

3.5: Second Amendment: Right to Bear Arms

Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty.

Undoubtedly our freedom of speech, press and religion form the bedrock of our civil liberties. Yet some of our most fierce political battles, involving our liberties, are waged over the Second Amendment. Controversial in our time has been the Court's wavering interpretation of the Second Amendment's "right to bear arms." The Second Amendment simply states,

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.

In *District of Columbia v. Heller* (2008) the Court recognized the saliency of "the right of the people." Government interests have no power or authority to infringe such rights, even the right to own a handgun. To those who argue that we live in different times and that national public policy demands new solutions to pressing problems the Court said,

Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

The Bill of Rights was included in our constitution to reflect our collective commitment to individual liberty. Even when faced with difficult policy choices, the rights of the people still carry the day. And those rights apparently meant carrying a gun. Yet the court was not quite done after they broadened the interpretation of the Second Amendment in the Heller decision.

The Second Amendment right to keep and bear arms for self-defense is now applicable to the states. Incorporation, to be discussed in a latter lesson, has broad implications for federalism. In *McDonald v. Chicago* (2010) the court ruled unconstitutional all state and local laws that infringed upon a citizens' right to bear arms. With the McDonald decision attempts by local governments to legislate against gun violence has become more problematic. For most of our history state and local governments, our "laboratories of democracy," were able to experiment with various gun control measures. More specifically state and local governments were able to tailor gun laws to address their own unique populations. Now under the McDonald precedent gun laws must consider the opinion of the Supreme Court in Heller and now McDonald. In the McDonald opinion, Justice Alito wrote:

...After our decision in Heller, the Chicago petitioners and two groups filed suit against the City in the United States District Court for the Northern District of Illinois. They sought a declaration that the handgun ban and several related Chicago ordinances violate the Second and Fourteenth Amendments to the United States Constitution. Another action challenging the Oak Park law was filed in the same District Court by the National Rifle Association (NRA) and two Oak Park residents. In addition, the NRA and others filed a third action challenging the Chicago ordinances. All three cases were assigned to the same District Judge...

...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. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings...

The “right to bear arms” is one of our most familiar and defended individual liberties. Even so gun violence continues to vex public policy makers. In *McDonald v. Chicago* (2010) the court inserted the national government as the final arbitrator in this dispute.

As gun violence becomes more and more a wedge issue in our political debate, the court’s power to tell us what our laws mean triggers both frustration and hope. To date, the court has defended the rights of gun owners and their new found Second Amendment liberties. But as the personnel on changes, so too can their interpretation of what the Second Amendment means. **Provisions of the U.S. Constitution’s Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.**