

# LAW REVIEW SYMPOSIUM

## THE SECOND AMENDMENT AT THE SUPREME COURT: "700 Years of History" and the Modern Effects of Guns in Public

Friday, Oct. 1, 2021 | King Hall Room 1001

### AGENDA

8 - 8:45 am – Check In

8:45 - 9 am – Welcome from Dean Kevin Johnson

9 - 10:20 am

#### Panel One – A Turning Point for Public Carry Historical Scholarship? Substantive and Methodological Responses to *Young*

The *Young v. Hawaii* decision analyzes the centuries-long history of public carry rights and regulation in more detail than any judicial opinion to date. But the decision left unanswered questions, with the majority concluding there is no unfettered right to openly carry firearms but not delineating the scope of permissible regulations beyond upholding the Hawaii law at issue. It may be that the panel ran up against the limitations of historical analysis: the majority recognized a "mixed" historical record and claimed the "dissent has picked its friends," while the dissent claimed that the majority overrelied on "the mere fact of some historical regulation of firearms" to endorse broad restrictions and prohibitions. How do (or should) originalist scholars, advocates, and judges approach ambiguities or contradictions in the historical record? Are there other historical "friends" to add to the mix—such as corpus linguistics research or evidence about enforcement—that were overlooked by the *Young* majority and the dissent?

**Saul Cornell** (Fordham)  
**Brennan G. Rivas** (SMU)  
**Mark Frassetto** (Everytown Law)  
**Moderator - Carlton F. W. Larson** (UC Davis)

10:20 - 10:40 am – Break

10:40 am - 12 pm

#### Panel Two – Race and Firearm Regionalism from the Founding Era to the Modern Second Amendment

Race has played a distinctive role in the history of gun regulations, but this history has been interpreted differently by different judges—and there are still other interpretations and evidence that are underdeveloped in Second Amendment jurisprudence more broadly. How do legal and historical sources illuminate the issue of race and guns, and are there ways in which the analysis is incomplete? Is there additional historical or doctrinal context that can either sharpen or narrow areas of disagreement over how to interpret racially motivated efforts at disarmament, including at the Founding era with respect to slaves and Indian tribes, in post-Civil War Black Codes, and laws prohibiting gun ownership by noncitizens? How do we reconcile an appeal to history as the authoritative voice on the scope of the right to bear arms with the racism of early gun regulations?

**Darrell A. H. Miller** (Duke)  
**Pratheepan Gulasekaram** (Santa Clara Law)  
**Ann Tweedy** (University of South Dakota)  
**Sally Hadden** (Western Michigan University)  
**Moderator - Lisa Ikemoto** (UC Davis)

12 - 1 pm – Lunch Break

1 - 1:20 pm – Keynote Speaker

1:20 - 1:30 pm – Break

1:30 - 2:15 pm

#### Conversation on Gun Violence Research and Litigation

**John Donohue** (Stanford)  
**Jesenia Pizarro-Terrill** (ASU)  
**Moderator - Kelly Drane** (Giffords)

2:15 - 2:25 pm – Break

2:25 - 3:45 pm

#### Panel Three – Consequences of Using a Firearm in Public: Self-Defense Doctrine and Second Amendment Law

Does a right to carry firearms include a right to use them against perceived threats from other persons? Some Second Amendment advocates assume that a right to carry includes a right to use firearms. Second Amendment jurisprudence, however, does not exist in a vacuum, but against a historical backdrop of case law and legislation defining the permissible use of lethal force in self-defense by civilians. Moreover, some laws, like the Stand Your Ground law that exists in Florida and many other states, are recognized to disproportionately harm Black Americans, women, and other groups. This is consistent with empirical research showing that the severity of perceived threats differ based on the race of the gun wielder and the person they are confronting. How would an expanded right to carry firearms in public interact with empirical evidence that the use of firearms in self-defense causes unequal harms? What does (or should) self-defense doctrine or the Second Amendment have to say about these and other issues?

**Cynthia Lee** (GW)  
**Kami Chavis** (Wake Forest)  
**Joseph Blocher** (Duke)  
**Eric Ruben** (SMU)  
**Moderator - Lisa Tu** (Giffords)

3:45 - 4 pm

#### Closing Remarks

(UC Davis Law Review & Giffords Law Center)

4 pm – Reception in King Hall Courtyard