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### Supreme Court rules that a city's ban on handguns is unconstitutional

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#### ❖ Introduction

In a landmark, but not unexpected, decision, the United States Supreme Court, in *McDonald v. City of Chicago*, [1] ruled 5-4, that individuals have a constitutional right to own guns and that cities and states cannot ban such ownership. The Court held that “most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.”

The City of Chicago and the Village of Oak Park, a Chicago suburb, had municipal code provisions which effectively banned handgun possession by almost all private citizens who resided in those jurisdictions. The Court noted that “Chicago enacted its handgun ban to protect its residents from the loss of property and injury or death from firearms. The Chicago petitioners ...., however, argue that the handgun ban has left them vulnerable to criminals.”

The Chicago ban was considered among the nation's most restrictive gun control measures and the Court ruled that "the need for defense of self, family, and property is most acute in the home ...." Furthermore, "... citizens must be permitted to use [handguns] for the core lawful purpose of self-defense."

### ❖ The Bill of Rights and the States

The Court noted that "the Bill of Rights, including the Second Amendment, originally applied only to the Federal Government. However, after reviewing and analyzing various court decisions, the Court stated that it was now presented with "the question whether the Second Amendment right to keep and bear arms is incorporated in the concept of due process.

"In answering that question ... we must decide whether the right to keep and bear arms is fundamental to our scheme of ordered liberty, or ... whether this right is deeply rooted in this Nation's history and tradition ...."

In referring to the 2008 Supreme Court decision, *District of Columbia v. Heller*, [2] where it struck down a D.C. law that banned possession of handguns in the home, the Court said that the *Heller* decision "points unmistakably to the answer" that the right to possess arms is a fundamental right.

"Self defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self defense is 'the central component' of the Second Amendment right." Furthermore, the Court in referring to *Heller* stated that "... we 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 Court continued, by holding that "... citizens must be permitted to use [handguns] for the core lawful purpose of self-defense. *Heller* makes it clear that this right is deeply rooted in this Nation's history and tradition. *Heller* explored the right's origins, noting that the 1689 English Bill of Rights explicitly protected a right to keep arms for self defense ..."

### ❖ Pro ordinance arguments

The Court analyzed the arguments of the municipalities in opposition to the ruling in *Heller*. “Municipal respondents, in effect, ask us to treat the right recognized in *Heller* as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.”

Continuing, the Court stated that “according to municipal respondents, if it is possible to imagine any civilized legal system that does not recognize a particular right, then the Due Process Clause does not make that right binding on the States.” According to the Respondents, since there are several countries, such as England, Canada, Japan, and others, which “either ban or severely limit handgun ownership, it must follow that no right to possess such weapons is protected by the Fourteenth Amendment.”

Further, “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 Court pointed out that other constitutional rights also implicate public safety, such as the exclusionary rule and the right to a speedy trial. In applying either of those rights it can result in the dismissal of criminal charges and the freeing of guilty persons back into society.

“Municipal respondents cite 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.”

### ❖ The right to “Reasonably Regulate” handguns remains unchanged

The Court noted that imposing the right to bear arms on the States does not prevent reasonable restrictions on that right.

“[The right …] is fully binding on the States and thus limits (but by no means eliminates) their ability to devise solutions to social problems that suit local needs

and values. As noted ... state and local experimentation with reasonable firearms regulations will continue under the Second Amendment.”

“It is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not ‘a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.’

“We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’ We repeat those assurances here. Despite municipal respondents’ doomsday proclamations, incorporation does not imperil every law regulating firearms.”

#### ❖ How the decision affects other places

It is lawful in most states to possess firearms and this decision will probably have little direct impact on law enforcement. What may occur, however, will be legal challenges to existing regulations which currently limit firearms.

For example, in the case of *Nordyke v. King*, [3] it was held that Alameda County, Calif., had the right to prohibit gun shows from displaying and selling weapons at the County fairgrounds since the property was owned by the County.

It is not unreasonable to anticipate a challenge to such a regulation but, in light of the language in the *McDonald v. Chicago*, it would appear unlikely that such a challenge would be successful.

As in all matters involving the law, it is imperative that you confer with your agency’s legal counsel to secure advice and guidance on how it will impact on your agency.

**Notes:**

1. *McDonald v. City of Chicago*, #08-1521, 2010 U.S. Lexis 5523 (2010).
2. *District of Columbia v. Heller*, #07-290, 128 S.Ct. 2783 (2008).
3. *Nordyke v. King*, #07-15763, 563 F.3d 439 (9th Cir. 2009).

“The right to bear arms is a bulwark against external invasion. We should not be overconfident that oceans on our east and west coasts alone can preserve security. We recently saw in the case of the terrorist attack on Mumbai that terrorists may enter a country covertly by ocean routes, landing in small craft and then assembling to wreak havoc. That we have a lawfully armed populace adds a measure of security for all of us and makes it less likely that a band of terrorists could make headway in an attack on any community before more professional forces arrived.”

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