

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

Condensed Case



The Big Picture

In a previous case, the Court declared a federal restriction on handguns unconstitutional. It applied the same rationale to strike down state and local gun regulations in this case.

Ruling

The Fourteenth Amendment's protection of liberty, which applies to states, includes the right to keep and bear arms for self-defense.

Constitutional Text

The Second Amendment reads: *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.*

The Fourteenth Amendment Due Process Clause reads: *No state shall . . . deprive any person of*

OPINION OF THE COURT

[In deciding whether the Second Amendment right to keep and bear arms applies not just to the Federal Government but also to States, the Court] must decide whether the right to keep and bear arms is fundamental to *our* scheme of ordered liberty, or as we have said in a related context, whether this right is “deeply rooted in this Nation’s history and tradition.”

Self-defense is a basic right, recognized by many legal systems from ancient times to the present, [and the Court previously 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.”

The right to keep and bear arms was considered no less fundamental by those who drafted and ratified the Bill of Rights. “During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric.” [T]hose who were fearful that the new Federal Government would infringe traditional rights such as the right to keep and bear arms insisted on the adoption of the Bill of Rights as a condition for ratification of the Constitution.

This understanding persisted in the years immediately following the ratification of the Bill of Rights. In addition to the four States that had adopted Second Amendment analogues before ratification, nine more States adopted state constitutional provisions protecting an individual right to keep and bear arms between 1789 and 1820.



life, liberty, or property, without due process of law.

Dissenting Opinion

[F]irearms have a fundamentally ambivalent relationship to liberty. Just as they can help homeowners defend their families and property from intruders, they can help thugs and insurrectionists murder innocent victims. The threat that firearms will be misused is far from hypothetical, for gun crime has devastated many of our communities. In recent years, handguns were reportedly used in more than four-fifths of firearm murders and more than half of all murders nationwide.

It is at least reasonable for a legislature to take such concerns into account in considering what sorts of regulations would best serve the public welfare.

[The] right to possess a firearm of one's choosing is different in kind from the liberty interests we have recognized under the Due Process Clause. [There are] many tools for self-defense, even if they are imperfect substitutes.

The strength of a liberty claim must be assessed in connection with its status in the democratic process. If a particular State or locality has enacted some "improvident" gun-control measures, as petitioners believe Chicago has done, there is no apparent reason to infer that the mistake will not "eventually be rectified by the democratic process."

By the 1850's, the perceived threat that had prompted the inclusion of the Second Amendment in the Bill of Rights had largely faded as a popular concern, but the right to keep and bear arms was highly valued for purposes of self-defense.

After the Civil War, many of the over 180,000 African-Americans who served in the Union Army returned to the States of the old Confederacy, where systematic efforts were made to disarm them and other blacks. The laws of some States formally prohibited African-Americans from possessing firearms.

In debating the Fourteenth Amendment, the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection. Senator Samuel Pomeroy described three "indispensable" "safeguards of liberty under our form of Government." One of these, he said, was the right to keep and bear arms: "Every man . . . should have the right to bear arms for the defense of himself and family and his homestead. And if the cabin door of the freedman is broken open and the intruder enters for purposes as vile as were known to slavery, then should a well-loaded musket be in the hand of the occupant to send the polluted wretch to another world, where his wretchedness will forever remain complete."

Evidence from the period immediately following the ratification of the Fourteenth Amendment only confirms that the right to keep and bear arms was considered fundamental.

In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.

Municipal respondents maintain that the Second Amendment differs from all of the other provisions of the Bill of Rights because it concerns the right to possess a deadly implement and thus has implications for public safety. The right to keep and bear arms, however, is not the only constitutional right that has controversial public safety implications. All of the constitutional provisions that impose restrictions on law enforcement and on the prosecution of crimes fall into the same category. [The City of Chicago cites] no case in which we have refrained from holding that a provision of the Bill of Rights is binding on the States on the ground that the right at issue has disputed public safety implications.

