

MCDONALD V. CHICAGO

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In the case of *McDonald v. Chicago*, the Supreme Court struck down two restrictive handgun laws in Chicago, Ill. and Oak Park, a nearby suburb. Three plaintiffs, including a retired maintenance engineer, challenged the ban in court, arguing that prohibiting the registration of handguns, as the laws did, was unconstitutional under the Second Amendment.



The Court's decision was viewed as a symbolic victory for gun rights advocates, who struck a major blow to gun control efforts in 2008 when the Court overturned a Washington, D.C. handgun ban, calling it unconstitutional. For now, the Court has restricted its ruling to the Chicago and Oak Park laws, sparing gun control legislation in states and municipalities across the country. As Justice Samuel Alito wrote in his majority opinion, the Court's ruling "does not imperil every law regulating firearms."

But gun rights advocates have nonetheless promised a widespread effort to challenge gun control laws across the country, and the National Rifle Association is already moving to file those suits in the lower courts. The outcome of those suits is uncertain, but both sides agree that the Supreme Court's decision in *McDonald v. Chicago* will likely have consequences for years to come.

Here are five things you need to know about this landmark ruling:

Different from *District of Columbia v. Heller*

In 2008, a group of gun owners challenged a controversial handgun ban in Washington, D.C. on the grounds that it violated the Second Amendment. Several lower courts ruled in their favor, and the Supreme Court upheld those rulings in a landmark 5-4 decision. Crucially, the *Heller* case affirmed that the Second Amendment guarantees an individual right to own a gun, rather than a collective right to gun ownership, which would allow citizens to form militias, for example, but would not preclude the government from outlawing individual handgun ownership.

The *Heller* case was regarded as a sort of predecessor to the *McDonald* case, and there are many similarities between the two. But the *McDonald* ruling goes much further, saying that all state and local gun control laws must meet the standards of the Second Amendment, and of the *Heller* ruling — not just federal laws. But the Court left for another day the question of which gun control laws, if any, could be reconciled with the *Heller* and *McDonald* rulings.

An "avalanche" of gun law challenges

The reticence of the Court to strike down any and all handgun laws on the basis of *McDonald* has left gun control advocates with at least some hope that those laws will withstand future challenges.

"Some of the gun laws are going to stand up to constitutional challenges," said Dave Workman, communications director for the Citizens Committee for the Right to Keep and Bear Arm.

But gun rights advocates, including leaders of the National Rifle Association, say the *McDonald* ruling puts a number of state and local gun control laws in jeopardy, and have already promised to challenge those laws in court. "What [the Supreme Court] said is what we've said all along. Every law-abiding American has a right to a gun regardless of where they live," Christopher Cox, the executive director of the NRA, told Politico earlier this week.

In his dissenting opinion, Justice John Paul Stevens warned that the *McDonald* ruling "invites an avalanche of litigation that could mire the federal courts in fine-grained determinations about which state and local regulations comport with the *Heller* right — the precise contours of which are far from pellucid — under a standard of review we have not even established."

Experts say the question of whether those challenges will, in fact, be successful depends on how closely Chicago's handgun ban, the subject of the *Heller* case, resembles other handgun bans across the country. "Chicago is the only place in the nation with such restrictive gun bans," said Daniel Vice, a senior attorney at the Brady Campaign to Prevent Gun Violence.

Still, gun rights advocates like Workman acknowledge that it will be largely up to the lower courts to interpret the *Heller* decision, and that a number of laws — including in New York and New Jersey — may come under especially harsh scrutiny.

The conservative-liberal divide, and the Kagan factor

Monday's 5-4 decision was divided along the usual conservative-liberal lines. In addition to Alito, Chief Justice John Roberts and Justices Antonin Scalia, Anthony Kennedy and Clarence Thomas voted to strike down the handgun bans. Justices Stephen Breyer, John Paul Stevens, Ruth Bader Ginsburg and Sonia Sotomayor cast dissenting votes. In fact, the case turned out to be one of the last major rulings for Stevens, who retired at the end of the Supreme Court's term on Monday.

The *Heller* case, and the Second Amendment more broadly, has become a main focal point of the Supreme Court confirmation hearings of Elena Kagan this week. Most observers believe she is unlikely to shift the conservative-liberal balance on the court, though some progressives have expressed concern that she may in fact be more conservative than the retiring Stevens.

The *McDonald* case is unlikely to be the Supreme Court's last word on the Second Amendment, and most legal experts expect that the Court will want to clarify the implications of its ruling in future cases. With that in mind, some Republicans and gun rights advocates have attacked Kagan as being "hostile" to gun owners, citing notes released earlier this year in which she lumped the NRA in with the Ku Klux Klan as "bad guy" organizations. Kagan has said those were notes from a telephone conversation with a colleague and not her own words.

The role and history of the 14th Amendment

Though the constitutionality of handgun laws revolves primarily around the Second Amendment, the Fourteenth Amendment, which guarantees due process and equal protection under the laws, also played an important role in the *McDonald* ruling. In the majority opinion, Justice Alito wrote: "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."

The Fourteenth Amendment was passed by Congress and ratified by the states in 1868, during Reconstruction, to protect the constitutional and civil rights of blacks in the South. The Amendment explicitly proscribed the deprivation of "any person of liberty, or property, without due process of the law." Justices Scalia, Alito, Kennedy and Roberts each cited that provision in their opinions striking down the Chicago handgun ban, arguing that citizens in Chicago are subject to the same rights under the Constitution, including those guaranteed by the Second Amendment, as any other citizen of the United States.

For his part, Justice Thomas focused on a lesser-known clause of the Fourteenth Amendment that prohibits states from curtailing "the privileges or immunities" of U.S. citizens. Thomas argued that under this clause, it would be unconstitutional to deny citizens their rights under the Second Amendment. Justice Breyer, in turn, argued against this strict interpretation of the Constitution. In his dissenting opinion in the *McDonald* case, Breyer wrote that "a rigid historical methodology is unfaithful to the Constitution's command."

The immediate impact of the ruling

As a result of the *McDonald* case, Chicago will have to revise its gun control policy, especially its ban on keeping handguns at home for self-defense.

The administration of Mayor Richard Daley had been preparing to make these changes as a contingency even before the Supreme Court's decision was handed down, knowing that the fight to keep the handgun ban intact was unlikely to succeed.

Daley said in a press conference after the ruling that his main concern was to establish new laws that would keep police, firefighters and paramedics safe when entering homes. One option, he said, is to create a citywide gun registry, so that law enforcement officials and emergency responders know which homes have firearms before entering.