

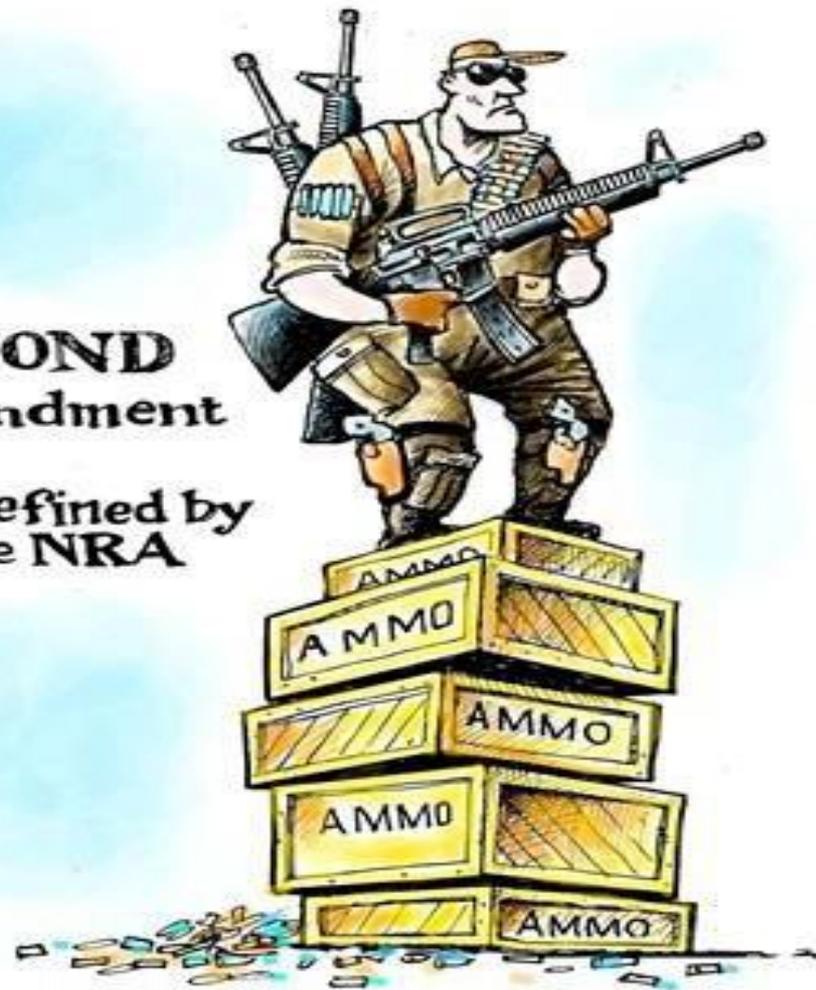
SECOND Amendment

as defined
by the
founding fathers



SECOND Amendment

as defined by
the NRA



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Selective Incorporation; Second Amendment

STUDENTS WILL KNOW THAT:

- 1. The U.S. Constitution includes the Bill of Rights specifically designed to protect individual liberties and rights**
- 2. Civil liberties are constitutionally established guarantees and freedoms that protect citizens, opinions, and property against arbitrary governmental interference**
- 3. The application of the Bill of Rights is continuously interpreted by the courts**
- 4. The Bill of Rights consists of the first ten Amendments to the Constitution, which enumerate the liberties and rights of individuals**
- 5. The doctrine of selective incorporation has imposed on state regulation of civil rights and liberties as represented by:**
 - *McDonald v. Chicago* (2010), which ruled the Second Amendment's right to keep and bear arms for self-defense in one's home is applicable to the states through the Fourteenth Amendment**
- 6. The Supreme Court's decisions on the Second Amendment rest upon its constitutional interpretation of individual liberty**
- 7. The debate about the Second Amendment involves concerns about public safety and whether or not the government regulation of firearms promotes or interferes with public safety and individual rights**

DIFFERENCE BETWEEN CIVIL LIBERTIES AND CIVIL RIGHTS?

CIVIL LIBERTIES

- **Definition – legal and constitutional rights that protect individuals from arbitrary *acts of government***
 - **Freedoms that are guaranteed -- either by law, constitution, or judicial interpretation**
 - **Involve basic freedoms (e.g. speech and religion)**
 - **The freedoms of conscience, religion, and expression, for example, which are secured by the First Amendment**

DIFFERENCE BETWEEN CIVIL LIBERTIES AND CIVIL RIGHTS?

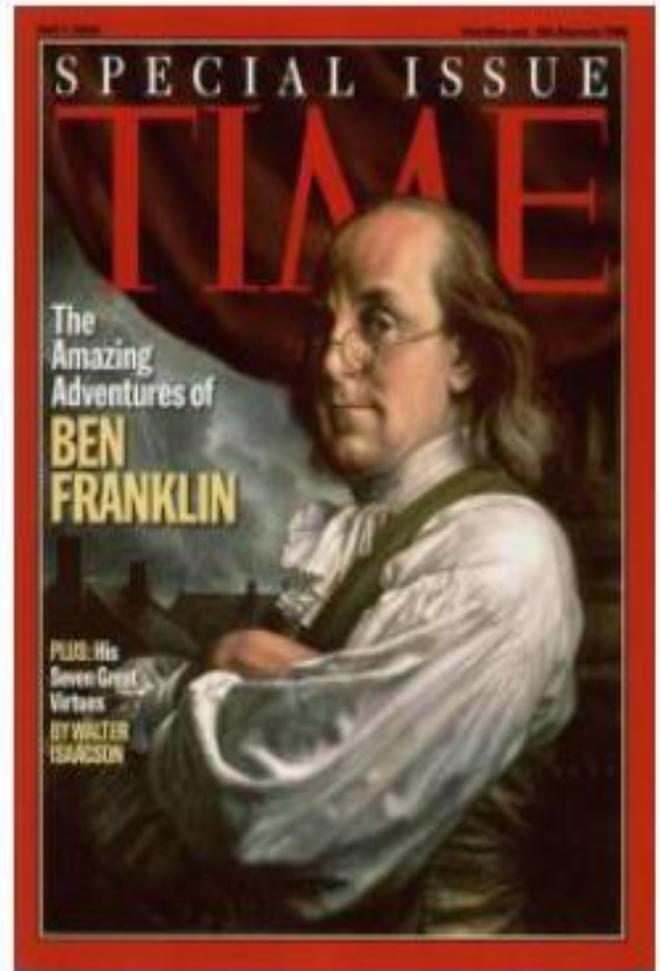
CIVIL RIGHTS

- **Definition – policies designed to protect people against arbitrary or discriminatory *treatment by government officials or individuals***
 - **Include laws prohibiting racial, gender, physical, and religious discrimination**
 - **Protected by the due process and equal protection clauses of the Fifth and Fourteenth Amendments and by the civil rights laws of national and state governments**

BASIS OF OUR CIVIL LIBERTIES – PROTECTED RIGHTS **IN THE ORIGINAL CONSTITUTION**

- ***Writ of habeas corpus***
 - Directs any official having a person in custody to produce the prisoner in court and to explain to the judge why the prisoner is being held; Can only be suspended during times of rebellion (Civil War)
 - Person has the right to know why he or she is being imprisoned
- ***Ex post facto laws***
 - Latin for “after the fact”
 - Punishes a person for something that was not a crime when he did it (retroactive punishment); May not be passed by Congress
- **Bills of attainder**
 - An act that punishes a person without benefit of trial
 - May not be passed by Congress

- *What is more important in a democratic society:*
 - *Freedom or Order?*
 - *Liberty or Security?*
- *Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.*
--Benjamin Franklin (1706-1790)



BILL OF RIGHTS AND THE STATES

BILL OF RIGHTS

- Added to the original Constitution to appease Anti-Federalists and the states
- Rights of the individuals and states listed to protect them from the federal government
- Bill of Rights only applied to the federal government and did not include protections against state governments (*Barron v. Baltimore, 1833*)
 - Feeling was that people could protect themselves against the state governments that were in their own backyards, but they needed additional protection against a new, powerful, and distant national gov't

SELECTIVE INCORPORATION OF THE BILL OF RIGHTS

- The BoR only apply to national government... NOT the states
 - *Decided in Barron v. Baltimore (1833)*
- 14th Amendment: created the possibility that the B of R would apply to states
 - *Gitlow v. New York (1925)*
 - The first Supreme Court case to “selectively incorporate” a part of the BoR
 - Applies First Amendment protection of free speech to the states using the 14th Amendment's due process clause
- Since *Gitlow*, the Supreme Court has gradually incorporated other selected parts of the BoR to the states
 - Most of the rights have been “incorporated” (applied to the states)
 - Most recent, 2nd Amendment with gun ownership in Chicago

SELECTIVE INCORPORATION OF THE BILL OF RIGHTS

THEN (ORIGINALLY)



NATIONAL GOVERNMENT ONLY

SELECTIVE INCORPORATION OF THE BILL OF RIGHTS

NOW (STARTING IN 1925 W/ *GITLOW v. NEW YORK*)



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NATIONAL GOVERNMENT

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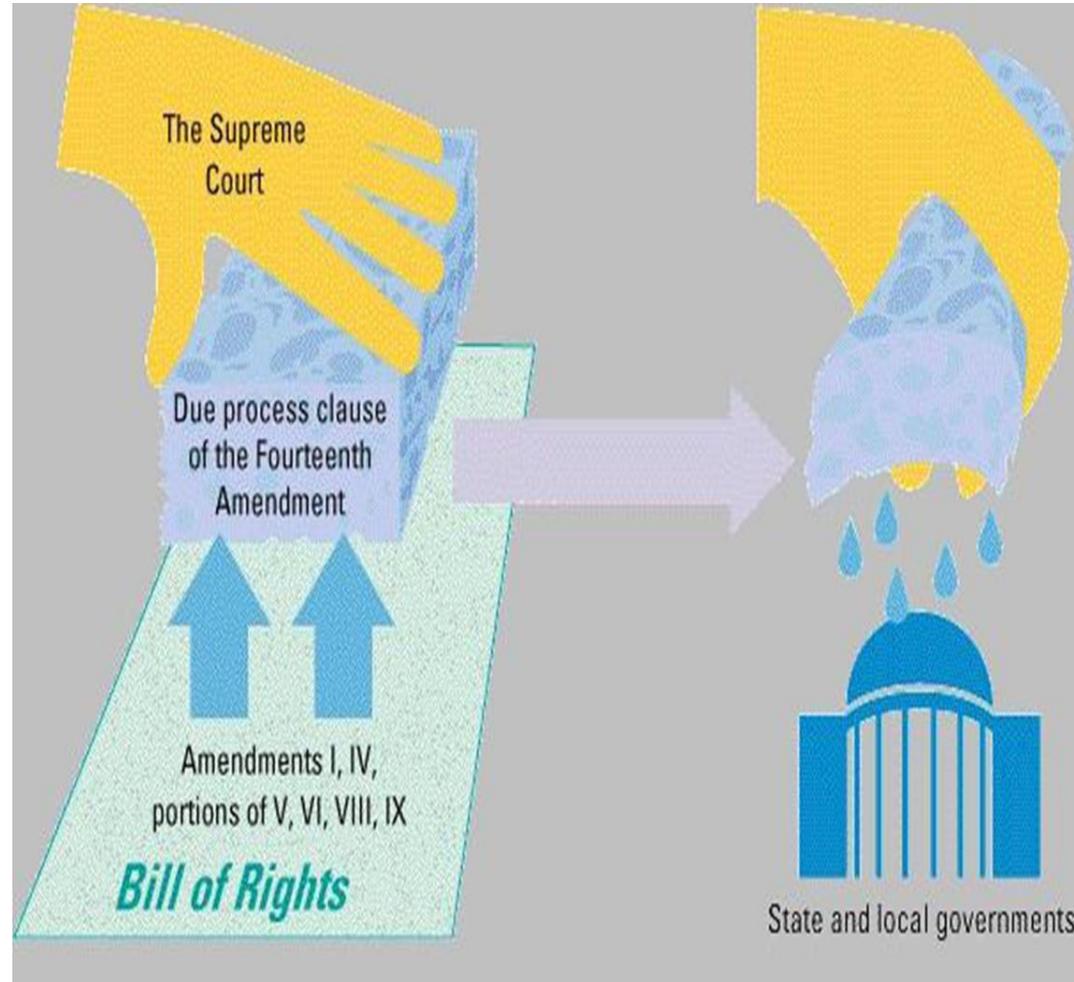


STATE GOVERNMENT ACTIONS

SELECTIVE INCORPORATION

Modifying Effect of the 14th Amendment

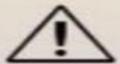
- The due process clause has been used to apply some of the provisions of the Bill of Rights to the states.
- This clause bans states from denying life, liberty, or property without due process of law.
- The “total incorporation” view would apply all of the provisions of the Bill of Rights to the states. It argues for nationalization (or federalization) of the Bill of Rights.
- The “selective incorporation” view would apply only some of these provisions, and would do so on a case-by-case basis.



SELECTIVE INCORPORATION

Modifying Effect of the 14th Amendment

- **Subsequent cases federalized parts of the Bill of Rights:**
 - **1st – Assembly, Petition, Religion**
 - **2nd – Right to Bear Arms**
 - **4th – Search and Seizure protections**
 - **5th – Self-Incrimination, Double Jeopardy**
 - **6th – Right to Counsel, Right to Bring Witnesses, Right to Confront Witnesses**
 - **8th – Protection against Cruel and Unusual Punishment**
- **All provisions of the Bill of Rights except Amendment 3, Amendment 7, and the Grand Jury requirement of the 5th Amendment have been federalized.**



EMERGENCY ALERTS

now

Emergency Alert

I'm going to be on Fox and Friends at 9:00am Eastern Time. Enjoy! - @realJerryPerez

Slide for more

Doctrine of Selective Incorporation

A constitutional doctrine through which the Bill of Rights are made applicable to the states through the Due Process clause of the Fourteenth Amendment and so applied to state and local governments.

Utilizing the language of the Fourteenth Amendment, specifically that “no state...shall abridge...due process of law,” the national government now serves as protector of our inalienable right to “life, liberty and property.” Most of the time this has resulted in the national government imposing its will on state and local laws to the contrary.

McDonald v. Chicago (2010): ruled the Second Amendment’s right to keep and bear arms for self-defense in one’s home is applicable to the states through the Fourteenth Amendment.



The Second Amendment

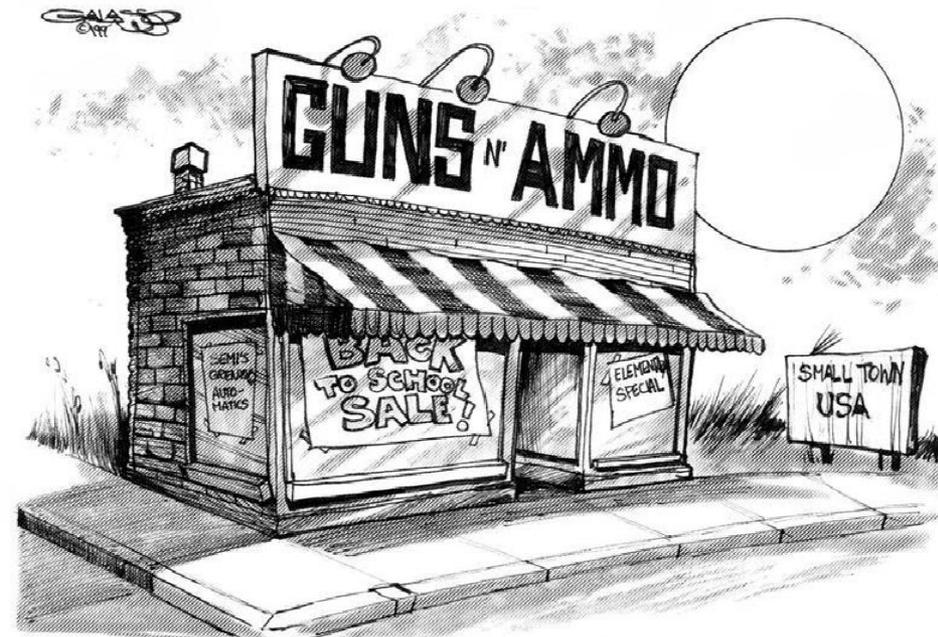
“A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”



District of Columbia v. Heller (2008)



Issue: Do the D.C. provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia (like the National Guard), but who wish to keep handguns and other firearms for private use in their homes?



Ruling: In a 5-4 decision, the Court struck down the District of Columbia's ban on handguns, holding that the Second Amendment guarantees an individual right to gun ownership.

McDonald v. Chicago (2010)



YEAH, QUICK QUESTION
ABOUT THIS SECOND
AMENDMENT...

THESE "BEAR ARMS."
WHERE ARE THEY
COMING FROM?

Issue: Does the Second Amendment right to keep and bear arms apply to state and local governments through the 14th Amendment and thus limit Chicago's ability to regulate guns?

Majority: 2nd Amendment right to keep and bear arms for the purpose of self-defense is fully applicable to the states under the 14th Amendment. The Court considered whether the right to keep guns "is fundamental to our scheme of ordered liberty and system of justice." The Court determined that both the Framers of and those who ratified the 14th Amendment considered the right to keep and bear arms among the fundamental rights "necessary to our system of ordered liberty." Self-defense is a basic right, and that, under *Heller*, individual self-defense is the central component of the Second Amendment right to bear arms.

The debate over the Second Amendment involves concerns about public safety and whether or not the government regulation of firearms promotes or interferes with public safety and individual rights.

Supreme Court: *“Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.”*

-Justice Alito

Do government regulations of firearms promote or interfere with public safety and individual rights?

