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.

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—*Heller* and *McDonald v. City of Chicago*—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:** We will have joint office hours on Tuesdays from 1:30 to 3:00 in Prof. Blocher’s office (3174) or by appointment. Please feel free to come by with questions or comments. You can also e-mail us any time at blocher@law.duke.edu and jacob.charles@law.duke.edu.

**Readings:** The only required course book is *Joseph Blocher & Darrell Miller, The Positive Second Amendment: Rights, Regulation, and the Future of Heller* (2018). The majority of the reading, however, will consist of articles, heavily edited cases, commentary, and other materials. This is a fast-moving area of law, where court cases, legislative actions, and public debate are intertwined—the reading assignments reflect as much.

As an optional companion volume, we recommend *Philip J. Cook & Kristin A. Goss, The Gun Debate: What Everyone Needs to Know* (2014). We will not be assigning readings from it, but it provides an excellent overview of many legal and policy issues.
There are also some helpful guides to firearm mechanics (How a Handgun Works: 1911 .45) (Caliber, cartridges, and bump stocks: guns, explained for non-gun people) and the variation among state laws and policies (e.g., Giffords Law Center, National Shooting Sports Foundation) that are useful if you have further interest in any specific area.

Class: Class will meet Tuesdays from 10:30am to 12:20pm. Attendance and active participation are required and will factor heavily into your final grade. This is a discussion class, and we 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) by 5pm the Monday before class so that we 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) we will count only the best six towards your final grade. Unless you have received approval from us 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. We are happy to discuss topics any time in person or over email.

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

Week 2 (Jan. 21) – 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 (Mar. 3) – 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 13 (April 7) – 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.

**May 1 - 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 we encourage you to take advantage of. 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: The Origins of the Right to Keep and Bear Arms

A. The English Bill of Rights

- *The English Bill of Rights* (1689) (skim)
  - “That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law”

B. Early American Understanding

- The Federalist Papers No. 29 (Hamilton); The Federalist Papers No. 46 (Madison)

C. The Early Court View

- State v. Reid, 1 Ala. 612 (1840)
- Nunn v. State, 1 Ga. 243 (1846)
- City of Salina v. Blaksley, 72 Kan. 230, 83 P. 619 (1905)

Week 2: From *Miller* to *Heller*

A. *United States v. Miller*

- United States v. Miller, 307 U.S. 174 (1939)
- Blocher & Miller, Chapter 2

B. The Road to *Heller*

- Emerson v. United States, 270 F.3d 203 (5th Cir. 2001) (skim)
Week 3: *Heller, McDonald, and Constitutional Interpretation*

**A. Heller & Method**

- *District of Columbia v. Heller*, 554 U.S. 570, 573-636 (2008); *id.* at 636-81 (Stevens, J., dissenting)

**B. Incorporation**

- BLOCHER & MILLER, 90-98

Week 4: Guns in *Heller’s America*

**A. Contemporary Gun Ownership**


**B. The Constitution and Cost-Benefit Analysis**

- *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (excerpts from majority opinion of Judge Ginsburg and dissenting opinion of Judge Kavanaugh)

**C. The Empirical Debates**


Week 5: Post-*Heller* Doctrinal Development

**A. Doctrinal Building Blocks**

- BLOCHER & MILLER, Chapters 4 & 5
- *U.S. v. Masciandaro*, 638 F.3d 458 (4th Cir. 2013) (excerpts)
B. An Overview of Post-\textit{Heller} Litigation


\textbf{Week 6: Public Carry and Good Cause Restrictions}

A. The Public Carry Debate

- \textit{What You Need to Know About Open Carry in America}, The Trace (July 18, 2016)
  - Optional: \textit{Guns to Carry, Gun Laws By State: The Complete Guide}

B. Public Carry Bans

- \textit{Moore v. Madigan}, 702 F.3d 933 (7th Cir. 2012) (excerpts)
- \textit{Peruta v. City of San Diego}, 824 F.3d 919 (9th Cir. 2016) (en banc) (excerpts)

C. Good Cause Restrictions

- \textit{Gould v. Morgan}, 907 F.3d 659 (1st Cir. 2018) (excerpts)

\textbf{Week 7: Regulating “Arms”}

A. Dangerous and Unusual Weapons and the “Common Use” Test


B. Assault Weapons & Large Capacity Magazines

- Jeremy White, \textit{When Lawmakers Try to Ban Assault Weapons, Gunmakers Adapt}, N.Y. Times (July 31, 2019) (review online)
- \textit{Kolbe v. Hogan}, 849 F.3d 114 (4th Cir. 2017) (en banc) (excerpts)
- \textit{Worman v. Healey}, 922 F.3d 26 (1st Cir. 2019) (excerpts)
- \textit{Friedman v. City of Highland Park}, 784 F.3d 406 (7th Cir. 2015) (excerpts)
Week 8: Classes of “the People” and As-Applied Challenges

A. Past Convictions

- U.S. v. Skoien, 614 F.3d 638 (7th Cir. 2010) (excerpts)
- Medina v. Whitaker, 913 F.3d 152 (D.C. Cir. 2019)
- Kanter v. Barr, 919 F.3d 437 (7th Cir. 2019) (Barrett, J., dissenting) (excerpts)
- Michael Luo, Felons Finding It Easy To Regain Gun Rights, N.Y. TIMES (Nov. 13, 2011)

B. Other Classes of Persons

- United States v. Meza-Rodriguez, 798 F.3d 664 (7th Cir. 2015) (specified non-citizens) (excerpts)
- Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185 (5th Cir. 2012) (minors) (excerpts)
- Adam Winkler, Time for a “No Buy” List on Guns, N.Y. TIMES (June 13, 2016)

C. Background Checks

- Danielle, Kurtzleben, Research Suggests Gun Background Checks Work, But They’re Not Everything, NPR.org (Jan. 9, 2016)
- Editorial, Deception on Background Checks, N.Y. TIMES (May 24, 2013)
- Glenn Kessler, The Stale Claim That 40 Percent of Gun Sales Lack Background Checks, WASH. POST (Jan. 21, 2013)

Week 9: Firearms & Mental Health

A. Scope of Federal Prohibition

- Tyler v. Hillsdale Cnty Sheriff’s Dept., 837 F.3d 678 (6th Cir. 2016) (en banc) (excerpts)

B. Mental Illness and Suicide


C. Red Flag Laws

- Excerpted Examples of Red Flag Laws (California, Connecticut, Indiana)
• Joseph Blocher & Jacob D. Charles, *Firearms, Extreme Risk, and Legal Design: “Red Flag” Laws And Due Process*

**Week 10: “Sensitive Places”**

**A. Government Property**

- *United States v. Class*, 930 F.3d 460 (D.C. Cir. 2019) (excerpts)
- *Bonidy v. United States Postal Service*, 790 F.3d 1121 (10th Cir. 2015) (excerpts)

**B. Schools**


**C. Churches, Bars, Restaurants, and other Private Property**

- *GeorgiaCarry.org., Inc. v. Georgia*, 687 F.3d 1244 (11th Cir. 2012) (excerpts)

**Week 11: What Is the Second Amendment For?**

- *Blocher & Miller*, Chapter 6

**Week 12: Federalism, Local Control & Sanctuary Counties**

**A. State Constitutional Guarantees**

- Strict Scrutiny Amendments from Alabama, Louisiana, and Missouri
- *State v. Clay*, 481 S.W.3d 531 (Mo. S. Ct. 2016) (en banc) (excerpts)
B. State and Regional Variation

- Concealed Carry Reciprocity Act of 2017
- NRA-ILA, *House Passes Concealed Carry Reciprocity* (Dec. 6, 2017)

C. Preemption and Local Control

- Matt Valentine, *Disarmed: How Cities are Losing the Power to Regulate Guns*, THE ATLANTIC (Mar. 6, 2014)
- NRA-ILA, *Firearm Preemption Laws*
- Giffords Law Center to Prevent Gun Violence, *Preemption of Local Laws*

D. Sanctuary Cities and Counties

- Katherine, Rosenberg-Douglas, *Second Amendment “Sanctuary County” Movement Expands as Organizers Take Aim at New Gun Laws*, CHICAGO TRIBUNE (Apr. 17, 2019) (review online and browse ordinances as well)

Week 13: Intersecting Interests & Emerging Trends

A. Race and Gender

- James Q. Wilson, *Just Take Away Their Guns*, N.Y. TIMES (March 20, 1994)

B. Stand Your Ground Laws


C. Mass Movements