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The Illogic of the Top Court's Chicago Gun-Rights Decision

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Conservative legal theorists claim to be the great protectors of state sovereignty against encroachment by the big, bad federal government.

But it is hard to think of a more intrusive attack on state sovereignty than the recent gun-control ruling by the U.S. Supreme Court's five conservative justices that the City of Chicago was powerless to ban hand-gun ownership.

The ruling in *McDonald v. City of Chicago* was particularly surprising since it was an interpretation of the provision in the federal Constitution that, on its face, does nothing more than authorize the states to maintain their own militias. Yet the conservatives on the Court took the occasion to strip state and local governments of the power to control gun ownership. For those who haven't checked out the Second Amendment lately, it says the following: " *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.* "

The most natural reading of those words would seem to imply that the several states have the right to maintain their own militias, and therefore the federal government cannot interfere with the state function of arming its citizens.

But the conservatives who are so concerned about respecting the autonomy of the states have taken it upon themselves to decide that a state has no power to control the possession of firearms of its own citizens. Or as Justice John Paul Stevens said in his dissent in the Chicago gun-rights case: "The Second Amendment ... is a federalism provision. ... It is directed at preserving the autonomy of the sovereign States, and its logic therefore resists incorporation by a federal court *against* the States."

What's more, four of the five justices in the majority based their decision restricting state power squarely on the state-empowerment provision of the Second Amendment.

At least Justice Clarence Thomas, who contributed the fifth vote for the majority, had the good sense to base his position on the Privileges and Immunities Clause of the Fourteenth Amendment, finding the right to keep a gun in the home for self-defense a fundamental right of U.S. citizenship. Even the dissenting Justice Stevens indicated that he might have endorsed such a right under the federal constitution.

To have so limited the ruling to one of self-protection in the home would have avoided the myriad of lawsuits now sure to follow challenging all sorts of state and local regulation of this newly discovered Second Amendment right to bear arms, and would have left it clearly within the power of the states to define the scope of the right.

But it seems that the conservative guardians of state sovereignty were unwilling to allow the states any such leeway.

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