

McDonald v. City of Chicago

Argued: March 2, 2010

Decided: June 28, 2010

Facts

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 this phrase means. Lower courts have often ruled that reasonable gun regulations are allowed under the Second Amendment, but many people and interest groups argue that any gun regulation violates their constitutional rights. This 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*). In this case, which is about a ban on guns in Chicago, the Court must consider the applicability of the Second Amendment to state and local governments.

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. In practice, most Chicago residents were banned from possessing handguns.

In 2008, after the Court had decided *Heller* and recognized that the Second Amendment includes an individual right to keep and bear arms, Otis McDonald along with other Chicago residents filed suit against the city in federal district court. They claimed that Chicago’s handgun regulations violate their Fourteenth Amendment rights. Specifically, the residents argue that the Fourteenth Amendment makes the Second Amendment right “to keep and bear Arms” applicable to state and local governments.

Both the federal district court and the Seventh Circuit decided for Chicago. They ruled that the Second Amendment right “to keep and bear Arms” only protects individuals from regulation by the federal government. The Ninth Circuit decided in a different case that the Second Amendment does apply to the states. The U.S. Supreme Court agreed to hear McDonald’s appeal.

Issue

Does the Second Amendment right “to keep and bear Arms” apply to state and local governments through the Due Process Clause of the Fourteenth Amendment and thus limit Chicago’s ability to regulate guns?

Constitutional Amendments and Precedents

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.”

Fourteenth Amendment

“[N]or shall any state deprive any person of life, liberty, or property, without due process of law....”

Duncan v. Louisiana (1968)

In the nation’s early history, it was understood that the Bill of Rights limited the actions of the federal government but did not apply to the states (or to local governments). In the 1930s, the U.S. Supreme Court began discussing a process now termed “selective incorporation” in which amendments or portions of amendments in the Bill of Rights were recognized as applicable to the states. Often the Court decided a portion of the Bill of Rights applied to the states by considering whether the right at issue was fundamental and rooted in the tradition and conscience of the American people. Over time the Court determined that most rights contained in the Bill of Rights applied to the states through the Due Process Clause of the Fourteenth Amendment, which guarantees that the states shall not deprive anyone of life, liberty, or property without due process. In *Duncan v. Louisiana*, the Court addressed this issue.

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. 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 applies to the states.

District of Columbia v. Heller (2008)

The District of Columbia had a ban on handguns, and the U.S. Supreme Court ruled that it was unconstitutional. The Court decided that the Second Amendment guarantees an individual right to gun ownership that the federal government cannot infringe. Laws from the 1600s and 1700s which included an inherent 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 only applies to weapons in common use such as handguns. The government can still impose reasonable regulations on weapons possession without infringing the right to bear arms. For example, it is likely that state or local governments can 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 on the status of state and local gun regulations. It bound the District of Columbia because the District is an instrument of the federal government.

Arguments for McDonald:

- 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 applies to the states under the Due Process Clause of the Fourteenth Amendment because the “right to keep and bear arms” is deeply rooted in American history. Possessing a gun is an ancient right that pre-dates even the Founding, and guns are still an important part of American culture and liberty.
- 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 the 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 ban the Court struck down in *Heller*, so it can not be described as a reasonable gun regulation. In practice, it is a total ban on gun ownership, and that’s 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 like schools are not threatened by the Second Amendment.

Arguments for Chicago:

- 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 which the federal government cannot infringe, the decision didn’t 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. Given the ongoing national debate on gun regulations and the variety of state approaches to gun control, a historical consensus on guns does not exist. The right to keep and bear arms cannot really 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 the District of Columbia’s complete ban on handguns that was struck down in *Heller*, the Chicago gun control regulations simply establish procedures that inhabitants must follow in order to possess a gun. Given the particulars of Chicago’s urban setting and 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 control 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 Fourteenth Amendment. Only four justices agreed on the reason that the Second Amendment is applicable to the states - Justice Thomas agreed with the result, but would have used different reasoning to get there.

Justice Alito and three other justices (a plurality of the Court) said that the Second Amendment applies to states under the Due Process Clause of the Fourteenth 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 and the ratifiers of the Fourteenth Amendment considered the right to keep and bear arms among the fundamental rights "necessary to our system of ordered liberty."

This plurality also asserted that their decision "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. Nevertheless, it is likely that in the future the Court would uphold reasonable gun regulations that do not infringe the core Second Amendment right recognized in *Heller* and this case: keeping and bearing arms for self-defense in the home.

Dissent (Breyer)

Justice Breyer argued that the Second Amendment should not be incorporated against the states under the Due Process Clause of the Fourteenth 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.