Eliot Whalen  
Topic 2  
The ruling on the 2nd amendment, whether firearms should be accessible by citizens in terms of self defense, is a controversial topic that has attracted a lot of attention due to common misuse of guns throughout time. It is these controversial cases that cause the supreme court to review and change decisions, so to be viewed as politically correct in that time while also attempting to uphold the validity of the law. It is uncommon for the supreme court to overrule a case and sometimes even laws that have been effect for many years but as times change so do the ‘needs of society’, making it necessary for the Judiciary to sometimes be either strict or lenient when interpreting the law, so to protect the current law as well as their public image. The case of McDonald v. The City of Chicago (2010) was a very important and influential one, and relative to this idea that judges in some cases are forced to exercise their power to interpret law however they seem fair. This case and its supreme court ruling changed the very way that the 2nd amendment is looked at and applied in court today. Chicago at this time was heavily effected by the topic of whether guns should be outlawed or not but when the city came out with an ordinance that banned them entirely, one Otis McDonald, a retired African American custodian, fought long and hard so that he could protect his right to defend himself. "I know every day that I come out in the streets, the youngsters will shoot me as quick as they will a policeman," stated McDonald¹, the right he defended being the 2nd amendment which protects his ability to provide security to himself and his family in instances such as the one mentioned in this statement.  
Although this dispute has been around for a while, it expanded in 2008 when the city of Chicago passed ordinances that, “Essentially banned private handgun ownership in the city”².  
When Otis McDonald as well as other pro-gun groups didn’t agree with this, they filed suits in  

District Court challenging the provisions in these laws in belief that their amendments and individual rights were being violated. These suits were quickly shut down by district court and court appeals for the seventh circuit because the 2nd amendment was not protected by laws enacted by state, but only by laws enacted under the authority of the national government. Once this was made largely known, the supreme court granted certiorari so the case could be looked at again through the eyes of a superior court system. After much review, the Supreme Court reversed the original ruling, holding that the 14th amendment and certain clauses within it, which declared the inability of a state to deprive any person of their liberties, made the second amendment applicable to state laws as well as national government. The suit was then given back to district court where, after the supreme courts decision to allow the 2nd amendment to apply to states, it became clear that the banning of guns in such ordinances proved to be unconstitutional. McDonald fought hard to protect his rights and win this case, his victory benefitting from the lenience and strictness of law interpretation that the Supreme Court utilized throughout the trial.

When an act or decision of congress can be seen as unconstitutional, congress has the power and responsibility to review and possibly overturn it, this being known as Judicial Review. Although rare, judges can then make changes and alterations to the laws at hand so to serve their idea of what society would agree with in that time period. As society evolves, law and the constantly aging rules of conduct created long ago must adapt to these changes so to meet ‘the spirit of the times’. This capability of the supreme court to discreetly change public policy to benefit the current societal opinion is referred to in legal terms as Judicial activism. Contradictory to this idea, judges can also limit the extent of their power to change law by avoiding the changing of public policy with the purpose of preserving the continuity of law. This strictness can also benefit the public opinion because at times accurately following and adhering
to the constitution can match the public's position on the matter. To abide by the law as opposed to changing it is referred to legally as Judicial restraint. Supporters of Judicial Activism believe that law was invented so long ago that its meaning can no longer be known and should be altered to complement the changing of the times, while believers of Judicial Restraint believe that the meaning of law that the founding fathers intended has not changed over time and should still be applied today, and that previous court decisions should match all similar cases following them. Examples of both activism and restraint can be found in the case of McDonald v. The City of Chicago. Judicial Restraint is found here when the precedent, or decision found in the similar case of The District of Columbia v. Heller (2008), was applied faithfully to this case, and because the second and fourteenth amendments were not invalidated by the supreme court decision, but strictly adhered to so the original text found in the constitution would be upheld. Judicial activism is applied in this case because the supreme court, through Judicial review, overturned the subordinate courts wrongful violation of the constitution when initially turning down McDonald's suit.

The District of Columbia v. Heller was an exceptionally similar case as, and occurring just prior to, McDonald v. The City of Chicago. Just like in Chicago, the district of Columbia basically made the owning of any firearms illegal, which sparked agitation in local D.C. police officer Dick Anthony Heller. The U.S. court of appeals saw his argument and held that these gun bans created by The District of Columbia were indeed unconstitutional, violating the second amendments granted right to keep fire-arms for self defense purposes. This decision that is so compatible to McDonald v. The City of Chicago, under the idea of Judicial restraint, should be used to decide the case because of Stare Decisis, a Latin word that basically means that old relevant cases or ‘precedent’ should be used in determining all cases like it in the future. The
supreme courts notion to apply stare decisis in this instance and overrule the initial decision highlights Judicial restraint and justice’s ability to limit their own power by following previously made Judicial decisions.

The issue that district courts had with McDonald’s suit originally was whether the precedent he was arguing applied to state or just the District of Columbia where the decision was made, which the Heller case decision declined to include. When the supreme court reviewed this detail they chose to adhere to the original meaning of the constitution. Their final opinion held that the Fourteenth Amendment’s ability to prohibit states from depriving any person of liberty, in this case that liberty being the right to keep and bear arms, made the Second Amendment applicable to the states after all. After this decision was finalized, Justice Samuel A. Alito wrote, “It is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system,” displaying the supreme courts use of original textualism, or choice to limit their own power when agreeing to not make any changes to the constitution and allowing the original text and meaning of the constitution to remain how the creators intended it to.

Contrarily, Judicial activism is utilized by justices and can be found amidst this intricate case as well. As mentioned before, Judicial review is applied when the possibility of a wrongful or unconstitutional act occurs in a subordinate court. This decision of the supreme court to apply a review of facts and law in a case can be considered activism alone, because the Judicial system is forcefully engaging in the act of protecting any wrongdoings toward the constitution in the eyes of the public. According to lecture, Judicial activism is found when state and local laws are overturned due to violation of the constitution, and in the case of McDonald v. Chicago a state ordinance was struck down essentially because it disobeyed a crucial amendment defined in the

constitution. The supreme court acted cautiously in their opinion in this case because, as times change, gun law is being held as a highly disputed issue. Unlike the 1700s, these issues are becoming more and more relevant today, so public opinion therefore influences and is considered in a Judicial verdict.

Activism and restraint were both displayed by the supreme court in McDonalds fight for his lawful capability to defend himself, and both were factors that had large impacts on the courts final decision to ultimately make the 2\textsuperscript{nd} amendment invalidate gun bans. “I think there is something of a mixed role between activism and restraint on this court [and you see this with] the McDonald decision and the 2nd Amendment,”\textsuperscript{1} states Walter Dellinger, a former acting solicitor general during the Clinton administration. There are arguments for both concepts as to which one could be framed as the overall deciding factor leading to the courts opinion. On one hand, the public opinion should be accounted for when deciding such a debated topic, and on the other hand the preservation of law must be sustained so to sustain the current standard and unbiased set of principles that have operated for so long. Both forms of law interpretation are heavily opinionated as to which should be applied and where, but when deciding a difficult matter such as whether precedent should be upheld, whether the old text should be followed strictly, or whether state law should be overturned, the supreme court will, and have (exemplified in the case of \textit{McDonald v. The City of Chicago}), done what is necessary to reach a decision that can be seen as impartial to both Judicial activism and judicial restraint.