

00:00;19;27 - 00:00;39;13

Stephen Gutowski

All right. Welcome, ladies and gentlemen, to another episode of the Weekly Reload Podcast. I'm your host, Stephen Gutowski. I'm also a CNN contributor and the founder of theReload.com, where you can head over and sign up for our free newsletter today. If you want to keep up to date with what's going on with guns in America from a sane, sober, perspective.

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Stephen Gutowski

And, of course you can also buy a membership if you want to support the reporting we do, and get access to hundreds of pieces of exclusive information this week on the show, we are talking about the ATF and the potential past that gun rights advocates could take under the new Trump administration. With the nation's federal gun law enforcement agency.

00:01;01;28 - 00:01;15;09

Stephen Gutowski

And to do that, we have, great guests back with the show, associate professor at George Mason University law school, Robert Leider. Welcome back to the show, Robert, thank you so much for coming on.

00:01;15;11 - 00:01;17;19

Robert Leider

Well, thank you very much for having me.

00:01;17;21 - 00:01;36;08

Stephen Gutowski

And you, you wrote a piece for us on this topic, at the Relo, which I think people should check out. It's it's in front of the paywall, so free to read. But, I think very interesting insights that you've got there and, but let's start off real quick with, just some of your background. Can you just tell people about what you do over there at George Mason?

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Robert Leider

Sure. So I write on, the right of self-defense, the constitutional allocation of military power and gun control in the Second Amendment. And my scholarship runs from philosophy of criminal law, to more constitutional law issues. And I have a few papers that have both come out on the Second Amendment and one that's, in process at the moment.

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Stephen Gutowski

Right. And so you're, you're quite knowledgeable on, the constitutional aspect of the, the gun laws here, but also, I'd say some of the administrative side of things, too.

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Robert Leider

Yes. So my specialty is, criminal law and the Constitution law issues. And with the criminal law comes some of the administrative laws, kind of an, ancillary of that, because a lot of what ATF enforces isn't directly just statutes. It's also the regulations that they've promulgated.

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Stephen Gutowski

Right. And that that is a big part of the Biden administration was they couldn't, they did pass. They actually did manage to pass some new federal gun law that is relatively, modest, compared to what most gun control activists would like to see. But a lot of the bulk of what Biden was doing that was highly controversial.

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Stephen Gutowski

And gun owners came through administrative procedure, you know, federal rulemaking, things of that nature. Right.

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Robert Leider

And I think that's it's going to be that way for a while. The country is divided. Congress is divided. It is very hard to pass new legislation. You have to get to the 60 vote threshold to overcome a filibuster in the Senate. We'll have a House majority that maybe as narrow as one vote. And so it is unlikely we will see major legislative shifts.

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Robert Leider

The big policy shifts are going to come from the administrative side.

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Stephen Gutowski

Yeah. And that's, that's a key thing when we're discussing what, would be, I guess, in this case, the most effective, means for gun rights advocates in particular, to try and effect change under this new Trump administration is to have sort of, just start from a viewpoint of what's realistic to expect. So let's start there.

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Stephen Gutowski

I guess, you know, what would a lot of people, a lot of online activists, at the very least, you'll often hear, you know, let's just abolish the ATF. Let's get rid of it. Can you just start from there? Well, first off, what would it take to get rid of the ATF as an agency? And, what would happen if you actually did do that.

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Robert Leider

If you would take an act of Congress? ATF is a statutorily authorized agency. The administration could do a lot to cripple ATF. Most of the policies that ATF promulgates in the firearms space is actually authority that the law delegates to the attorney general. So there's nothing stopping the attorney general, in theory, from delegating it to a different bureau or handling it personally.

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Robert Leider

But in reality, the attorney general is not going to do that. And there's already this structure in place to, to handle administration of federal firearm laws. So I don't think ATF is going to go anywhere. I mean, I don't know what they would do with all the employees building. There's so much structure built up that I think it would be very hard to dismantle, especially without an act of Congress.

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Stephen Gutowski

But let's say, you know, the attorney general does go about trying now. And I guess you make clear, this is not what we're talking about today, the Trump administration and, for instance, Pam Bondi, the attorney general nominee that Trump has put up, they haven't made any proposals like this. There's really not a lot of detail in what Trump has talked about doing, other than firing the current ATF director who was appointed by, Joe Biden.

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Stephen Gutowski

And, so we're kind of just, going through what the possibilities are, what you see as as real as the possibility is and how some of these things may play out. And avenues that could be taken, not so much what the Trump the incoming Trump administration is promising to do or anything like that. So just just to be clear about this, for folks, this is, trying to go through what's what is likely to happen, what you think would make the most sense.

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Stephen Gutowski

But, yeah, from from there, even if the, let's say the attorney general did take steps to try and, you know, rein in the scope of what the ATF does, you know, they would still likely need to enforce these federal gun laws that are on the books. Right? And I don't know, wouldn't that just fall to some other agency?

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Stephen Gutowski

How would that actually play out?

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Robert Leider

So there are two sides of this. On the one side, the executive branch has absolute prosecutorial discretion. So it's not obligated to enforce or not enforce any particular gun laws. And there are some gun laws that enforce this quite a bit like the selling of possession law. There are actually a number of statutes in the Gun Control Act that, are rarely subject to prosecution.

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Stephen Gutowski

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Robert Leider

Gun free school zones Act 922 are which, regulates the assembly of imported rifles from imported parts that there's not much in the way of prosecution on these statutes. So on the one hand, they could rein in, ATF quite a bit by simply declining to enforce or, prosecute certain laws. I don't think they will do that.

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Robert Leider

Ultimately, of the laws that are politically popular, one is, of course, prosecuting the felon in possession law. But anyway, that's the one time they absolute discretion there. There's a second side of it that just on the administration side. So federal law has certain prohibitions like you cannot sell firearms interstate without getting a federal firearms license. The attorney general is authorized to issue them.

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Robert Leider

The attorney general, of course, delegates out to ATF. But if you crippled ATF and they suddenly stopped issuing federal firearms licenses, the prohibition the Gun Control Act wouldn't go away. What would go away is whether people, in fact, had the licenses and could engage in the business. And so from the administration side, crippling ATF could be hugely counterproductive, because you could face a situation where you are required to get a license, to engage in certain activities, and suddenly the people who are in the business can't do that, or people who want to make a firearm under the National Firearms Act, they need the they need to pay the tax, and they need

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Robert Leider

the approval. And the approval doesn't come. Or if the approval takes three years to come, they can't make or transfer the statutory firearm. And, you think about it this way, if you suddenly, you know, everyone hates the DMV matter what state you're in, the DMV is often very slow. And, you know, no one enjoys going to get or renew their driver's license.

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Robert Leider

But if you shut down the DMV and did nothing else, the what you would have would be a bunch of people who are illegally driving because they cannot get a license. It's not like by shutting down the DMV, you would eliminate the requirement to obtain a driver's license. If you wanted to eliminate the requirement to obtain a driver's license, you would have to go repeal the law that requires a license to drive a vehicle in public.

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Robert Leider

And it's the same thing here if you want to. Actually, I think people who are the, you know, grassroots individuals who are advocating to shut down ATF, I think what they really want is to repeal certain federal gun laws. Shutting down ATF will not repeal the gun laws to which they objected.

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Stephen Gutowski

Right. It would most likely just shift a lot of that work to other federal law, like the FBI or or some something like that. Presumably, if you were actually going to try and shut down the ATF without repealing those laws, which, as you mentioned, is likely not possible under the in this new Congress with the margins that exist, especially because, I mean, felon in possession, like you mentioned, it's very popular.

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Stephen Gutowski

What other people want to see, people they don't want violent, at least violent felons to own guns. There's obviously a live legal, fight over the extent of, of that particular prohibition. But, you know, the I guess the point here is like some of these rubbish, some of these laws are popular, and especially in Congress, they're unlikely to repeal that stuff.

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Stephen Gutowski

And so if you did just try to shrink the ATF down to or cripple it as you, as you said, in order to keep any of this function going, you'd probably just have to move it to another agency, right. Which and, you know, is there any reason to think there that agency would operate any differently than the ATF?

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Robert Leider

I mean, yeah, we don't know. This isn't the first time that gun advocates have advocated for shutting down ATF. This was a major cause in the early 1980s. I think they got pretty close to success at that point. And then realized, at the time, ATF was in the Treasury Department and they realized that they shut down ATF, its functions were going to be transferred to the Secret Service.

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Robert Leider

And this was a politically unpalatable situation because it was easy for them, politically to beat ATF over the head when the ATF did something unpopular, it was going to be much harder to go against the Secret Service, which, at least at that time, if not now, has much more popularity among the population. Now, ATF isn't in the Treasury Department, it's in the Justice Department.

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Robert Leider

So my guess is the functions would not go outside the department. I don't think the functions could go outside the department because the legal grant is technically with the attorney general. But it could very well go to the FBI or to some other Justice Department agency. And that comes with a lot of risks. Number one, you don't know if the FBI got it that they would regulate guns any differently, than ATF did.

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Robert Leider

The FBI also has more personnel and resources. And so if they wanted to make strict enforcement of the nation's gun laws a priority, they could enforce the laws much more strictly than ATF can now think. You might also lose a lot of institutional knowledge. You know, again, you can't if you want to make a firearm under the National Firearms after transfer it, you need to get the approval of the either the attorney general or whoever he delegates to.

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Robert Leider

And if the FBI were suddenly unloaded or loaded up with these responsibilities and they weren't prepared to take it on, you know, these applications could just sit well, they figured out how to bureaucratically handle it. And so, you know, ATF does a lot for the gun community. It's on the kind of customer service side which I will, you know, use that term loosely.

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Robert Leider

And a lot of that, could get destroyed by carelessly transferring functions. So yeah.

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Stephen Gutowski

You're saying it could be worse.

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Robert Leider

Basically, it's one of those cases that I think God advocates need to be careful what they wish for, and they need to be careful what their criticisms are. Are their criticisms really aimed at ATF or are they aimed at the underlying laws? Certainly.

00;12;50;02 - 00;13;10;02

Stephen Gutowski

A lot of people, are specifically upset with the ATF in the way that it's especially changed its mind on regulations over the years. Right? Although, I mean, certainly it has been kind of ordered to do that by presidents, both, Trump and Biden told the ATF to make certain rules that go back on things they said previously.

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Stephen Gutowski

But there is obviously a reputation at the ATF for, you know, flip flopping on designation. And, I don't know, is I that's part of the critique. Right. And.

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Robert Leider

Yes, absolutely.

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Stephen Gutowski

But this is something that you would agree with to some degree.

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Robert Leider

I yes, I think I've written to one of the things ATF does not do well is follow traditional procedures when regulating. And one of the things you're supposed to do when you regulate is to solicit notice and comment. And ATF often doesn't do that, but they will do is issue in formal letters. Yes, you can do this. No, you can't do that.

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Robert Leider

You know. No, this one stock is not a machine gun. But the problem is once they don't solicit proper commentary and they just handle this informally, what ends up happening is they often reverse themselves under pressure. Those reversals disturbed, settled expectations. I think in terms of the gun community, this is, I think, been one of their primary objections that if somebody had said from the beginning a pistol brace as a shoulder stock, they would have never become popular, and there wouldn't be the kind of reliance that there is on them today.

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Robert Leider

But when ATF goes one way and then goes another way, it unsettles those expectations and it creates huge problems, in the marketplace. And so, yes. No, I think there are many criticisms of ATF that I think are perfectly valid, but crippling ATF doesn't respond to those criticisms. You have to go in and fix the problems.

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Stephen Gutowski

And before we get to, because, you know, next, I want to talk about what what you think would be a more effective way of handling these issues. But one of the counter arguments I've seen to the idea that, you know, we shouldn't move these functions, these law enforcement functions to another agency like the FBI is that, you know, perhaps under the FBI.

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Stephen Gutowski

It would maybe it would be better to not have an agency that is solely dedicated to enforcing federal gun laws, and it should be part of, the broader, law enforcement mechanism at the FBI because, it's less likely that you'll have, people trying to, you, too focused on this and, and, and I guess, coming up with, ways to, go after people that are, are a side effect of the, this, that intent focus on just this issue.

00;15;41;21 - 00;15;57;02

Stephen Gutowski

I guess it's sort of the counter. It's sort of the opposite of what you were saying about specialization. Maybe specialization is bad to some, to some folks because it leads to, increased enforcement. I don't there's any any, validity to that.

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Robert Leider

I think there's considerable validity to the criticism that when you have an agency that's dedicated to one thing, it's going to do that thing, you know, it's going to look for ways that it's going to look for its purpose. It's going to look for ways to regulate. But, you know, two responses on that. First of all, if you send it over to another bureau that has other responsibilities, it will weaken some of the political accountability.

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Robert Leider

Right now, as I note in the article or in the op ed, we select ATF directors primarily for their views on gun policy. If that goes to the FBI, we do not select directors of the FBI for that solely for their views on gun policy. The FBI has so many responsibilities that there is always some political compromise somewhere.

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Robert Leider

And one of them could be selecting an FBI director who supports gun control or fact. A lot of the FBI directors have often been moderate supporters of gun control. So, you could you could have a situation where, the even, political figures who are sympathetic to gun rights end up compromising on the issue because the FBI handles so many other things.

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Robert Leider

So if they need the FBI to, heavily prosecute financial crimes, counter, counter, you know, and have a robust, counter counterintelligence and counterterrorism strategy, then maybe gun control is the thing that they're willing to compromise on. The other thing with ATF is that ATF is not supposed to be an agency focused on one thing.

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Robert Leider

I think it has morphed into that largely. But ATF is also supposed to be responsible for alcohol and tobacco enforcement and more recently, explosives enforcement. And nothing would stop the Trump administration from beefing up the

alcohol and tobacco enforcement side of things and saying, no, we're not going to use the Bureau solely to focus on one thing. We will look at the you know, we will look at alcohol and tobacco regulation, too.

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Robert Leider

And, that way the agency isn't single mindedly focused on regulating a fundamental right. So I do think there are I do think the underlying criticism, has some bite. But I also think a solvable ATF is not supposed to be doing what they're supposed to be doing, 3 or 4 different things.

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Stephen Gutowski

Right? Right. And so let's get into to that point a little bit further. What if not crippling the ATF? Or, and if it isn't possible to repeal some of the underlying gun laws that people don't like. What what is a more effective path in your opinion? In your view, for gun rights advocates to take with the ATF under a Trump administration.

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Robert Leider

Trump administration could do the same thing that the Biden administration has done, but from the opposite perspective. So ATF has a lot of delegated authority where Congress says, we'll give you a rule, but really, it's up to you to figure out how the rule gets implemented and what the rule means. So, for example, federal law bars the importation of firearms and ammunition that are not primarily designed for sporting purposes.

00;19;19;04 - 00;19;48;15

Robert Leider

Federal law does not define what sporting purposes are. ATF has done that. The Reagan ATF had one view. The George H.W. Bush and Clinton administration had progressively stricter views. Nothing stops a Trump ATF from having a different view of what sporting purposes are, that is broader than, that of the Biden and Obama and Clinton administrations.

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Robert Leider

So these are this is not going to fall. And it was this recent Supreme Court decision that eliminated, that limited a little bit agency's power to delegate, which went under Chevron deference, which is whether agencies could regulate in an area where the law was ambiguous. And the court said, we're not going to we're not going to defer to those sorts of agency regulations.

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Robert Leider

But that has nothing to do with areas where the agency has been delegated by Congress the power to regulate and firearm importation is a big one. Second big area is prosecutorial discretion. The Biden administration has imposed a zero tolerance policy on errors by licensed gun dealers. And they are revoking gun, federal firearms licenses at a significantly higher rate.

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Robert Leider

Nothing would stop the Trump administration from reconsidering that, violations from by federal firearms licensees, but run the gamut from slight paperwork errors to a fairly serious things. And nothing would stop the Trump administration from having a progressive schedule that they would handle, minor errors more lightly than they would handle significant violations. So they have tremendous power to, to kind of set their it's just set their prosecutorial goals and to exercise their discretion.

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Robert Leider

There's, there's a tremendous those are just two examples. I mean, there's a tremendous list of things, that they could do.

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Stephen Gutowski

And so how would how would that be accomplished in practice? And obviously, Biden, I guess, I guess you'd look back to the Biden administration and how he did it. And one way was, you know, appointing an ATF director that, many have criticized this as highly politicized and then maybe a little bit less politicized than the first one who didn't make it through confirmation.

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Stephen Gutowski

But but still, you know, somebody who ran as a Partizan Democrat and had supported, gun control policies in the past, even though he was also a prosecutor and a U.S. attorney, you know, a U.S. attorney, Steven Darrell Bock. You know, I guess Trump should appoint somebody in that vein who, you know, this is it's interesting because Biden started with somebody who was much more of a political spokesperson, really.

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Stephen Gutowski

I mean, that was his job. When he got picked, he had worked at the ATF. Chipman. Right. But he was more of a, you know, a commentary person when he got picked and they ended up with somebody who while also,

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Stephen Gutowski

Somebody who has taken political positions on gun laws, was maybe a bit more of a serious, approach because he had a history of running, you know, an attorney general or not, attorney general of the U.S. Attorney's office. And maybe some more chops that perhaps doing the administrative side of things. So, should Trump look for somebody like that?

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Stephen Gutowski

Like, because obviously there's been some suggestion, of appointing, you know, I guess Brandon Herrera, who's a gun tuber who ran for Congress, that's, one that you've seen a lot of online activists talk up. But then obviously. So that's more on your that spokesperson, the a media personality side to point somebody like that or you know, go with the more traditional somebody who's worked inside the system before.

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Stephen Gutowski

I where you guys who should be director I guess in this like the kind of person that should be a director.

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Robert Leider

I mean, there's a lot in between, you know, there's a it's a larger spectrum. Is.

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Stephen Gutowski

Traditionally the ATF director is also just been somebody who worked at ATF for a long time, right?

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Robert Leider

Yeah. Well, so until, last decade or so, the ATF, decade and a half of the ATF director was somebody that was promoted within. And it was not a Senate confirmed position. That changed. And so it's a political job now. It requires a nomination confirmation. I think, given that it's a political job, the president, president elect Trump, has every right to have his person in charge of the bureau.

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Robert Leider

He's he's not bound to have a holdover from the prior administration. That's not what happens in any other bureau that's led by a political appointee. Generally don't get these sort these sorts of holdovers, except maybe with the FBI.

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Stephen Gutowski
Yeah, the FBI.

00;24;35;01 - 00;25;07;01

Robert Leider
Yeah. Yeah, they have a ten year term, but even their President Trump's looking at, making a replacement. But traditionally, presidents are not required to keep former political appointees in their political job. The former administration resigns at the start of a new term, and the current president gets to put his political people in new place, which is necessary to people that are serving in the administration need to serve President Trump's political agenda.

00;25;07;01 - 00;25;20;11

Robert Leider
You can't have a situation where you have lower, you know, you have high level employees at the bureau who are serving in President Trump's administration, but serving President Biden's political agenda. So it's a political job.

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Stephen Gutowski
Yeah. Traditionally people have wanted that, these law enforcement positions, that to be a bit less politicized, right? I mean, you know, that's why you've got a ten year term for the FBI director and why it was controversial when Trump fired the last one and Biden didn't fire Trump's pick for the FBI. You know, I will say, like Biden with the ATF has perhaps made it even more of a political position with how he treated it.

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Stephen Gutowski
So that's a fair point. I just want I just want to say, like, obviously there's a there's a reason that some people, look at some of these law enforcement position nominations differently than than like the attorney general or, you know.

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Robert Leider
Yeah.

00;26;04;06 - 00;26;04;26

Stephen Gutowski
Or somebody like that.

00;26;05;02 - 00;26;33;14

Robert Leider
I mean, that may be a mistake, though. These are not purely ministerial jobs. ATF is not just saying, oh, you qualify for Federal Firearms License or you don't. It's not that kind of ministerial job. It's a job that is heavily political. They set enforcement priorities. It is their choice whether they're going to focus on violent felons, anyone with a felony conviction, whether they're going to focus on gangs or Glock switches, those sorts of things are political decisions.

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Robert Leider
It is equally a political decision how you administer the laws, how you define sporting purposes. You know how certain guns are classified, whether you're going to have, National Firearms Act amnesty or not, these are all political decisions. And you can't just say, oh, this person is a career ministerial person. He will do it. You have to at some point take ownership of the political decisions.

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Stephen Gutowski

Okay. So so do you think by, in this case, Trump should, should fire the ATF, which he has said he will do on, day one, actually. But but, and then pick somebody who is more from the political side of the spectrum than somebody out of the ATF. Is that.

00;27;22;12 - 00;27;44;14

Robert Leider

Right? Okay. So I think there are two questions there. Number one, I think the current director should, as other political appointees do, tendered his resignation at the end of the current administration's term. And then it can be up to President Trump whether to accept or reject that resignation. So at the end of the day, it is President Trump's choice as to who to staff, and then who to pick.

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Robert Leider

I think there a wide variety of candidates you could choose from, each with their pluses and minuses. He could find a career law enforcement person who has expertise administering, an agency that has thousands of people on a large budget and could treat it more as a professional. You know, more in the professional sense. I think he could also nominate somebody who's a lawyer or specialize in these sort of administrative law things to take the agency in a different direction.

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Robert Leider

And each one comes with benefits and costs. If you have a career law enforcement person, they have experience administering these sorts of agencies, and they will likely do that. Well. But as you see with the current director, he doesn't always understand how the guns work and doesn't understand the technicalities, how the regulations go. On the other hand, if you appoint somebody who is has extraordinary technical expertise, you could find that they lack the kind of managerial experience that is sometimes common.

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Robert Leider

So I don't think there's one right answer here are there are different pluses and minuses.

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Stephen Gutowski

No one one option you didn't mention there, which may be, you know, could indicate how you're feeling about this, but, he could. Yeah. Like, he could pick somebody like Brandon Herrera who doesn't have any of the things that you're talking about, but would send a and obviously very clear public message about how he feels the ATF should be run by picking a very prominent, gun rights advocate.

00;29;17;20 - 00;29;38;11

Robert Leider

Yeah. No, he could do that. I think he's effectively done that with the FBI, too, with his nominee for, FBI director. Because, you know, he could absolutely do that. And again, it comes with pluses and minuses. You might have an area where you either greatly restructure or cripple the bureau. Now, I'm not sure what Mr. Herrera would do.

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Stephen Gutowski

And I don't I don't think I don't know if Brandon Herrera is like, wants to be ATF, right. It's just it's.

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Robert Leider

Kind of a.

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Stephen Gutowski
Meme out.

00;29;44;19 - 00;29;48;02

Robert Leider

There. And I'm not trying to suggest that he should be, you know, either.

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Stephen Gutowski

I just mean somebody like him. You could imagine picking somebody like that. And Trump has seemed to, thus far oscillate between making sort of statement picks with people like Cash Patel and making more, traditional picks, like Marco Rubio, secretary of state or something like that.

00;30;07;04 - 00;30;18;29

Robert Leider

I mean, these picks are extremely important. The president can't administer the executive branch by himself. Right? These picks shape how the administration role will run. So.

00;30;19;01 - 00;30;36;00

Stephen Gutowski

But would you, you know, for your view of, of how gun rights advocates could have the most impact on the ATF? I mean, presumably you would lean towards, somebody who has more extensive knowledge of how the agency works and what the laws are, right?

00;30;36;02 - 00;30;48;09

Robert Leider

Yeah. I mean, I think if you want to have maximum impact, you're going to have to have somebody who understands, what the law is, how it works, how you can regulate within a.

00;30;48;12 - 00;30;50;08

Stephen Gutowski

And how the agency works and.

00;30;50;09 - 00;31;09;09

Robert Leider

How the agency works. It will make, you know, we'll make sure the agency is following the directives of the political branch. You don't want to have the agency, the so-called deep state. You don't want to have the, the agency trying to get its own agenda through in contravention of what the political leadership wants, but. Right.

00;31;09;11 - 00;31;39;15

Robert Leider

If you're going to have maximum impact, you're going to have to have people who understand what can be accomplished, through administrative regulation. And you have a certain kind of policy agenda. And then to go and competently implement the policy agenda. And it's interesting. One of the things I'm seeing, at least with the online debate, is there are a lot of, memes about who should be the director, but there haven't been a lot of memes about what they want the director to do.

00;31;39;17 - 00;32;17;01

Robert Leider

And if you're going to have maximum impact, somebody is going to have to come in in coordination, with the white House and make sure that, and have a defined list of policies that they want to implement. And in the first Trump administration, this never happened. He made one nomination of Chuck Canterbury for ATF, who was a moderate gun control supporter, who would have, I'm sure, administer ATF very diligently, but who would have not accomplished any sort of the political objectives that gun advocates are hoping for in President Trump's election.

00:32;17;03 - 00:32;19;24

Stephen Gutowski

Right. He was blocked by Republicans and he.

00:32;19;24 - 00:32;49;17

Robert Leider

Was blocked by Republicans because, again, it's a political job, and they were afraid of what he would do on the policy front. And I think it was well within the Senate's right not to consent. To a nominee who they felt would regulate against where they were politically. And so, you know, I think, if you have to have maximum effect, the white House is going to have to work with a nominee to come up with a set of policies and then to implement the policies.

00:32;49;17 - 00:33;15;09

Robert Leider

There are a lot of policies that they can implement without congressional change. The Obama and Biden White Houses have been doing this. I think gun control groups have been getting increasingly sophisticated about operating within political constraints and maximizing as much of their agenda as they can implement, given the political realities. And I think the big question for now, at the political winds have shifted the other way.

00:33;15;11 - 00:33;36;26

Robert Leider

The big question is going to be, can gun advocates translate their political success into tangible policy outcomes? And to do that will require having people, who are competent politically and can achieve the policies that are feasible to achieve.

00:33;36;29 - 00:34;00;16

Stephen Gutowski

And it'll likely take more than just an ATF director for that as well. Right? If you look at how Biden has gone about doing this, most of the big changes he was able to implement on the administrative side came not just from having Steven Del back, as the ATF director didn't necessarily originate through his office. It came from the white House down to tell the ATF what they need to do.

00:34;00;17 - 00:34;33;05

Stephen Gutowski

But, and, and Biden even created an entire office inside of the white House for, you know, in part that purpose. Right. The the white House Office of Violence commands prevention, which is sort of a clearinghouse for gun control advocates to come in and try and help direct the administration's policy, you know, gun policies. And, because, you know, Biden is the one who told the ATF to institute a zero tolerance policy on on gun, dealer licenses.

00:34;33;05 - 00:34;54;04

Stephen Gutowski

And he's the one who told them to implement the rules that they ended up implementing. Right. Like the ATF may have come up with the details of these things, but it was a top down. Approach. You know, you need, you know, for that to work like you're talking about. You probably need cooperation from the people at the agency, including the leadership.

00:34;54;07 - 00:35;07;00

Stephen Gutowski

Especially the leadership, I suppose. But, but you also need, like, a whole operation in the white House for that, too. I mean, is that am I being to broaden my view of that, or what do you think?

00:35;07;06 - 00:35;28;15

Robert Leider

I don't think there's one right way to do this. There are a couple of ways you can accomplish the goal. One is to have a president appoint a strong ATF director and say, here are my general policy goals. You go figure it out and implement it

and go do it. A second would be to have the white House say, we are going to tell you what to do.

00:35:28;15 - 00:35:55;08

Robert Leider

And these are our policy goals, and not just in the kind of abstract, but here are specific policies we want you to implement, and we want you to go do it now. I think presidents can go either way on this. The white House can't micromanage everything. The federal bureaucracy is so huge that at some point they have to put trusted people in place and get the, and, you know, trust that they will regulate according to the administration's wishes.

00:35:55;10 - 00:36:20;12

Robert Leider

ATF can't do it all alone, either. To pass a regulation, isn't just isn't something ATF can do by itself. There are other offices that the regulation has to pass through, including a little known office called OIRA that has to approve these regulations. And so the white House can always if regulations are getting stuck at various points, the white House can always grease the wheels a little bit and make sure they get through.

00:36:20;14 - 00:36:44;10

Robert Leider

It's also the case in the firearms space that it's not all controlled by ATF itself. ATF handles a lot of the Gun Control Act and National Firearms Act implementation. But decisions on who to prosecute rests with the US attorney's various districts. And some of the process is actually like the national and some check system is run by the FBI, not the ATF.

00:36:44;10 - 00:37:11;05

Robert Leider

And so it would be. Yeah. So you're going to have to have some coordination among different executive, departments to have a coherent gun policy. So part of the, you know, part of my answer is yes, you are going to need somebody in the white House to coordinate among, among the different bureaucracies. But how much power ATF gets is a decision for how the white House wants to handle it.

00:37:11;07 - 00:37:23;11

Stephen Gutowski

Yeah. So, you know, while Biden was pretty successful in terms of implementing his his agenda, through, administrative action in the way that he went about it, it's not the only way, I guess, is your point here, right?

00:37:23;15 - 00:37:34;06

Robert Leider

It's not the only way in the Trump administration is going to face the question of whether to shut down the white House Office of Gun Violence Prevention or to repurpose it in a different political direction.

00:37:34;13 - 00:37:57;14

Stephen Gutowski

Right, right. But, yeah, interesting point. You know, it doesn't doesn't have to do with the way that Biden did it. There's a lot of different approaches he could take. But, you know, I think you you've laid out, your view on this pretty thoroughly for us. I really appreciate that. I think it helps people give, a much more granular sense of how this would.

00:37:57;20 - 00:38:22;05

Stephen Gutowski

Well, would have to go for things to really, change inside of the ATF or with gun policy on the administrative side of this generally, you know, the the next question is, what path will Trump take and how will that all play out? And we just don't know. Yes. So we'll be we will certainly be watching here at the Reload.

00:38:22;05 - 00:38:36;10

Stephen Gutowski

And I'm sure we will have you on again in the future to, to look at how that all unfolds. Maybe they'll pick you for ATF

director. You know, I have not heard anything that, Well, I was really interested in doing that.

00:38:36;13 - 00:38:38;02

Robert Leider

That would come as a surprise to me.

00:38:38;08 - 00:38:45;08

Stephen Gutowski

Sure, but what would do would you have any interest in. And so, I mean, you would you have some of these skills that you've described to you? I don't know.

00:38:45;11 - 00:39:06;10

Robert Leider

I look, if, the Trump administration thinks I could help in some part of the, of the administration, and I will certainly consider offers, but I also try to be very careful. You know, my day job is as a scholar. And I want to make sure that, yeah, I don't want to be on your show actively politicking.

00:39:06;10 - 00:39:13;26

Robert Leider

I don't think, you know, you know, I try to maintain in terms of my scholarly analysis, I try to maintain a very neutral perspective.

00:39:14;03 - 00:39:17;21

Stephen Gutowski

Okay. Well, that's Fiona's analytical perspective. So now to ask.

00:39:17;21 - 00:39:20;10

Robert Leider

I'm not going to be on the podcast gunning for any sort of job.

00:39:20;13 - 00:39:35;26

Stephen Gutowski

All right. That's fair. I had to ask, either I appreciate you taking some time to talk with us and for writing that piece as well. I think people should go and read the full thing, to get a complete picture of what you're talking about here. But I think we've done a really good job of covering it.

00:39:35;26 - 00:39:43;10

Stephen Gutowski

So I appreciate you coming on. If people want to follow more of of your work, your, your scholarly work as well, where can they do that?

00:39:43;12 - 00:40:16;27

Robert Leider

So I'm on Twitter at, at Leider. Rob. And then my academic scholarship is available, on screen, which is the Social Science Research Network. It's also published in various law reviews and I often post links on the Twitter account. And then I also have a blog, standing his ground.com, where I collect a lot of the op eds that I have published in various outlets, as well as have just my own blog entries on various issues of gun and self-defense law, and sometimes military law as well.

00:40:16;29 - 00:40:28;01

Stephen Gutowski

Wonderful. All right, well, we'll have to have you back on the show in the future to, analyze what what does become of this second Trump administration on on gun policy. So, we.

00:40:28:04 - 00:40:30:16

Robert Leider

Always happen to be here. Thank you very much for having me.

00:40:30:21 - 00:40:35:06

Stephen Gutowski

All right. Thank you. That's all we got for you guys this week. We will see you guys again real soon.