

KIMBALL R. AND KAREN GATSIIS ANDERSON CENTER FOR ADVOCACY AND PROFESSIONALISM

FALL 2023 SYMPOSIUM

LITIGATING THE

SECOND AMENDMENT

*Gun Safety Advocacy
in the Wake of Heller and Bruen*

November 3, 2023

*Winston & Strawn LLP
Chicago, Illinois*



Kimball R. and Karen Gatsis
AndersonCenter
for Advocacy and Professionalism



College of Law

UNIVERSITY OF ILLINOIS URBANA-CHAMPAIGN

The Kimball R. and Karen Gatsis Anderson Center for Advocacy and Professionalism at the Illinois College of Law and Giffords Law Center to Prevent Gun Violence plan to bring together practitioners and scholars alike for a symposium to discuss timely issues on litigation involving the Second Amendment, gun violence prevention, and firearm industry accountability. The symposium will focus on affirmative litigation strategies against the firearms industry, appellate advocacy efforts on Second Amendment issues, and the ethical issues raised by the Supreme Court's "originalist" and "historical" approach to interpreting the Second Amendment.



The Agenda

7:30 - 8:00 AM

Continental Breakfast

8:00 - 8:10 AM

Opening Remarks

Dean Jamelle Sharpe, University of Illinois College of Law

8:10 - 9:30 AM

Session 1 – Affirmative Litigation and Gun Industry Accountability

Moderator: Kristen Elmore-Garcia, Elmore Law

John Elmore, Elmore Law

Josh Koskoff, Koskoff Law

Alla Lefkowitz, Everytown

Ari Scharg, Edelson

Session Description: This panel is focused on using affirmative litigation to hold gun companies accountable. Such litigation may seek to establish liability for defective products, inadequate safety measures, or illegal sales practices that contribute to gun violence. The panel focuses on techniques for successfully utilizing affirmative litigation, lessons learned for future efforts, and a discussion on where affirmative litigation is likely needed for future efforts and anticipated issues.

9:30 - 9:40 AM

Break

9:40 - 11:00 AM

Session 2 – The Role of Amicus Briefing in Defending Second Amendment Challenges to Gun Laws

Moderator: Leigh Rome, Giffords Law Center

Shira Feldman, Brady

Timothy Howard, Freshfields

Makennan McBryde, March for Our Lives

Yvin Shin, March for Our Lives

Session Description: Beyond affirmative litigation efforts, individuals, organizations, and government entities have increasingly turned towards amicus briefs to defend important gun safety laws from Second Amendment challenges. This panel provides a practitioner's perspective on using amicus briefs, focusing on their impact, their ability to incorporate specialized knowledge or expertise in relevant fields, such as constitutional law, criminology, public health, or firearms policy, and challenges posted by an amicus program.

11:00 AM - 1:00 PM

Brief Remarks by Congresswoman Gabby Giffords and Serving of Lunch (provided)

1:00 - 1:45 PM

**Keynote Address by Congressman
Eric Swalwell**

1:45 - 2:00 PM

Break

2:00 - 3:30 PM

**Session 3 – Ethical Use of History in Second
Amendment Litigation**

Moderator: William “Billy” Clark, Giffords Law Center

Dr. Saul Cornell, Fordham University

Julia Hesse, Choate

Dr. Brennan Rivas, Independent Historian

Kevin Schascheck, Attorney

Dr. Jennifer Tucker, Wesleyan University

*Session Description: In *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court held that the constitutionality of modern gun safety measures must be evaluated by direct analogy to history, unmediated by familiar doctrinal tests. Following this holding, practitioners litigating Second Amendment cases must engage with historical texts and records in arguing whether a given gun law is consistent with historical analogs. This approach has called into question the ethical uses of history in making these arguments. Are advocates engaging with the full historical record? Can the historical record be manipulated to advance an advocate’s position? And how and by whom should this historical evidence be admitted in Second Amendment litigation? To answer these questions, this panel brings together both historians who write, publish, and serve as expert witnesses in Second Amendment issues, along with practitioners who are using these writings and testimony to advocate for their clients.*

3:30 PM

Closing Remarks

Kimball Anderson, Winston & Strawn LLP