**Second Amendment: History, Theory, and Practice**

Professor Joseph Blocher

Duke Law School

Fall 2022

Tuesday, 8:55-10:45, Room 4044

A dozen years ago, the Supreme Court’s decision in *District of Columbia v. Heller* established that the right to keep and bear arms extends beyond the organized militia and includes an individual right to possess arms for certain private purposes, including self-defense in the home. In the decade since, in more than 1,000 cases, hundreds of scholarly articles, and millions of public debates, the modern Second Amendment has begun to take shape. The Court’s decision last term in *New York State Rifle & Pistol Association v. Bruen* appears to have altered that shape, doctrinally speaking, but the dust has only just begun to settle.

In this course, we will attempt to come to grips with the right to keep and bear arms as a matter of law. We will do so by thoroughly examining the constitutional history, theory, and practice of gun rights and regulation in the United States. We will cover the foundational Supreme Court cases as well as the broader historical and political debates in which they are embedded, and the theoretical questions they raise. Our goal is to understand both the relevant legal doctrine and the context in which that doctrine is embedded.

*Office Hours*: I will have open hours on Tuesdays from 10:45 to 12:30 in my office (3174) or by appointment. Please feel free to come by with questions or comments. You can also e-mail me any time at [blocher@law.duke.edu](mailto:blocher@law.duke.edu).

*Readings*: Along with Jacob Charles (Pepperdine), Jody Madeira (Indiana), and Darrell A.H. Miller (Duke), I am currently writing a Second Amendment casebook, the draft chapters of which will be posted to Sakai and will comprise the reading assignments throughout the semester. The book is very much a work in progress—you all will be the first to see and use the draft—and I invite your feedback throughout the semester on discussion questions, notes, case selection, and the like.

As an optional companion, I recommend Philip J. Cook & Kristin A. Goss, The Gun Debate: What Everyone Needs to Know (2d ed 2020). I will not be assigning readings from it, but it provides an excellent overview of many legal and policy issues.

*Class*: Attendance and active participation are required and will factor heavily into your final grade. This is a discussion class, and I expect to hear from everyone multiple times each week.

*Grading*: Grades will be determined by class participation and by your work on either (1) six response papers of approximately five pages each, or (2) one longer paper of approximately thirty pages.

If you choose the response paper option, these should be e-mailed to Theresa Boyce ([theresa.boyce@law.duke.edu](mailto:theresa.boyce@law.duke.edu)) by 5:00 pm the Monday before class so that I can review them ahead of time. Although your preparation and class participation will be evaluated every week, you can write papers for any six weeks you choose. If you write more than six papers (up to a maximum of nine) I will count only the best six towards your final grade. Unless you have received approval to write about something else, the response papers should be tied to the reading, though you need not limit them to a single week’s assignment.

For the longer paper option, the guidelines below apply:

1) *Choosing a topic*. You are free to write about whatever you like, so long as it relates to some aspect of the Second Amendment or firearms law. I would be happy to discuss topics any time in person or over email.

2) *Following the schedule*. Please make note of these dates:

Week 2 (Aug. 30) – Topic

Before the second week of class, you will produce something akin to an abstract: a few-sentence-long description of the issue you plan to explore. You will not be locked in to your topic, however, and can change if need be.

Week 7 (Oct. 4) – Detailed Outline

The outline should be a few pages long, and must deliver a roadmap of where you think the paper will go. Formatting is irrelevant, and it doesn’t need to be neat. We just want to see what you have in terms of arguments, questions, sources, and avenues for further exploration.

Week 12 (Nov. 15) – First Draft

Your first draft is only that—a draft—but it is essential, whether or not you are writing your paper to satisfy the Law School’s research paper requirement. The draft does not need to be proofed or Bluebooked, but it must demonstrate that you have read and processed the relevant sources, and that you have found a way to construct your own argument based on them. Page count is less important than engagement with the materials and your own thesis.

December 16 - Final Paper

By this point the paper should be completed, fully cited, proofed, and Bluebooked.

*Sakai*: You can find more information about the course on Sakai, including the readings and syllabus, and any announcements about changes in the reading. There is also a “Forums” section, which I encourage you to use for any posts or comments on developments in gun law and policy—of which I expect there will be many throughout the fall. It will not be a substitute for attendance and in-class discussion, but thoughtful postings will count towards your class participation.

This syllabus is subject to change throughout the semester.

**Second Amendment Seminar – Readings**

**Week 1 - August 23**

Chapter 1: *Heller* And Constitutional Grammar

**Week 2 - August 30**

Chapter 2: The History Of The Arms Right

*Topics for long papers due*

**Week 3 – September 6**

Chapter 3: Reconstruction & Incorporation

**Week 4 – September 13**

Chapter 4: How Second Amendment Should Cases Be Decided?

**Week 5 – September 20**

Chapter 5: Where The Second Amendment Extends

**Week 6 – September 27**

*No reading assignment* – discussion with Erin Murphy of Clement & Murphy PLLC

**Week 7 – October 4**

Chapter 6: Who The Second Amendment Covers

*Outlines for long papers due*

**Week 8 – October 18**

Chapter 7: What The Second Amendment Protects

**Week 9 – October 25**

Chapter 8: Gun Rights And Equality

**Week 10 – November 1**

Chapter 9: Conflicting & Reinforcing Rights & Interests

**Week 11 – November 8**

Chapter 10: Gun Rights Outside The Constitution

**Week 12 – November 15**

*No reading assignment* – reserved for outside speaker

**Week 13 – December 8**

Chapter 11: Civil Liability And Regulation