**Seminar: The Second Amendment (L01.3586.001)**

**Professor Adam M. Samaha**

**Wednesdays at 4:00–5:50 p.m. in Room VH208**

**Description:** This seminar investigates constitutional rights to keep and bear arms in the United States. The focus of the seminar will be the Second Amendment — its history, its contested meaning over time, its role in politics, and, ultimately, its enforcement by federal courts to protect an individual right of some dimension. The seminar will touch on the existing regulatory regime and state constitutional law regarding weaponry. Students also will study the question whether a federal constitutional right to keep and bear arms should be enforced against state and local action. Grades will be based on short reaction papers and class participation. An additional paper may be written for substantial writing credit.

**Readings:** Below is a list of readings for our 14 class sessions. Links have been provided to full-text electronic versions of nearly all of the readings. I have tested these links on my office computer but, if the links are not working for you, please let me know. You may also access HeinOnline on your own to obtain many of the readings. There are a few exceptions in which no link is provided for an assigned reading. A few of these sources will be posted on the Blackboard website for the seminar. Other exceptions include judicial opinions, which you can access on Westlaw or Lexis, as well as excerpts from three books. Copies of the three books will be placed on reserve at the law library. However, you might wish to purchase these books. Links to online booksellers have been provided, and you should be able to buy new or used copies of the books for under $10 each. Note that often I have assigned only part of the source in question; you are responsible only for the page ranges listed below.

**Reaction Papers:** Starting with the second reading assignment (i.e., the assignment for our September 15 class meeting), groups of students will be writing short reaction papers. These papers will be only 2–3 pages in length, they will not require any additional research, and you will not have to write a reaction paper for every class meeting. But they will allow you to express thoughtful opinions about one or more of the readings, and they will help form the foundation for in-class discussions. I will discuss these reaction papers in more detail during our first class meeting on September 1.

**Class Participation:** Class participation is important to a successful seminar. It sharpens your own understanding of the subject matter and it instigates learning for the group. Please read the assignments thoughtfully, and then be willing to explore ideas during our class meetings. Reaction papers will be one source of discussion, but those students not writing reaction papers for a given class meeting should be full participants, as well. To keep your workload manageable, different students will be assigned to “take the lead” in presenting different readings for our second and subsequent class meetings. I will offer more thoughts on class participation during our first class meeting on September 1. I look forward to seeing you then.
Sept. 1, 2010 — Regulatory background and Second Amendment models

(Note: No reaction papers will be written for this class meeting.)


Sept. 15, 2010 — Second Amendment history

(Note: The seminar does not meet on September 9, which is a Legislative Monday.)

- Sanford Levinson, The Embarrassing Second Amendment, 99 Yale L.J. 637–659 (1989) (recall the analysis in this article, which was assigned for our first class session)


Sept. 22, 2010 — Second Amendment history, continued


- United States v. Miller, 307 U.S. 174–183 (1939), available on Westlaw or Lexis

Sept. 29, 2010 — State constitutional rights

• Aymette v. State, 21 Tenn. 154 (1840), available on Westlaw or Lexis
• Nunn v. State, 1 Ga. 243 (1846), available on Westlaw or Lexis
• State v. Chandler, 5 La. Ann. 489 (1850), available on Westlaw or Lexis

(#5) **Oct. 6, 2010 — Handgun bans: The D.C. example**

• Loftin, McDowall, Wiersema & Cottey, Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia, 325 New England J. Med. 1615–1620 (1991) (this article will be made available to you on the Blackboard website)

(#6) **Oct. 13, 2010 — On empirical study**

• Philip J. Cook & Jens Ludwig, Aiming for Evidence-Based Gun Policy, 25 Journal of Policy Analysis and Management 691–699, 701–703, 705–728 (2006) (this article will be made available to you on the Blackboard website)

(#7) **Oct. 20, 2010 — Federal judicial review begins**


(#8) **Oct. 27, 2010 — Afterward: The District’s response**
• Complete our discussion of *Heller*

• DC’s new ordinance (this source will be made available to you on the Blackboard website)


(#9) Nov. 3, 2010 — *Afterward: Analyzing Second Amendment claims*


• Lawrence Rosenthal, Second Amendment Plumbing After Heller: Of Standards of Scrutiny, Incorporation, Well-Regulated Militias, and Criminal Street Gangs, 41 Urb. Law. 1–6, 45–48, 78–84 (2009), available on Westlaw or Lexis


(#10) Nov. 10, 2010 — *Afterward: The Second Amendment in litigation*


• U.S. v. Skoien, ___ F.3d ___ (7th Cir. July 13, 2010) (No. 08-3770), available on Westlaw or Lexis

• Britt v. State, 681 S.E.2d 320–325 (N.C. 2009), available on Westlaw or Lexis

(#11) Nov. 17, 2010 — *Incorporation: Some history and analytical tools*


Presser v. Illinois, 116 U. S. 252–269 (1886), available on Westlaw or Lexis

Duncan v. Louisiana, 391 U. S. 145–193 (1968), available on Westlaw or Lexis

(#12) Nov. 24, 2010 — Incorporation: The Supreme Court today


- Complete our discussion of McDonald
- Chicago’s new ordinance (this source will be made available to you on the Blackboard website)
- The Complaint in Benson v. Chicago (this source will be made available to you on the Blackboard website)

(#14) Dec. 8, 2010 — New York City’s system: Constitutionally problematic?

- New York Penal Law § 400.00, available on Westlaw or Lexis