club was organized as a not-for profit entity. See Ex. F. Dorsey invited Drummond to resubmit his application with the appropriate documentation, but Drummond chose not to do so. Drummond did not file an appeal with the Zoning Hearing Board. Instead, he attempted to appeal the decision directly to the Court of Common Pleas, but subsequently withdrew for lack of jurisdiction for failing to file a timely appeal to the Zoning Hearing Board. See Exhibits G, H and Exhibit E at pp. 4:22-5:1. This suit followed.

II. STANDARD OF REVIEW

In determining whether to grant a preliminary injunction, a court must consider whether the party seeking the injunction has satisfied four factors: "1) a likelihood of success on the merits; 2) he or she will suffer irreparable harm if the injunction is denied; 3) granting relief will not result in even greater harm to the nonmoving party; and 4) the public interest favors such relief." *Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 109 (3d Cir. 2010). See also Fed.R.Civ.P. 65. Moreover, where the requested preliminary injunction "is directed ... at providing mandatory relief, the burden on the moving party is particularly heavy." *Trinity Industries, Inc. v. Chicago Bridge Iron Co.*, 735 F.3d 131, 139 (3d Cir.2013). Mandatory injunctions should be issued only sparingly. *United States v. Price*, 688 F.2d 204, 212 (3d

Cir.1982). Plaintiffs' Motion for Preliminary Injunction does not seek to maintain the status quo, but to provide mandatory relief in allowing an exception to the zoning ordinance. Plaintiffs cannot meet the heavy burden they face in pursuing the "drastic and extraordinary" remedy of a preliminary injunction.

III. ARGUMENT

A. Plaintiffs are not Likely to Succeed on the Merits.

1. This Matter is not Ripe for Adjudication

"The basic rationale of the ripeness requirement is to prevent a court, through avoidance of premature adjudication, from entangling itself in abstract disagreements." *Chalfont Bus. Owners All. v. Borough of Chalfont*, 1997 WL 224980, at *1 (E.D. Pa. 1997) (citing *Acierno v. Mitchell*, 6 F.3d 970, 974 (3d Cir. 1993). (citing *Abbott Labs. v. Gardner*, 387 U.S. 136 (1967). "In short, ripeness is a question of timing that addresses 'when ... it [is] appropriate for a court to take up the asserted claim.'" *Id.*; *see also, Action Alliance of Senior Citizens v. Heckler*, 789 F.2d 931, 940 (D.C. Cir. 1986). "Courts have generally imposed a particularly stringent standard for ripeness in cases involving challenges to land-use or zoning decisions." *Mercer Outdoor Advert., LLC v. City of Hermitage, Pa.*, 2013 WL 6498266, at *3 (W.D. Pa. 2013). In disputes arising from zoning decisions, "the zoning hearing board must make a determination on the plaintiff's application before the § 1983 claims are ripe, even if the land-use decision may cause constitutional injury." *Id.* at 4 (citing *Taylor Inv., Ltd. v. Upper Darby Twp.*, 983 F.2d 1285, 1287 (3d Cir. 1993)). Here, Drummond failed to appeal the denial of his Application for Zoning Permit to the Zoning Hearing Board. As such, Plaintiffs' Second and Fourteenth

Amendment claims are not ripe for adjudication, and therefore Plaintiffs cannot succeed on the merits.

2. Plaintiffs Lack Standing

The Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010). In the wake of *Heller* and *McDonald*, courts have held that the Second Amendment also protects various "ancillary rights necessary to the realization of the core right to possess a firearm for self-defense." *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017), *cert. denied sub nom. Teixeira v. Alameda Cty.*, Cal., 138 S. Ct. 1988 (2018). "As with purchasing ammunition and maintaining proficiency in firearms use, the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms." *Id*. (quoting *Ezell I*, 651 F.3d at 704); *see also Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014).

In the case at hand, Plaintiffs seek to bring Second Amendment claims on behalf of their prospective customers and members in Pennsylvania. "[V]endors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function." *Teixeira*, 873 F.3d at 678 (quoting *Craig v. Boren*, 429 U.S. 190, 195, (1976)). Courts have held that a prospective operator of a gun store would have derivative standing to assert the subsidiary right to acquire arms on behalf of his potential customers only if that gun storeowner shows that residents are unable to otherwise exercise their Second Amendment rights to purchase firearms.

Id. at 678-79. (citing *Carey v. Population Servs., Int'l*, 431 U.S. 678, 683, (1977); *Ezell I*, 651 F.3d at 693, 696).

In *Teixeira*, a prospective gun shop owner brought an action arguing that a county ordinance prohibiting gun stores within 500 feet of residential districts, schools, other gun stores, or establishments that sold liquor violated the Second Amendment and the Equal Protection Clause. *Id*. at 673-76. The Ninth Circuit Court of Appeals held that the averments in the complaint were legally deficient to assert a Second Amendment claim on behalf of prospective customers because he did not adequately allege in his complaint that the customers/county residents could not purchase firearms within the county. Rather, the facts demonstrated that residents could freely purchase firearms within the county. *Id*. at 678–79.

Here, Drummond's Permit did not indicate that he intended to engage in commercial sales of firearms or ammunition on the subject premises. On the contrary, he merely applied to operate a Sportsman's Club. *See Exhibit D*; see also *Exhibit A*, at Art. XI § 602 – SPORTSMAN'S CLUBS. As such, Mr. Drummond was never denied permission to operate a for-profit business. Even if he had, just like the complaint in *Teixeira*, Plaintiffs' Complaint fails to aver that Plaintiffs' customers and members cannot purchase firearms elsewhere within the county. Moreover, in contrast to the ten gun shops in Alameda County emphasized by the Ninth Circuit, it appears that Washington County presently has at least eighteen gun shops.[2] See Ex. I. Accordingly, Count I of Plaintiffs' Complaint fails to state a Second Amendment claim on behalf of potential customers.

[2] Given Washington County's population of approximately 200,000 and Alameda County's population of 1.6 million, the Washington County market is approximately fourteen times as saturated with gun shops as Alameda County.

With respect to Plaintiffs' claims that the Ordinance improperly restricts Plaintiffs' prospective customers and clients from training with center-fire rifles (Count II),[3] at least one court has suggested that the Second Amendment does not extend to the right to operate a gun range. *See Sundowner Ass'n v. Wood County Comm'n*, 2014 WL 3962495, at *9-10 (S.D. W. Va. 2014). Since Plaintiffs' Complaint is devoid of any averment that Plaintiffs' prospective customers/members are unable to train with center-fire rifles elsewhere in the County, Plaintiffs' Complaint fails to state a claim on behalf of potential customers and/or members, and therefore Plaintiffs are unlikely to succeed on the merits thereof.

3. Count I and II of Plaintiffs' Complaint Fail to State a Claim Under the Second Amendment.

Plaintiff's Complaint also appears to suggest that the Second Amendment grants them a right to sell firearms. The Third Circuit Court of Appeals has interpreted *Heller* as setting-forth a two-pronged approach to Second Amendment Challenges. First, the court evaluates whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. *Cf. United States v. Stevens*, 533 F.3d 218, 233 (3d Cir.2008), *aff'd* —— U.S. ——, 130 S.Ct. 1577, 176 L.Ed.2d 435 If it does not, our inquiry is complete. If it does, we evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid. *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *Binderup v. Attorney Gen. United States of Am.*, 836 F.3d 336, 356 (3d Cir. 2016) (citing *Marzzarella* as establishing a two-step framework for analyzing both facial and as-applied Second Amendment challenges), *cert. denied sub nom. Sessions v. Binderup*, 137 S. Ct. 2323

[3] Again, it is undisputed that Mr. Drummond did not apply to operate a center-fire rifle range.

(2017), *and cert. denied sub nom. Binderup v. Sessions*, 137 S. Ct. 2323 (2017). Applying the foregoing analysis, the Ninth Circuit held that "the Second Amendment does not confer a freestanding right, wholly detached from any customer's ability to acquire firearms, upon a proprietor of a commercial establishment to sell firearms. Commerce in firearms is a necessary prerequisite to keeping and possessing arms to self-defense, but the right of gun users to acquire firearms legally is not coextensive with the right of a particular proprietor to sell them." *Teixeira*, 873 F.3d at 682. (citing *Heller*, 554 U.S. at 626-27).

Plaintiffs' alleged rights to sell firearms to customers and to sell range time for center-fire rifles are not freestanding – they are contingent upon their customers' right to obtain such services. The Complaint does not aver that any customer or member's ability to fire center-fire rifles at a range have been limited or restricted in any way. Accordingly, Mr. Drummond and GPGC, LLC's individual Second Amendment claims are legally deficient, and therefore Plaintiffs are unlikely to succeed thereon.

4. Count III of the Complaint Fails to State a Claim Under the Second Amendment

Count III of Plaintiff's Complaint challenges the Ordinance's modification of the classification of "Sportsman's Clubs" from permitted to conditional use. The Complaint offers no explanation as to how this modification infringes on the Second Amendment rights of Plaintiffs' prospective customers and members, or Plaintiffs themselves, beyond a conclusory averment. Nor does the Complaint aver that this designation in any way affected the denial of Mr. Drummond's Application for Zoning Permit. "A conditional use is nothing more than a special exception that falls within the jurisdiction of the municipal governing body rather than the zoning hearing board." *In re AMA/Am. Mktg. Ass'n, Inc.*, 142 A.3d 923, 934 (Pa. Commw.

Ct. 2016) (citing *In re Thompson*, 896 A.2d 659 (Pa. Commw. Ct. 2006)). "As in the case of special exceptions, the uses that may be established or maintained as conditional uses are prescribed by the zoning ordinance and the standards to be applied to the grant or denial of those uses are set forth in the zoning ordinance." *Id*. (citing *In re Thompson*, 896 A.2d 659). "A special exception (or conditional use) is not an exception to the zoning ordinance, but rather a use to which the applicant is entitled provided the specific standards enumerated in the ordinance for the special exception (or conditional use) are met by the applicant." *Id*. As such, Count III fails to plead a cause of action under the Second Amendment, and therefore Plaintiffs are unlikely to succeed thereon.

5. Count IV of the Complaint Fails to State a Claim Under the Fourteenth Amendment Based on the Definition of Sportsman's Clubs as Non-Profit Entities.

Courts are reluctant to overturn governmental action on the ground that it denies equal protection of the laws. Courts will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the only conclusion that can be reached is that the legislature's actions were irrational. *Congregation Kol Ami v. Abington Twp.*, 309 F.3d 120, 133 (3d Cir. 2002) (quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979). *One Three Five, Inc. v. City of Pittsburgh*, 951 F. Supp. 2d 788, 820 (W.D. Pa. 2013) (quoting *Vacco v. Quill*, 521 U.S. 793, 799 (1997). This is particularly so in the context of zoning plans. "[T]he federal courts have given states and local communities broad latitude to determine their zoning plans. Indeed, land use law is one of the bastions of local control, largely free of federal intervention. *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981), "The power of local governments to zone and control land use

is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities.... [T]he courts generally have emphasized the breadth of municipal power to control land use." Land use ordinances that do not classify by race, alienage, or national origin, will survive an attack based on the Equal Protection Clause if the law is "'reasonable, not arbitrary' and bears 'a rational relationship to a (permissible) state objective.'" *Congregation Kol Ami*, 309 F.3d at 133 (quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8 (1974)).

Plaintiffs' claim the Zoning Ordinance "singles-out" Sportsman's Clubs as the only uses within *Interchange Business Development* districts that are not permitted to operate for profit. However, Sportsman's Clubs are not restricted to *Interchange Business Development* districts. They are also permitted in Agricultural districts, as well as Special Conservation districts, along with other non-profit uses. See *Ex. A.*, at §202-03.

Further, it bears noting that Plaintiffs' Complaint does not express an interest in opening "Sportsman's Club," which is defined as having been "formed for conservation of wildlife or game." See *Ex. A*, § 602. Rather, Plaintiffs seek to open a "commercial shooting range," which is classified under "Commercial Recreation, Intensive". See *Id.*, at § 602 – COMMERCIAL RECREATION, INTENSIVE. Plaintiffs' Complaint is devoid of any averments challenging this designation under the Equal Protection Clause. Accordingly, this claim is legally deficient, and therefore Plaintiffs are unlikely to succeed on the merits.

6. Count V of Plaintiffs' Complaint Fails to State a Substantive Due Process Claim

Drummond avers substantive due process violations claiming Defendants persuaded him to delay the submission of his application, enacted Ordinance 01-2018, and then denied his

application. "In order to justify substantive due process protection, the legal right to a permit must exist before the local agency denies the permit application—the claim of entitlement must come from 'an existing legislative or administrative standard.'" *Acierno v. Cloutier*, 40 F.3d 597, 619 (3d Cir. 1994) (citing *Dean Tarry Corp. v. Friedlander*, 826 F.2d 210, 213 (2d Cir. 1987). Pursuant to Pennsylvania's pending ordinance doctrine, "zoning ordinances that are pending before the City Council are treated as law even if they are not yet adopted." *Berger v. Cushman & Wakefield of Pennsylvania, Inc.*, 2014 WL 2892408, at *3 (E.D. Pa. 2014) (citing *Casey v. Zoning Hearing Bd. of Warwick Tp.*, 328 A.2d 464, 467 (Pa. 1974) ("When there has been a 'sufficient public declaration' of an intent to amend the existing zoning ordinance, […] the pending amendment governs the issuance of such permits"). "An ordinance is 'pending' when the City Council 'has resolved to consider a particular scheme of rezoning and has advertised to the public its intention to hold public hearings on the rezoning.'" *Id*. (quoting *Casey*, 328 A.2d at 467; *Boron Oil Co. v. Kimple*, 284 A.2d 744, 747 (Pa. 1971)).

As noted above, the Township issued a Resolution qualifying the Ordinance as a pending ordinance on February 19, 2018, which was well before Drummond submitted his application. Plaintiffs have stipulated that there was no defect in the procedure followed by the Township in enacting the amendment to the Zoning Ordinance. See Exhibit E at p. 5:6-11.

Even if the Complaint had sufficiently pleaded a legal right, the conduct at issue does not shock the conscience. The "shocks the conscience test" in land use cases was addressed by the Supreme in *Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). The "criteria used to identify what is fatally arbitrary differ depending on whether [a legislative act] or a specific act of a government officer is at issue." *Id.* at 846. Cases "dealing with abusive

executive action have repeatedly emphasized that only the most egregious official conduct [is] 'arbitrary in the constitutional sense.' " *Id.* (*quoting Collins v. Harker Heights,* 503 U.S. 115, 129, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992)). "[T]he cognizable level of executive abuse of power [is] that which shocks the conscience." *Id.* "While the measure of what is conscience shocking is no calibrated yard stick, it does ... 'poin[t] the way.' " *Id.* at 847 (*quoting Johnson v. Glick,* 481 F.2d 1028, 1033 (2d Cir.1973)).

In *United Artists Theatre Circuit, Inc. v. Twp. of Warrington,* 316 F.3d 392 (3d Cir.2003), the Third Circuit considered the plaintiff's claims that Warrington Township and its Board of Supervisors had "complicated and delayed approval of United Artists' development plan, and thereby allowed a competitor to beat [it] in a race to build a movie theater." *Id.* at 394. The Court found that these allegations did not satisfy the "shocks the conscience" test. Adopting this test "[brought] the Court into line with several other Courts of Appeals that have ruled on substantive due process claims in land-use disputes" and "also prevent[ed the Court] from being cast in the role of a 'zoning board of appeals.' " *Id.* at 402 (*quoting Creative Env'ts, Inc. v. Estabrook,* 680 F.2d 822, 833 (1st Cir.1982)). "Land use decisions are matters of local concern, and such disputes should not be transformed into substantive due process claims based only on allegations that government officials acted with 'improper' motives.' " *Id.* (internal citation omitted). *Southersby Dev. Corp. v. Borough of Jefferson Hills,* 2010 WL 1576465, at *2–3 (W.D. Pa. 2010).

Plaintiffs' substantive due process claim is essentially the same as *United Artists'* claim. It is legally insufficient and will not succeed on the merits.

7. Count VI of Plaintiffs' Complaint Fails to State a Claim Under the Fourteenth Amendment Based on Plaintiffs' Inability to Operate a Commercial Shooting Range on the Subject Property.

The right "to follow a chosen profession free from unreasonable governmental interference comes within both the liberty and property concepts of the Fifth and Fourteenth Amendments." *McCool v. City of Philadelphia*, 494 F. Supp. 2d 307, 325 (E.D. Pa. 2007) (quoting *Piecknick v. Commonwealth*, 36 F.3d 1250, 1259 (3d Cir. 1994). However, "it is the right to pursue a calling or occupation, and not the right to a specific job that is protected by the Fourteenth Amendment." *Id*. "Thus, the Constitution protects only against state actions that threaten to deprive persons of the right to pursue their chosen occupation." *Id*. State actions that exclude a person from one particular job or job opening are not actionable." *Id*. (quoting *Bernard v. United Township High Sch. Dist. No. 30*, 5 F.3d 1090, 1092 (7th Cir. 1993)).

Plaintiffs do not allege they were deprived of the right to pursue their occupation, but rather a single business opportunity. As such, this claim is legally deficient and they are not likely to succeed on the merits of their claim.

B. Plaintiffs will not Suffer Irreparable Harm

"In order to demonstrate irreparable harm the [movant] must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial." *Hadeed v. Advanced Vascular Res. of Johnstown, LLC*, 2016 WL 7176658, at *3 (W.D. Pa. 2016) (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989)). In the absence of exceptional circumstances, economic loss does not qualify as irreparable harm. *Id*. (citing *Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 255 (3d Cir. 2011)). And "[a]n inability to precisely measure financial harm does not make that harm irreparable or

immeasurable." *Acierno v. New Castle County*, 40 F.3d 645, 655 (3d Cir. 1994). Thus, "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Id.* (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). In addition, more than a mere risk of irreparable harm must be demonstrated; "[t]he requisite for injunctive relief has been characterized as a clear showing of immediate irreparable injury, or a presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights." *Id.*

The Second Amendment does not establish either a constitutional right to open a business selling firearms or a constitutional right to operate a commercial shooting range. Further, Plaintiffs' fail to identify a single individual customer or member who would be affected, nor can they – commercial shooting ranges are plainly permitted to operate elsewhere within the township. To the extent Plaintiffs may claim to have suffered economic injury, as set forth above, economic loss does not constitute irreparable harm. Further, the relief sought in their Proposed Form Order would not cure the harms alleged in Plaintiffs' Motion. The Motion seeks to enjoin the enforcement of §311(D), §601 and Table 208A, but does not seek to enjoin §602 – COMMERCIAL RECREATION, INTENSIVE; §202, Table 202A; or §209, Table 209A, which requires that commercial shooting ranges be located on lots within *Special Conservation* and *Industrial* districts. Further, the Proposed Order requests the mandatory relief of forcing the Township to "issue forthwith all permits necessary for the operation of said gun club." *Id.* Mr. Drummond never applied for a permit to operate a commercial shooting range. As such,

Plaintiffs have failed to demonstrate that denying the preliminary injunction would cause them irreparable harm.

C. Plaintiffs Fail to Demonstrate That Granting Relief will not Result in even Greater Harm

Plaintiffs' sole argument with respect to the third element necessary to prove a right to a preliminary injunction is the conclusory assertion that "Injunctive relief will harm no one." See Plaintiffs' Memorandum of Law at p. 14. However, courts have repeatedly noted that a municipality's "interest in attempting to preserve the quality of urban life ... must be accorded high respect." *See, e.*g. *Peterson v. City of Florence, Minn.*, 884 F. Supp. 2d 887, 893 (D. Minn. 2012), *aff'd*, 727 F.3d 839 (8th Cir. 2013); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 49 (1986)). The Zoning Ordinance at issue is aimed at encouraging beneficial growth, while preserving the residential nature and quality of life of Robinson Township's citizens. See *Exhibit A* at § 100.3. The property at issue is in close proximity to residentially zoned districts. *See* Ex. I. When weighing these property owners' interests in the use and enjoyment of their homes against Plaintiffs' interest in making a profit selling guns and ammunition, it is clear that the greater harm would be to the Township's constituents. Plaintiffs have failed to demonstrate that residents experience any difficulty or hardship purchasing firearms from other commercial establishments or training at other shooting ranges. Accordingly, Plaintiffs fail to establish the third and fourth elements necessary to establish a right to a preliminary injunction.

IV. CONCLUSION

For the reasons set forth above, the Defendants, Robinson Township and Mark Dorsey, respectfully request the Court deny Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

/s/ Trisha A. Gill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to Plaintiffs' Motion for Permanent Injunction and Memorandum of Law in Support Thereof have been served via CM/ECF filing system on counsel of record, this, the 18th day of October, 2018.

Respectfully Submitted,

/s/Trisha A. Gill

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