**McDONALD versus CITY OF CHICAGO (2010)**

***(Gun Jurisdiction / 2nd Amendment)***

**Background:**

In the 2010 case *McDonald v. City of Chicago*, Chicago resident Otis McDonald, a 76-year-old (in 2010) retired maintenance engineer, had lived in the [Morgan Park](https://en.wikipedia.org/wiki/Morgan_Park,_Chicago) neighborhood since buying a house there in 1971. McDonald decried the decline of his neighborhood, describing it as being taken over by [gangs](https://en.wikipedia.org/wiki/Gang) and [drug dealers](https://en.wikipedia.org/wiki/Drug_dealers). His lawn was regularly littered with refuse and his home and garage had been broken into a combined five times, with the most recent robbery committed by a man McDonald recognized from his own neighborhood. An experienced hunter, McDonald legally owned shotguns, but believed them too unwieldy in the event of a robbery, and wanted to purchase a handgun for personal home defense. Due to Chicago's requirement that all firearms in the city be registered, yet refusing all handgun registrations after 1982 when a citywide handgun ban was passed, he was unable to legally own a handgun. As a result, in 2008, he joined three other Chicago residents in filing a lawsuit which became *McDonald v. Chicago*.

**Majority Opinion:**

***McDonald v. Chicago***, 561 [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) [742](https://supreme.justia.com/us/561/08-1521/index.html) (2010), is a landmark decision of the [Supreme Court of the United States](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) that found that the right of an individual to "keep and bear arms" is protected under the [Second Amendment](https://en.wikipedia.org/wiki/Second_Amendment_to_the_United_States_Constitution) is incorporated by the [Due Process Clause of the Fourteenth Amendment](https://en.wikipedia.org/wiki/Fourteenth_Amendment_to_the_United_States_Constitution#Due_Process_Clause) against the [states](https://en.wikipedia.org/wiki/U.S._state). The decision cleared up the uncertainty left in the wake of [*District of Columbia v. Heller*](https://en.wikipedia.org/wiki/District_of_Columbia_v._Heller) as to the scope of [gun rights](https://en.wikipedia.org/wiki/Gun_politics_in_the_United_States) in regard to the states.

Initially the [Court of Appeals for the Seventh Circuit](https://en.wikipedia.org/wiki/Court_of_Appeals_for_the_Seventh_Circuit) had upheld a Chicago ordinance banning the possession of handguns as well as other gun regulations affecting rifles and shotguns, citing [*United States v. Cruikshank*](https://en.wikipedia.org/wiki/United_States_v._Cruikshank), [*Presser v. Illinois*](https://en.wikipedia.org/wiki/Presser_v._Illinois), and [*Miller v. Texas*](https://en.wikipedia.org/wiki/Second_Amendment_to_the_United_States_Constitution#Miller_v._Texas). The petition for certiorari was filed by [Alan Gura](https://en.wikipedia.org/wiki/Alan_Gura), the attorney who had successfully argued *Heller*. The [Second Amendment Foundation](https://en.wikipedia.org/wiki/Second_Amendment_Foundation) and the Illinois State Rifle Association sponsored the litigation on behalf of several Chicago residents, including retiree Otis McDonald.

The [oral arguments](https://en.wikipedia.org/wiki/Oral_argument_in_the_United_States) took place on March 2, 2010. On June 28, 2010, the Supreme Court, in a 5–4 decision, reversed the Seventh Circuit's decision, holding that the [Second Amendment](https://en.wikipedia.org/wiki/Second_Amendment_to_the_United_States_Constitution) was incorporated under the Fourteenth Amendment thus protecting those rights from infringement by local governments. It then remanded the case back to Seventh Circuit to resolve conflicts between certain Chicago gun restrictions and the Second Amendment.

**Legal Basis For Incorporation:**

All of the post-*Heller* cases, including *McDonald*, *NRA v. Chicago*, *Nordyke* and *Maloney*, argued that the Second Amendment, in addition to applying to federal jurisdictions, should also be applied against state and local governments, using a judicial process called selective incorporation. Selective incorporation involves convincing the court that a right is "fundamental" by being “implicit in the concept of ordered liberty” or “deeply rooted in our nation’s history and traditions” as defined most recently in the Supreme Court case *Duncan v. Louisiana* (1968).

In addition to claiming the Second Amendment should be incorporated through the selective incorporation process, *McDonald* is unique among post-Heller gun cases in that it asked the court to overturn the *Slaughter-House Cases*, (1873). *Slaughter-House* determined that the 14th Amendment's Privileges or Immunities Clause did not apply the Bill of Rights to the actions of states (and by extension, local governments). If it had been overturned, the Selective Incorporation process may have become unnecessary, since the entire Bill of Rights, including the 2nd Amendment, would arguably be applied to the states.

In attempting to overturn *Slaughter-House*, this case garnered the attention and support of both conservative and liberal legal scholars interested in its potential application in areas outside of firearms law. Their interest was that if *Slaughter-House* had been overturned, it would have been possible that constitutional guarantees such as the right to a jury in civil cases, right to a grand jury in felony cases, and other parts of the Bill of Rights, as well as future court rulings and existing federal precedent, not universally guaranteed in actions by the states, would have been applied against the states automatically.

In his concurring opinion, Justice Thomas criticized the *Slaughter-House* and *Cruikshank* decisions,proposing that "the right to keep and bear arms is a privilege of American citizenship that applies to the States through the Fourteenth Amendment’s Privileges or Immunities Clause."

**Dissenting Opinion:**

Justice Stevens wrote a lengthy dissenting opinion. Among his disagreements with the majority was the statement that incorporation was not at issue in this case. Citing *Cruikshank*, Stevens wrote, "The so-called incorporation question was squarely and, in my view, correctly resolved in the late 19th century." In addition, he argued against incorporation, taking issue with the methodology of the majority opinions.

Justice Breyer wrote, "In sum, the Framers did not write the Second Amendment in order to protect a private right of armed self defense. There has been, and is, no consensus that the right is, or was, 'fundamental.