



Written by [James Heiser](#) on October 5, 2009

Supreme Court to Rule in Second Amendment Case

The Supreme Court will soon face its first post-Sotomayor test concern Second Amendment liberties. The landmark *District of Columbia v. Heller* case last year overturned the D.C. ban on gun ownership, maintaining that Second Amendment liberties could not be abridged in the federal district.



(However, the Supreme Court did permit onerous [legal restrictions](#) on the storage and use of such firearms as dictated by the laws of the district as to essentially enervate the functional significance of *Heller*.) Now the court will consider *McDonald v. Chicago*, and the ruling will potentially affect gun laws throughout the states of the union. According to [an article in the Los Angeles Times](#).

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At issue is whether state and local gun-control ordinances can be struck down as violating the "right to keep and bear arms" in the 2nd Amendment.

A ruling on the issue, due by next summer, could open the door to legal challenges to various gun control measures in cities and states across the nation.

The case also will decide whether the 2nd Amendment protects a broad constitutional right, similar to the 1st Amendment's right to free speech or the 4th Amendment's protection against unreasonable searches and seizures.

The challenge in *McDonald v. Chicago* centers on the 14th Amendment. Again, according to the *Los Angeles Times*:

Lawyers for the gun owners argued that "the right of the people to keep and bear arms" set out in the 2nd Amendment is "incorporated" into the 14th Amendment and thereby applies to states and localities....

After the Civil War, the 14th Amendment was added to the Constitution, and it says a state may not "abridge the privileges and immunities" of citizens nor deprive any person of "liberty ... without due process of law."

In the mid-20th century, the Supreme Court decided, in a step-by-process, that such fundamental rights as the freedom of speech, the free exercise of religion and the freedom from "unreasonable searches" are part of the "liberty" protected by 14th Amendment. These rulings permit constitutional challenges to state and local laws.

The appeal to the Supreme Court in *McDonald v. Chicago* relies on the so-called "Equal Protection



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Class” in Section 1 of the 14th Amendment: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” But the Supreme Court has thus far not ruled that the “right to keep and bear arms” is part of the liberty the 14th Amendment protects. The lawyers for the gun owners hope to win such a ruling, thereby prohibiting not only federal violations of the Second Amendment but violations by state and local governments as well.

Fundamental liberties that are acknowledged by the U.S. Constitution are not established by the Supreme Court; nor in point of fact, were such rights established by the U.S. Constitution. The fundamental rights set forth in the Bill of Rights, including the right to keep and bear arms, are simply *enumerated* by the Constitution, not *granted* by it.

However, in an age when judicial activism is inclined to ostensibly create or destroy rights at the whims of judges around the nation, the battles to reassert the rights of the American people enunciated in the Second Amendment has become a key part of the fight to uphold our liberties. It remains to be seen whether the Roberts Court will build on *District of Columbia v. Heller*, and whether the newest justice will honor the precedent of that case. It also remains to be seen whether, as the case of *Heller*, the Court essentially takes back with its left hand what it purports to give with its right, by permitting states and cities to so restrict the possession and use of firearms in self-defense as to render them useless.



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