

The U.S. Supreme Court's Decision in *District of Columbia v. Heller*

On June 26, 2008, the U.S. Supreme Court issued its historic ruling in *District of Columbia v. Heller*, the closely-watched case regarding the meaning of the Second Amendment.¹ In a 5-4 decision written by Justice Scalia, the Court held that the Second Amendment confers an individual right to possess firearms unrelated to service in a well-regulated state militia. The Court struck down the District's ban on handgun possession, finding that "the inherent right of self-defense has been central to the Second Amendment" and that handguns are "overwhelmingly chosen by American society for that lawful purpose."² The Court also struck down the District's requirement that firearms in the home be stored unloaded and disassembled or bound by a trigger lock or similar device because the law contained no exception for self-defense.

Does the *Heller* case mean that U.S. citizens have an inalienable right to own a gun?

No. Although the *Heller* decision establishes a new individual right to "keep and bear arms," the opinion makes clear that the right is not unlimited, and should not be understood as "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."³ The Court provides examples of gun laws that it deems "presumptively lawful" under the Second Amendment, including those which:

- Prohibit the possession of firearms by felons and the mentally ill;
- Forbid firearm possession in sensitive places such as schools and government buildings; and
- Impose conditions on the commercial sale of firearms.

The Court makes clear that this list is not exhaustive. The Court also concludes that the Second Amendment is consistent with laws banning "dangerous and unusual weapons" that are not "in common use at the time" -- such as M-16 rifles and other firearms "that are most useful in military service."⁴ Finally, the Court declares that its analysis should not be read to suggest "the invalidity of laws regulating the storage of firearms to prevent accidents."⁵

What does the *Heller* case mean for proposed gun violence prevention legislation in Illinois?

The *Heller* case should have no impact on the policies proposed in Illinois to reduce gun violence. First, none of the policies proposed in Illinois were directly at issue in the case. The *Heller* case decided only that the District of Columbia's handgun ban and trigger lock law were unconstitutional under the Second Amendment. Legislation proposed in Illinois (e.g. to require background checks on all handgun transfers, to license gun dealers, and to require gun owners to report lost or stolen firearms) all involve much more modest regulations than a ban on handguns.

In addition, it has long been established that the Second Amendment limits only the power of Congress, and that state laws are not subject to challenge under the Second Amendment. Because *Heller* considered a law of the District of Columbia (a federal enclave), the only question presented was the application of the Second Amendment to a *federal* regulation banning handgun possession.

The *Heller* Court stated that the question of whether the Second Amendment applies to the states is “a question not presented by this case.”⁶ While the *Heller* Court did not rule on whether the Second Amendment applies to the states, the Court did note its earlier decisions holding that “the Second Amendment applies only to the Federal Government.”⁷ The Seventh Circuit Court of Appeals, which includes Illinois, Indiana and Wisconsin, has adopted this position as well.⁸

How will the *Heller* case affect existing gun laws in Illinois?

Currently, there are several pending lawsuits challenging handgun bans in Chicago and the suburban communities of Evanston, Oak Park and Morton Grove. As a matter of law, these cases should be dismissed because the Second Amendment does not apply to the states. In Chicago, Mayor Daley has resolved to fight any attempt to overturn the city’s ban.

What does the Second Amendment to the U.S. Constitution say?

The Second Amendment to the U.S. Constitution 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.”

¹ *District of Columbia v. Heller*, No. 07-290 (June 26, 2008)

² *Id.*, slip op. at 56.

³ *Id.* at 55.

⁴ *Id.* at 60.

⁵ *Id.* at 48 n.23.

⁶ *Id.*, citing *Miller v. Texas*, 153 U.S. 535, 538 (1894); *Presser v. Illinois*, 116 U.S. 252, 265 (1886); and *United States v. Cruikshank*, 92 U.S. 542, (1876).

⁷ *Quilici v. Village of Morton Grove*, 695 F.2d 261, 270-71 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983). Other federal appellate courts also have reiterated this position. See, e.g., *Love v. Pepersack*, 47 F.3d 120, 123-24 (4th Cir. 1995), cert. denied, 516 U.S. 813 (1995); *Fresno Rifle & Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723, 729-31 (9th Cir. 1992).

⁸ *Heller*, slip op. at 54.