**McDonald v City of Chicago**

**Facts:** The city of Chicago and the village of Oak Park, a suburb, passed laws that pretty much banned possession of a handgun by all private citizens. The Supreme Court ruled in *D.C. v. Heller* back in 2008, that a private citizen has a **2nd** Amendment right to keep and bare arms in their homes for the purpose of self-defense. Otis McDonald and several other residents of Chicago filed a suit against the ban. They asked the Court to rule that the bans were in violation of their rights listed in the **2nd** and 14th Amendments.

**Procedural History:** A lower trial court ruled in favor of the City of Chicago. This decision was appealed to the 7th Circuit Court of Appeals combined with a similar case, *NRA v. Chicago.* The **7th** Circuit upheld the lower courts ruling and the bans. The reasoning behind the ruling was that only the Supreme Court could incorporate the **2nd** Amendment against the states. The case was granted certioari by the Supreme Court in September 2009. The court heard the case in March of 2010, and was decided that June.

**Arguments:**

**McDonald-**

1. The right to keep and bear arms is among the privileges or immunities of

American Citizenship that states may not abridge.

1. The Slaughterhouse Cases, Cruikshank, and Presser were incorrectly ruled and should be overturned.
2. The 2nd Amendment right to keep and bare arms is incorporated as against the states by the 14th Amendments due process clause.

**City of Chicago-**

**1. The Due Process clause does not incorporate the 2nd Amendment right to keep and bare arms.**

**2.The Court should adhere to precedent rejecting incorporation under the Privileges or Immunities Clause.**

**3. If the clause cannot be incorporated to the states, then it is within the police power to regulate how the states see fit.**

**Issues-1. Can the 2nd Amendment be incorporated to the states by the 14th Amendment? 2.Were the precedent cases decided wrongly, and should they be overturned? 3. Should incorporation of the Bill of Rights for the last 50 plus years, be revisited and rethought in today's society?**

**Holding:1. Yes. The court has ruled in recent years that the 2nd Amendment can be incorporated to the states through the due process clause of the 14th Amendment.**

1. **No. The Slaughterhouse cases, etc, do not need to be reconsidered for the purpose of ruling in this case.**
2. **No. There is no reason to disregard 50 years of incorporation of the Bill of Rights, to fit the times of the present.**

**Ruling: Reversed. 5-4**

**Legal Reasoning: Majority by Alito- The 2nd Amendment right to keep and bare arms is incorporated by the 14th Amendment because the right is "fundamental to the Nation's scheme of ordered liberty ... and is deeply rooted in this Nation's history and tradition." This was recognized in the Court's decision in *Heller.* There was no reason to look back into the Slaughterhouse cases because this case was being ruled on the Due Process clause, whereas Slaughterhouse cases were ruled and decided on the Privileges and Immunities**

clause. The argument to reconsider incorporation is nonsensical. It goes against years of precedent and just because other areas of the world are banning handguns and such, America does not need to follow suit, because "...our Bill of Rights is virtually unique to this

country." Alito concludes his opinion with, "In *Heller,* we held that the Second Amendment

protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of *stare decisis* counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the

Federal Government and the States. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller."* Concurrence by Scalia- The method we have of deciding and interpreting the Constitution

and the best that we have right now. It is the process that intrudes the least amount on the democratic process.

Concurrence by Thomas- The incorporation under Due Process is right, but it is a flimsy argument. The Privileges and Immunities Clause is a better argument. Since the right to own a gun is listed in the Bill of Rights, it is a privilege of an American citizen.

Dissent by Stevens- The 14th does not incorporate the **2nd** against the states. Owning a personal firearm is not a liberty interest that is protected by the Due Process Clause. There is nothing in the text or history of the Constitution's **2nd** Amendment that characterizes gun ownership as a fundamental right, which would warrant incorporation under the 14th Amendment.

**Precedent Cases:** D.C. v Heller, Slaughterhouse Cases, U.S. v. Cruikshanks, Presser v. Illinois.

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Van Geel- Heller to McDonalds. McDonalds broadens the area of impermissible government regulations.

**Source of Law:2nd** Amendment; 14th Amendment