

McDonald v. City of Chicago, 561 U.S. 742 (2010)

In 1982, Chicago passed multiple ordinances that created a successful handgun ban on the citizens living in Chicago. Many lawsuits were filed, but the one that reached the Supreme Court was that of *McDonald v. City of Chicago*. This suit got its name from one of the three individuals who filed it, Otis McDonald, who had experienced a break in and other invasions of property and security in his home. However, the veteran couldn't purchase a handgun due to the ban in Chicago. The four main charges against the Chicago gun regulations were as follows:

- Prohibit the registration of handguns, thus effecting a broad handgun ban.
- Require that guns be registered prior to their acquisition by Chicago residents.
- Mandate that guns be re-registered annually, with another payment of the fee.
- Render any gun permanently non-registrable if its registration lapses.
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It was the plaintiffs opinion that the *District of Columbia v. Heller, 554 U.S. 570 (2008)* supreme court case gave ground to the fact that gun bans were unconstitutional, even at a state level. However, they lost because Chicago's courts determined that the *Heller* court case applied to the federal government alone, and not states. McDonald appealed, and they were affirmed by the U.S. Court of Appeals for the 7th Circuit.

When the case came before the supreme court, the questions asked of the constitution regarded the applicability of the 2nd amendment to states and local governments - did they have to answer to the Bill of Rights, and in particular, the 2nd amendment? *The Slaughter-House Cases, 83 U.S. 36 (1873)* determined that the 14th amendment's Privileges and Immunities clause ("*the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states*") did not apply the bill of rights to governments other than the federal government.

So then discussion turned to an idea called *Selective Incorporation*, where through judicial process, certain protected rights should be applied to state and local governments since if the right is fundamental by being "implicit in the concept of ordered liberty" or "deeply rooted in our nation's history and traditions", the prior standards mentioned having been defined by the *Supreme Court case Duncan v. Louisiana, 391 U.S. 145 (1968)*. This selective incorporation is supposedly found in the Due Process clause in the 14th amendment, which prohibits the states from depriving "any person of life, liberty, or property, without due process of law." The plaintiff argued that the 2nd amendment was indeed a fundamental right, and therefore qualified for selective incorporation, which would thereby mean Chicago's gun ban was unconstitutional on the basis that the right to bear and keep arms was not taken away using due process.

On a 5-4 decision, the Supreme Court voted in favor of Otis McDonald, thereby setting the precedent that the 2nd amendment applies not only to the federal government, but state and local governments as well. Justice Samuel A. Alito Jr. wrote the decision for the majority, saying that, as held in the *Heller* case, the 2nd amendment is a fundamental right. Therefore he says that the 2nd amendment is included in the Due Process clause in the 14th amendment. Justice Clarence Thomas made a separate claim, although voting in favor of McDonald, that the Due Process clause was not

the correct mechanism to incorporate the 2nd amendment, but rather that the Privileges and Immunities clause should have been used. Justice Alito and the rest of the majority agreed that in the light of the Slaughterhouse Cases - rejecting the use of the Privileges or Immunities Clause for the purpose of incorporation - using that clause would be inappropriate and unconstitutional.

Justice John Paul Stevens wrote a very long dissent, disagreeing that the 14th amendment incorporated the 2nd against states. He didn't believe that owning a firearm was a liberty interest that could qualify for selective incorporation, and that the idea of incorporation itself was not an issue in this case. Justice Stephen G. Breyer went a step further, writing a second dissent saying that he found no historical, text, or underlying rationale in the 2nd amendment to warrant it for incorporation as a fundamental right.

Ultimately, the Supreme Court held in the case of *McDonald v. City of Chicago*, 561 U.S. 742 (2010) the right to keep firearms apart from the militia as found in the *Heller* case was a fundamental right that applied to states in addition to the federal government, because of the Due Process clause in the 14th amendment.