



# Iowa General Assembly

## 2010 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/index.html>

**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### HANDGUN BAN IN CITY OF CHICAGO

Filed by the United States Supreme Court

June 28, 2010

McDonald v. City of Chicago, Illinois

No. 08-1521

<http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf>

**Background.** In June of 2008 the United States Supreme Court (Court) struck down a District of Columbia law that banned the possession of handguns in the home for the purpose of self-defense as a violation of the Second Amendment right to keep and bear arms. See *District of Columbia v. Heller*, 128 S.Ct. 2783 (U.S. 2008). The case involved only federal law, and thus the Court's decision did not apply directly to the states. Although the Court recognized an individual right to keep and bear arms, the Court did caution that the Second Amendment right to keep and bear arms is not unlimited and in some circumstances may be prohibited, but the Court did not specify or give guidance on what such limitations are or should be in regard to state or local gun laws. The exact scope of permissible firearm regulations by the states was thus left unsettled. (For a summary review of this case, see [http://www.legis.state.ia.us/lsadocs/Legal\\_Update/2008/LURBH000.PDF](http://www.legis.state.ia.us/lsadocs/Legal_Update/2008/LURBH000.PDF))

After *Heller* was decided, the petitioners filed this federal lawsuit alleging that the City of Chicago's handgun ban as well as several related City ordinances violated the Second and Fourteenth Amendments to the United States Constitution, primarily arguing that the right to keep and bear arms is among the "privileges and immunities of citizens of the United States" and that the Supreme Court's prior interpretation of the Privileges and Immunities Clause of the Fourteenth Amendment should now be rejected. Petitioners also contended that the Due Process Clause of the Fourteenth Amendment "incorporates" the Second Amendment, making the Second Amendment applicable to the states. The respondents in the case (the city of Chicago, Illinois, and the village of Oak Park, Illinois) argued that a right set out in the Bill of Rights applies to the states only if that right is an "indispensable attribute" of any "civilized" legal system and since some civilized countries ban or strictly regulate private handgun ownership, due process cannot operate to preclude such measures.

**Issue.** Whether the Second Amendment to the U.S. Constitution applies to state and local governments through the Fourteenth Amendment's Privileges and Immunities or Due Process clauses.

**Conclusion.** The Court's 5-to-4 majority decision provides an extensive historical and legal analysis of the relationship between the provisions of the Bill of Rights and the states. In holding that the Second Amendment right to keep and bear arms for the purpose of self-defense applies to the states through the Fourteenth Amendment Due Process Clause, the Court stated that the right to keep and bear arms is fundamental to the nation's scheme of ordered liberty, as self-defense is a basic right recognized by many legal systems as well a central component of the Second Amendment. As the Court previously stated in *Heller* and reiterated in this case, this right applies to handguns because they are the "most preferred" firearm to keep and use for protection of one's home and family and this right is deeply rooted in this nation's history and tradition. The Court also reiterated that the right to keep and bear arms is not a right to keep and carry any weapons "whatsoever in any manner whatsoever and for whatever purposes" and the result in this case does not necessarily lead to the conclusion that every law regulating firearms should be struck down. The Court remanded this case to the Seventh Circuit Court of Appeals to determine whether the handgun bans in question violate an individual's Second Amendment right to keep and bear arms for the purpose of self-defense.

**Dissent.** Two dissents were filed in this case. In his dissent, Justice Stevens disagreed with the majority's position that the Fourteenth Amendment incorporates the Second Amendment right to keep and bear arms and that owning a personal firearm is an aspect of Fourteenth Amendment liberty. Justice Breyer argued in his dissent that nothing in the Second Amendment's text, history, or underlying rationale could warrant characterizing it as a fundamental right insofar as it seeks to protect the keeping and bearing of arms for the purpose of private self-defense.

**Impact and Applicability to Iowa Law.** The Court's decision cautions that the Second Amendment right is not unlimited and thus implies that reasonable restrictions may still be allowed. For example, longstanding regulations such as prohibitions on the possession of firearms by felons and persons with mental illness as well as regulations of firearms in sensitive places such as schools and government buildings may be prohibited. However, the Court did not specify or give guidance on what such limitations are or should be in regard to state or local gun laws. The exact scope of permissible firearm regulations by the states thus continues to remain unsettled. Iowa Code Chapter 724 contains limited qualifications and restrictions on a citizens right to carry handguns, including recently enacted disqualifying criteria prohibiting certain persons from obtaining permits to carry weapons (2010 Iowa Acts, S.F. 2379) and restrictions prohibiting persons subject to a civil domestic abuse protection order or a criminal domestic abuse no-contact order and persons convicted of a misdemeanor crime of domestic violence from possessing, transferring, or selling firearms and ammunition or offensive weapons (2010 Iowa Acts, S.F. 2357).

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