

## 4.12: McDONALD v. CITY OF CHICAGO, ILLINOIS

### McDONALD v. CITY OF CHICAGO, ILLINOIS

561 US 742 (2010)

(Case Syllabus edited by the Author)

Justice Alito delivered the opinion of the Court.

Two years ago, in *District of Columbia v. Heller*, 554 U. S. 570 (2008), this Court held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and struck down a District of Columbia law that banned the possession of handguns in the home. Chicago (hereinafter City) and the village of Oak Park, a Chicago suburb, have laws effectively banning handgun possession by almost all private citizens.

After *Heller*, petitioners filed this federal suit against the City, which was consolidated with two related actions, alleging that the City's handgun ban has left them vulnerable to criminals. They sought a declaration that the bans, and several related City ordinances, violate the Second and Fourteenth Amendments. Rejecting petitioners' argument that the ordinances are unconstitutional, the court noted that the Seventh Circuit previously had upheld the constitutionality of a handgun ban, that *Heller* had explicitly refrained from opining on whether the Second Amendment applied to the States, and that the court had a duty to follow established Circuit precedent. The Seventh Circuit affirmed.

Held:

The Seventh Circuit judgment is reversed, and the case is remanded. The Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller*, to keep and bear arms for the purpose of self-defense.

(a) Petitioners contend that the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right. Chicago and Oak Park (municipal respondents) maintain that a right set out in the Bill of Rights applies to the States only when it is an indispensable attribute of any "civilized" legal system. If it is possible to imagine a civilized country that does not recognize the right, municipal respondents assert, that right is not protected by due process. And since there are civilized countries that ban or strictly regulate the private possession of handguns, they maintain that due process does not preclude such measures.

(b) The Bill of Rights, including the Second Amendment, originally applied only to the Federal Government, not to the States, but the Constitutional Amendments adopted in the Civil War's aftermath fundamentally altered the federal system.

(c) Whether the Second Amendment right to keep and bear arms applies to the States is considered in light of the Court's precedents applying the Bill of Rights' protections to the States.

(1) In the late 19th century, the Court began to hold that the Due Process Clause prohibits the States from infringing Bill of Rights protections.

(2) Justice Black championed the alternative theory that the Fourteenth Amendment totally incorporated all of the Bill of Rights' provisions, but the Court never has embraced that theory.

(3) The Court eventually moved in the direction of adopting a theory of selective incorporation by which the Due Process Clause incorporates particular rights contained in the first eight Amendments. The Court clarified that the governing standard is whether a particular Bill of Rights protection is fundamental to our Nation's particular scheme of ordered liberty and system of justice. The Court eventually held that almost all of the Bill of Rights' guarantees met the requirements for protection under the Due Process Clause. The Court also held that Bill of Rights protections must "all ... be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." Under this approach, the Court overruled earlier decisions holding that particular Bill of Rights guarantees or remedies did not apply to the States.

(d) The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the States.

(1) The Court must decide whether that right is fundamental to the Nation's scheme of ordered liberty, or, as the Court has said in a related context, whether it is "deeply rooted in this Nation's history and tradition." *Heller* points unmistakably to the answer. Self-defense is a basic right, recognized by many legal systems from ancient times to the present, and the *Heller* Court held that individual self-defense is "the central component" of the Second Amendment right. Explaining that "the need for defense of self, family, and property is most acute" in the home, the Court found that this right applies to handguns because they are "the most

preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family.”. It thus concluded that citizens must be permitted “to use [handguns] for the core lawful purpose of self-defense.” *Heller* also clarifies that this right is “deeply rooted in this Nation’s history and traditions,” *Heller* explored the right’s origins in English law and noted the esteem with which the right was regarded during the colonial era and at the time of the ratification of the Bill of Rights. This is powerful evidence that the right was regarded as fundamental in the sense relevant here. That understanding persisted in the years immediately following the Bill of Rights’ ratification and is confirmed by the state constitutions of that era, which protected the right to keep and bear arms.

(2) A survey of the contemporaneous history also demonstrates clearly that the Fourteenth Amendment’s Framers and ratifiers counted the right to keep and bear arms among those fundamental rights necessary to the Nation’s system of ordered liberty.

(i) By the 1850’s, the fear that the National Government would disarm the universal militia had largely faded, but the right to keep and bear arms was highly valued for self-defense. Abolitionist authors wrote in support of the right, and attempts to disarm “Free-Soilers” in “Bloody Kansas,” met with outrage that the constitutional right to keep and bear arms had been taken from the people. After the Civil War, the Southern States engaged in systematic efforts to disarm and injure African Americans, see *Heller*. These injustices prompted the 39th Congress to pass the Freedmen’s Bureau Act of 1866, and the Civil Rights Act of 1866 to protect the right to keep and bear arms. Congress, however, ultimately deemed these legislative remedies insufficient, and approved the Fourteenth Amendment. Today, it is generally accepted that that Amendment was understood to provide a constitutional basis for protecting the rights set out in the Civil Rights Act. In Congressional debates on the proposed Amendment, its legislative proponents in the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection. Evidence from the period immediately following the Amendment’s ratification confirms that that right was considered fundamental.

(ii) The right to keep and bear arms must be regarded as a substantive guarantee, not a prohibition that could be ignored so long as the States legislated in an evenhanded manner.

567 F. 3d 856, reversed and remanded.

Alito, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A, II–B, II–D, III–A, and III–B, in which Roberts, C. J., and Scalia, Kennedy, and Thomas, JJ., joined, and an opinion with respect to Parts II–C, IV, and V, in which Roberts, C. J., and Scalia and Kennedy, JJ., join. Scalia, J., filed a concurring opinion. Thomas, J., filed an opinion concurring in part and concurring in the judgment. Stevens, J., filed a dissenting opinion. Breyer, J., filed a dissenting opinion, in which Ginsburg and Sotomayor, JJ., joined.

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