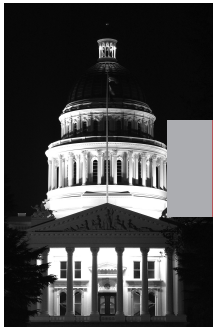


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The U.S. Supreme Court recently imposed limits on state and local firearm-control laws. What does this mean for California?

A sharply divided U.S. Supreme Court ruled 5-4 in *McDonald v. City of Chicago* that the Second Amendment—which states in its entirety, “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”—applies to state and local laws. The Court’s opinion, filed on June 28, 2010, declared that the Second Amendment provides an individual right to self-defense, underscoring the right to protect one’s self, home, family, and personal property.

The Court incorporated the Second Amendment, which means state and local laws that interfere with an individual’s fundamental right to keep a handgun in the home for self-defense are subject to increased scrutiny under the federal Constitution. The ruling has been hailed as a constitutional victory by gun rights advocates.

How the Justices Ruled

Justice Alito delivered the majority opinion and was joined by Justices Kennedy, Scalia, Thomas, and Chief Justice Roberts. In dissent were Justices Ginsberg, Sotomayor, Breyer, and Stevens.

In essence, the Court has ruled that handgun ownership in the home is a constitutional right, but like other constitutional rights, it is limited. For example, the First Amendment’s guarantees of freedom of speech, assembly, and press apply to state as well as federal regulations, yet First Amendment rights are limited by laws prohibiting libel and slander.



The U.S. Supreme Court Rules on the Second Amendment

In a significant 5-4 ruling, the U.S. Supreme Court has incorporated the Second Amendment, meaning state and local laws that interfere with an individual’s fundamental right to keep a handgun in the home for self-defense are subject to increased scrutiny under the federal Constitution.

Similarly, in *McDonald v. City of Chicago*, the Court has incorporated the Second Amendment, but it also has preserved the constitutionality of some reasonable firearms restrictions. Specifically, the Court stressed that reasonable restrictions involving gun possession by felons and people with mental illness, restrictions on firearms at sensitive places such as schools and government buildings, and conditions on commercial gun sales will remain constitutionally valid.

Putting It in Perspective

McDonald v. Chicago expands the U.S. Supreme Court's 2008 decision in *District of Columbia v. Heller*, which overturned a federally imposed District of Columbia law banning possession of handguns in the home as a violation of the Second Amendment. *McDonald* adopts the landmark declaration of *Heller*—that the Second Amendment guarantees an individual right to self-defense in the home—and applies Second Amendment limitations to state and local firearm laws.

The Impact of *McDonald v. City of Chicago*

Nationwide, *McDonald* is expected to produce a considerable volume of Second Amendment-based legal challenges to the constitutionality of state and local firearm laws. While outright bans on handgun possession in the home for self-defense are unquestionably unlawful, it remains unclear what, if any, restrictions on firearms other than handguns will be declared constitutional violations.

The U.S. Court of Appeals for the Ninth Circuit, which has jurisdiction over California, will soon issue a ruling that may provide some answers. An Alameda County ordinance that makes it a misdemeanor to possess a firearm or ammunition on county property was ruled as constitutional by the Ninth Circuit (*Nordyke v. King*) in April 2009. The ordinance had been challenged by gun-show promoters who wanted to hold shows at the Alameda County Fairgrounds. However, in light of the Supreme Court's *McDonald* ruling, the Ninth Circuit has decided to rehear the case.

While it is now known that the Second Amendment applies to the states, many legal scholars agree that the *McDonald* ruling does not prevent California and other states from regulating firearms to ensure public safety. Indeed, it may be many years before the impact of this ruling can be fully appreciated.

Written by Lindsey V. Scott-Flórez. The California Senate Office of Research is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. It was established by the Senate Rules Committee in 1969. For more information and copies of this report, please visit www.sen.ca.gov/sor or call (916) 651-1500.