

McDonald v. City of Chicago (2010)

Argued: March 2, 2010

Decided: June 28, 2010

Background

The Second Amendment protects “the right of the people to keep and bear Arms,” but there has been an ongoing national debate about exactly what that phrase means. The debate only intensified after the U.S. Supreme Court struck down a handgun ban in the District of Columbia in 2008 (*District of Columbia v. Heller*). Because of its unique constitutional status as the home of the federal government (and not a state), the District of Columbia is treated as subject to the restrictions that the Constitution places on the federal government. As a result, the *Heller* decision left open the question whether the Second Amendment applies to state and local governments. In this case, which is about a ban on guns in Chicago, the Court was presented with that question.

When the Constitution was written, the Bill of Rights applied only to the federal government—not to the state or local governments. After the Civil War, however, the Constitution was amended to include the 14th Amendment, which guarantees that the states shall not deprive anyone of life, liberty, or property without due process of law. In the decades after the 14th Amendment, the Supreme Court began to rule that different parts of the Bill of Rights did apply to state and local governments—the process of selective incorporation. The Court said that some of the liberties protected in the Bill of Rights are *fundamental* to our concept of liberty and that it would violate the 14th Amendment’s guarantee of due process if states interfered with those liberties. Over time, the Court has ruled that almost all of the Bill of Rights do apply to the states. Before 2010, the Supreme Court had never ruled on whether the Second Amendment’s right to bear arms was one of those fundamental rights that states could not infringe.

Facts

In 1982, the city of Chicago adopted a handgun ban to combat crime and minimize handgun related deaths and injuries. Chicago’s law required anyone who wanted to own a handgun to register it. The registration process was complex, and possession of an unregistered firearm was a crime. In practice, most Chicago residents were banned from possessing handguns.

In 2008, after the Court decided *Heller* (see the summary below) and said that the Second Amendment includes an individual right to keep and bear arms, Otis McDonald and other Chicago residents sued the city for violating the Constitution. They claimed that Chicago’s handgun regulations violate their 14th Amendment rights. Specifically, the residents argued that the 14th Amendment makes the Second Amendment right to keep and bear arms applicable to state and local governments.

The federal district court ruled for Chicago. McDonald appealed. The Seventh Circuit Court of Appeals decided for Chicago, as well. That court ruled that the Second Amendment right to keep and bear arms protects individuals only from regulation by the federal government. McDonald asked the U.S. Supreme Court to hear the case, and it agreed to do so.

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?

Constitutional Amendments and Supreme Court Precedents

- **Second Amendment to the U.S. Constitution**

“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.”

- **14th Amendment to the U.S. Constitution**

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law....”

- ***Duncan v. Louisiana (1968)***

In this case the Supreme Court incorporated a provision of the Bill of Rights, making it applicable to state and local governments. Duncan was charged with simple battery, a crime that Louisiana law allowed to be tried without a jury. Duncan was convicted and then appealed his conviction. He argued that his conviction should be overturned because the state violated his Sixth Amendment right to a jury trial in a criminal case. At that time the right to a jury trial was guaranteed only in federal cases. When the Supreme Court considered whether a portion of the Bill of Rights should apply to the states under the 14th Amendment, the justices considered whether the right at issue was fundamental and rooted in the tradition and conscience of the American people. When his case reached the U.S. Supreme Court, the Court considered whether the right to a jury trial for criminal offenses is “fundamental to the American scheme of justice.” Noting the long tradition of jury trials for criminal offenses, wide state recognition of the right, and the importance of having a jury, the Court ruled that the Sixth Amendment right to a jury trial applies to the states.

- ***District of Columbia v. Heller (2008)***

The District of Columbia (which is not a state) had a ban on handguns, and the U.S. Supreme Court ruled that ban unconstitutional. The Court decided that the Second Amendment guarantees an individual right to gun ownership, which the federal (or D.C.) government may not infringe. Laws from the 1600s and 1700s, which included a right for

individuals to possess weapons for self-defense, indicated that the Framers recognized an individual right to bear arms as a fundamental right.

The Court observed, however, that the right is not absolute. It applies only to weapons in common use, such as handguns. The government may still impose reasonable regulations on weapons possession without infringing the right to bear arms. For example, it seemed likely that government could prohibit felons from having guns and prohibit the possession of guns in sensitive places such as schools. The Court also noted that its ruling in *Heller* was not a decision that applied directly to state and local gun regulations. It bound the District of Columbia because the District is an instrument of the federal government.

Arguments for McDonald (petitioner)

- The Second Amendment applies to the states because the right to keep and bear arms is deeply rooted in American history. Possessing a gun is a right that pre-dates even the founding of the country, and guns are still an important part of American culture and liberty.
- Most provisions of the first eight amendments already apply to the states, and the Second Amendment should not be treated differently. Rights articulated in the Bill of Rights are assumed to be fundamental.
- The Second Amendment affords American citizens the ability to defend themselves against a tyrannical government. It would not make sense to allow citizens to defend themselves against the federal government but not state or local governments.
- The Chicago ban obstructs the core right the Court recognized in *Heller*: keeping a common weapon, like a handgun, for protection in one's home.
- The Chicago ban is nearly the same as the one the Court struck down in *Heller*, so it cannot be described as a reasonable gun regulation. In practice, it is a total ban on gun ownership, and that is not reasonable.
- Applying the Second Amendment to the states will not create a public safety crisis. *Heller* suggested that the right to keep and bear arms is limited to weapons in common use and that traditional regulations that keep guns out of the hands of felons and out of places such as schools are not threatened by the Second Amendment.

Arguments for Chicago (respondent)

- The Constitution and Bill of Rights have traditionally been understood as limits on the federal government, not the states.
- Although *Heller* recognized an individual right to keep and bear arms that the federal government may not infringe, that decision did not prohibit states from controlling guns.

- Even if guns were an important part of this country at the time of the founding, much has changed since then. There is an ongoing national debate on guns and a variety of state approaches to gun control. The right to keep a handgun cannot be described as fundamental or an established American tradition that warrants incorporation.
- The Court’s decision in *Heller* noted that the right to keep and bear arms is not absolute. States, like the federal government, should be able to impose some reasonable regulations to keep their citizens safe given that crime, injury, and death are all linked to handguns.
- Unlike D.C.’s complete ban on handguns, which was struck down in *Heller*, Chicago simply establishes procedures that residents must follow in order to possess a gun. Given the particulars of Chicago’s history of gun violence, the regulation is reasonable.
- The Court should defer to state judgments regarding gun control. States and the cities within them each face their own particular public safety issues. Applying the Second Amendment to the states would likely strike down thousands of gun regulations across the country and create dangerous uncertainty for states and cities that face serious problems linked to guns.

Decision

Justice Alito announced the judgment and opinion of the Court. Chief Justice Roberts and Justices Scalia and Kennedy joined Justice Alito’s opinion in full, and Justice Thomas joined only in part. Justices Stevens, Breyer, Ginsburg, and Sotomayor dissented.

Majority

Writing for a majority of the Court, Justice Alito concluded that the Second 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.” Relying on a variety of historical records, 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.” They said that 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.

Four of the five justices in the majority also said that applying the Second Amendment against state and local governments “does not imperil every law regulating firearms.” Echoing the *Heller* decision, the plurality suggested that reasonable gun restrictions—such as a ban on felons owning guns or on carrying guns on school property—would still be allowed. Since there was not a *majority* for that part of the opinion, however, it is not the law.

Dissents

Justices Stevens and Breyer each wrote lengthy dissenting opinions. Justice Stevens argued that the Second Amendment was adopted to protect the states from federal encroachment and that, therefore, it made no sense to apply that provision *against* state and local governments. Justice Breyer, joined by Justices Ginsburg and Sotomayor, argued that the Second Amendment should not be incorporated against the states under the 14th Amendment. He asserted that nothing in the Second Amendment's text, history, or underlying rationale made it "fundamental" and protective of the keeping and bearing of arms for private self-defense. Justice Breyer criticized the Court for transferring the regulation of private firearm use away from democratically elected legislatures and states to the courts and the federal government.