Syllabus

McDONALD ET AL. *v.* CITY OF CHICAGO, ILLINOIS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 08–1521. Argued March 2, 2010—Decided June 28, 2010

Two years ago, in *District of Columbia* v. *Heller*, 554 U. S. 570, this Court held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense and struck down a District of Columbia law that banned the possession of handguns in the home. Chicago (hereinafter City) and the village of Oak Park, a Chicago suburb, have laws effectively banning handgun possession by almost all private citizens. After *Heller*, petitioners filed this federal suit against the City, which was consolidated with two related actions, alleging that the City's handgun ban has left them vulnerable to criminals. They sought a declaration that the ban and several related City ordinances violate the Second and Fourteenth Amendments. Rejecting petitioners' argument that the ordinances are unconstitutional, the court noted that the Seventh Circuit previously had upheld the constitutionality of a handgun ban, that *Heller* had explicitly refrained from opining on whether the Second Amendment applied to the States, and that the court had a duty to follow established Circuit precedent. The Seventh Circuit affirmed, relying on three 19th-century cases—*United States* v. *Cruikshank*, 92 U. S. 542, *Presser* v. *Illinois*, 116 U. S. 252, and *Miller* v. *Texas*, 153 U. S. 535—which were decided in the wake of this Court's interpretation of the Fourteenth Amendment's Privileges or Immunities Clause in the *Slaughter-House Cases*, 16 Wall. 36.

Held: The judgment is reversed, and the case is remanded.

567 F. 3d 856, reversed and remanded.

JUSTICE ALITO delivered the opinion of the Court with respect to Parts I, II–A, II–B, II–D, and III, concluding that the Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller*, to keep and bear arms for the purpose of self-defense. Pp. 753–758, 759–780.

(a) Petitioners base their case on two submissions. Primarily, they argue that the right to keep and bear arms is protected by the Privileges or Immunities Clause of the Fourteenth Amendment and that the *Slaughter-House Cases'* narrow interpretation of the Clause should now be rejected. As a secondary argument, they contend that the Fourteenth Amendment's Due Process Clause incorporates the Second

Syllabus

Amendment right. Chicago and Oak Park (municipal respondents) maintain that a right set out in the Bill of Rights applies to the States only when it is an indispensable attribute of *any* "'civilized'" legal system. If it is possible to imagine a civilized country that does not recognize the right, municipal respondents assert, that right is not protected by due process. And since there are civilized countries that ban or strictly regulate the private possession of handguns, they maintain that due process does not preclude such measures. P. 753.

(b) The Bill of Rights, including the Second Amendment, originally applied only to the Federal Government, not to the States, see, *e. g., Barron ex rel. Tiernan* v. *Mayor of Baltimore*, 7 Pet. 243, 247, but the constitutional Amendments adopted in the Civil War's aftermath fundamentally altered the federal system. Four years after the adoption of the Fourteenth Amendment, this Court held in the *Slaughter-House Cases* that the Privileges or Immunities Clause protects only those rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws," 16 Wall., at 79, and that the fundamental rights predating the creation of the Federal Government were not protected by the Clause, *id.*, at 76. Under this narrow reading, the Court held that the Privileges or Immunities Clause protects only very limited rights. *Id.*, at 79–80. Subsequently, the Court held that the Second Amendment applies only to the Federal Government in *Cruikshank*, *supra*, *Presser*, *supra*, and *Miller*, *supra*, the decisions on which the Seventh Circuit relied in this case. Pp. 754–758.

(c) Whether the Second Amendment right to keep and bear arms applies to the States is considered in light of the Court's precedents applying the Bill of Rights' protections to the States. Pp. 759–766.

(1) In the late 19th century, the Court began to hold that the Due Process Clause prohibits the States from infringing Bill of Rights protections. See, *e. g., Hurtado* v. *California*, 110 U. S. 516. Five features of the approach taken during the ensuing era are noted. First, the Court viewed the due process question as entirely separate from the question whether a right was a privilege or immunity of national citizenship. See *Twining* v. *New Jersey*, 211 U. S. 78, 99. Second, the Court explained that the only rights due process protected against state infringement were those "of such a nature that they are included in the conception of due process of law." *Ibid.* Third, some cases during this era "can be seen as having asked . . . if a civilized system could be imagined that would not accord the particular protection" asserted therein. *Duncan* v. *Louisiana*, 391 U. S. 145, 149, n. 14. Fourth, the Court did not hesitate to hold that a Bill of Rights guarantee failed to meet the test for Due Process Clause protection, finding, *e. g.*, that freedom of speech and press qualified, *Gitlow* v. *New York*, 268 U. S. 652,

666; *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, but the grand jury indictment requirement did not, *Hurtado*, *supra*. Finally, even when such a right was held to fall within the conception of due process, the protection or remedies afforded against state infringement sometimes differed from those provided against abridgment by the Federal Government. Pp. 759–761.

(2) Justice Black championed the alternative theory that §1 of the Fourteenth Amendment totally incorporated all of the Bill of Rights' provisions, see, *e. g.*, *Adamson* v. *California*, 332 U. S. 46, 71–72 (Black, J., dissenting), but the Court never has embraced that theory. Pp. 761–763.

(3) The Court eventually moved in the direction advocated by Justice Black, by adopting a theory of selective incorporation by which the Due Process Clause incorporates particular rights contained in the first eight Amendments. See, *e. g.*, *Gideon* v. *Wainwright*, 372 U. S. 335, 341. These decisions abandoned three of the characteristics of the earlier period. The Court clarified that the governing standard is whether a particular Bill of Rights protection is fundamental to our Nation's particular scheme of ordered liberty and system of justice. *Duncan*, *supra*, at 149, n. 14. The Court eventually held that almost all of the Bill of Rights' guarantees met the requirements for protection under the Due Process Clause. The Court also held that Bill of Rights protections must "all . . . be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *Malloy* v. *Hogan*, 378 U. S. 1, 10. Under this approach, the Court overruled earlier decisions holding that particular Bill of Rights guarantees or remedies did not apply to the States. See, *e. g.*, *Gideon*, *supra*, which overruled *Betts* v. *Brady*, 316 U. S. 455. Pp. 763–766.

(d) The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the States. Pp. 767–780.

(1) The Court must decide whether that right is fundamental to the Nation's scheme of ordered liberty, *Duncan*, *supra*, at 149, or, as the Court has said in a related context, whether it is "deeply rooted in this Nation's history and tradition," *Washington* v. *Glucksberg*, 521 U. S. 702, 721. *Heller* points unmistakably to the answer. Self-defense is a basic right, recognized by many legal systems from ancient times to the present, and the *Heller* Court held that individual self-defense is "the central component" of the Second Amendment right. 554 U. S., at 599. Explaining that "the need for defense of self, family, and property is most acute" in the home, *id.*, at 628, the Court found that this right applies to handguns because they are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," *id.*, at

628–629. It thus concluded that citizens must be permitted "to use [handguns] for the core lawful purpose of self-defense." *Id.*, at 630. *Heller* also clarifies that this right is "deeply rooted in this Nation's history and tradition," *Glucksberg, supra,* at 721. *Heller* explored the right's origins in English law and noted the esteem with which the right was regarded during the colonial era and at the time of the ratification of the Bill of Rights. This is powerful evidence that the right was regarded as fundamental in the sense relevant here. That understanding persisted in the years immediately following the Bill of Rights' ratification and is confirmed by the state constitutions of that era, which protected the right to keep and bear arms. Pp. 767–770.

(2) A survey of the contemporaneous history also demonstrates clearly that the Fourteenth Amendment's Framers and ratifiers counted the right to keep and bear arms among those fundamental rights necessary to the Nation's system of ordered liberty. Pp. 770–780.

(i) By the 1850's, the fear that the National Government would disarm the universal militia had largely faded, but the right to keep and bear arms was highly valued for self-defense. Abolitionist authors wrote in support of the right, and attempts to disarm "Free-Soilers" in "Bloody Kansas" met with outrage that the constitutional right to keep and bear arms had been taken from the people. After the Civil War, the Southern States engaged in systematic efforts to disarm and injure African-Americans, see *Heller, supra,* at 614–615. These injustices prompted the 39th Congress to pass the Freedmen's Bureau Act of 1866 and the Civil Rights Act of 1866 to protect the right to keep and bear arms. Congress, however, ultimately deemed these legislative remedies insufficient, and approved the Fourteenth Amendment. Today, it is generally accepted that that Amendment was understood to provide a constitutional basis for protecting the rights set out in the Civil Rights Act. See *General Building Contractors Assn., Inc.* v. *Pennsylvania,* 458 U. S. 375, 389. In congressional debates on the proposed Amendment, its legislative proponents in the 39th Congress referred to the right to keep and bear arms as a fundamental right deserving of protection. Evidence from the period immediately following the Amendment's ratification confirms that that right was considered fundamental. Pp. 770–778.

(ii) Despite all this evidence, municipal respondents argue that Members of Congress overwhelmingly viewed §1 of the Fourteenth Amendment as purely an antidiscrimination rule. But while §1 does contain an antidiscrimination rule, *i. e.,* the Equal Protection Clause, it can hardly be said that the section does no more than prohibit discrimination. If what municipal respondents mean is that the Second Amendment should be singled out for special—and specially unfavorable—

treatment, the Court rejects the suggestion. The right to keep and bear arms must be regarded as a substantive guarantee, not a prohibition that could be ignored so long as the States legislated in an even-handed manner. Pp. 778–780.

JUSTICE ALITO, joined by THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY, concluded, in Parts II–C, IV, and V, that the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right recognized in *Heller*. Pp. 758–759, 780–791.

(a) Petitioners argue that the Second Amendment right is one of the "privileges or immunities of citizens of the United States." There is no need to reconsider the Court's interpretation of the Privileges or Immunities Clause in the *Slaughter-House Cases* because, for many decades, the Court has analyzed the question whether particular rights are protected against state infringement under the Fourteenth Amendment's Due Process Clause. Pp. 758–759.

(b) Municipal respondents' remaining arguments are rejected because they are at war with *Heller*'s central holding. In effect, they ask the Court to hold the right to keep and bear arms as subject to a different body of rules for incorporation than the other Bill of Rights guarantees. Pp. 780–787.

(c) The dissents' objections are addressed and rejected. Pp. 787–791.

JUSTICE THOMAS agreed that the Fourteenth Amendment makes the Second Amendment right to keep and bear arms that was recognized in *District of Columbia* v. *Heller*, 554 U. S. 570, fully applicable to the States. However, he asserted, there is a path to this conclusion that is more straightforward and more faithful to the Second Amendment's text and history. The Court is correct in describing the Second Amendment right as "fundamental" to the American scheme of ordered liberty, *Duncan* v. *Louisiana*, 391 U. S. 145, 149, and "deeply rooted in this Nation's history and tradition," *Washington* v. *Glucksberg*, 521 U. S. 702, 721. But the Fourteenth Amendment's Due Process Clause, which speaks only to "process," cannot impose the type of substantive restraint on state legislation that the Court asserts. Rather, the right to keep and bear arms is enforceable against the States because it is a privilege of American citizenship recognized by § 1 of the Fourteenth Amendment, which provides, *inter alia:* "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." In interpreting this language, it is important to recall that constitutional provisions are "'written to be understood by the voters.'" *Heller*, 554 U. S., at 576. The objective of this inquiry is to discern what "ordinary citizens" at the time of the Fourteenth Amendment's ratification would have understood that Amendment's Privileges or Immunities Clause to mean. *Id.*, at 577. A survey of contemporary legal

authorities plainly shows that, at that time, the ratifying public understood the Clause to protect constitutionally enumerated rights, including the right to keep and bear arms. Pp. 805–838.

ALITO, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A, II–B, II–D, and III, in which ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined, and an opinion with respect to Parts II–C, IV, and V, in which ROBERTS, C. J., and SCALIA and KENNEDY, JJ., joined. SCALIA, J., filed a concurring opinion, *post*, p. 791. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 805. STEVENS, J., filed a dissenting opinion, *post*, p. 858. BREYER, J., filed a dissenting opinion, in which GINSBURG and SOTOMAYOR, JJ., joined, *post*, p. 912.

Alan Gura argued the cause for petitioners. With him on the briefs was *David G. Sigale*. *Paul D. Clement* argued the cause for the National Rifle Association of America, Inc., et al., respondents in support of petitioners. On the briefs were *Stephen D. Poss*, *Kevin P. Martin*, *Scott B. Nardi*, *Joshua S. Lipshutz*, and *Stephen P. Halbrook*.

James A. Feldman argued the cause for respondent City of Chicago et al. With him on the brief were *Benna Ruth Solomon*, *Myriam Zreczny Kasper*, *Suzanne M. Loose*, and *Andrew W. Worseck*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *James C. Ho*, Solicitor General, *C. Andrew Weber*, First Assistant Attorney General, *David S. Morales*, Deputy Attorney General, *Sean D. Jordan*, Deputy Solicitor General, and *Candice N. Hance*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Daniel S. Sullivan* of Alaska, *Terry Goddard* of Arizona, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Steve Six* of Kansas, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Janet T. Mills* of Maine, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Gary K. King* of New Mexico, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Richard Cordray* of Ohio, *W. A. Drew*