

00;00;19;25 - 00;00;43;03

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 the founder of theReload.com and a CNN contributor. I did that one backwards. I normally say this. But you can head over to theReload.com today if you want to check out all of our latest reporting from a sober, serious perspective on gun policy and politics throughout the country, you want to keep up to date with what's going on with guns in America.

00;00;43;03 - 00;01;01;19

Stephen Gutowski

That is what's best place to go and do it. This week we are going to be talking about, Donald Trump's firearms executive order that he, he issued, just recently here. And we want to get into some of the details of what this might turn into, some of the policy areas that this might have an impact.

00;01;01;22 - 00;01;14;14

Stephen Gutowski

And to do that, I have, you know, policy expert, gun policy expert with me this week, David Kopel from, Independence Institute, who is, joining us. Once again, thank you for coming on the show again. David.

00;01;14;17 - 00;01;19;11

David Kopel

Thanks for having me. You're the, the best firearms show within the the known universe.

00;01;19;13 - 00;01;31;22

Stephen Gutowski

Thank you. Well, we we always appreciate you coming on. Given your insight as a Second Amendment scholar here. Can you tell speaking which can you tell people a little bit more about your background? And just for anyone who, doesn't know the full details?

00;01;31;29 - 00;01;57;23

David Kopel

Sure. I'm the research director of the Independence Institute, which is in Denver, Colorado. And it is. I've been in that position since 1992. I started writing for them in 1988. Independence Institute is the second oldest of the state level think tanks. I'm also a. Excuse me. Oh, I'm also an adjunct scholar at the Cato Institute in Washington, DC.

00;01;57;25 - 00;02;13;23

David Kopel

And I've been writing for them since, first published by them in 1988. And I'm also a, the a senior fellow at the University of Wyoming, College of Law, Firearms Research Center.

00;02;13;25 - 00;02;18;19

Stephen Gutowski

And you're writing has been cited in numerous federal court cases and Supreme Court.

00;02;18;22 - 00;02;29;01

David Kopel

711 Supreme Court opinions and including by, Justice Thomas in the broad decision and in over 100 other lower courts.

00;02;29;03 - 00;02;53;00

Stephen Gutowski

So you have a very good understanding of federal, firearms law and policy. And and so I'm hoping that we can go through this executive order, which really, you know, at the moment, all it does is order a review from the attorney general to go and look at it some, really, but it is kind of the top priorities of a lot of the gun rights movement, what they

want to see the executive branch do in this administration.

00;02;53;06 - 00;03;21;18

Stephen Gutowski

But it is at the moment just a review. And it's, you know, the it doesn't flesh out a lot of the details. So that's what we're I'm hoping to accomplish here. So there's at least seven areas that the AG is supposed to focus on. Now some of these are a bit redundant, right? Like the first one talks about all presidential and agency actions during the Biden administration, essentially, that, purport to promote safety but may have impinged on the Second Amendment rights of all citizens.

00;03;21;18 - 00;03;47;15

Stephen Gutowski

So that's kind of a catchall thing for all the later rule, later subsections. But the first one is rules promulgated by the Department of Justice, including the ATF. So can you just walk us through what you see as the possible not not necessarily exactly what's going to happen, but some of the possibilities from that first section there, the rule, the ATF rules that we saw from Biden ministration.

00;03;47;18 - 00;04;15;24

David Kopel

Well, let's see, they've, they lost on their, on their, well, that came from the Trump administration, but then further by the Biden administration, was that the bump stock rule? And that's obviously been held, unlawful, by the Supreme Court in, Khalil of, Garland v Cargill. The Supreme Court didn't rule on the Second Amendment issue, which would not be a winner on that particular, topic, but said it just doesn't match what the what the statute says.

00;04;15;26 - 00;04;49;29

David Kopel

Right. There's been a ton of, ATF rulemaking, by the Biden administration. Most famously, I suppose, the pistol brass rule, which is it's long and confusing, but it seems to say that most pistol braces are presumptively unlawful because they convert a gun into a short barreled rifle, which under the National Firearms Act, you can own, but you got to pay a \$200 tax and go through a registration procedure.

00;04;50;02 - 00;05;05;11

David Kopel

And then there's also a, a making rule, which is currently being litigated. But that aims to, at the least restrict, the manufacturer of a firearm at home for personal use.

00;05;05;13 - 00;05;06;08

Stephen Gutowski

Yeah. The frames.

00;05;06;11 - 00;05;09;24

David Kopel

And we're starting with the starting with 80% receiver.

00;05;09;26 - 00;05;34;01

Stephen Gutowski

Right. Where we're, they're reclassifying, receivers, at least the kits. And they've kind of been a little vague. Right. So we've more than just the kits. Yeah. As far as can be, you know, gun making, homemade gun kits. But yeah. So those are the two, I think biggest ones that people have heard of that have the biggest impacts, in real, you know, in real terms, at least in theory, like the pistol brass band, there were millions of those guns.

00;05;34;01 - 00;05;57;20

Stephen Gutowski

Yeah. Out there when the when vitamin Stration handed that down. Although all of these have kind of been stuck in in

court. Right. You also have, for instance, the, the used gun sales rule where they tried to, you know, make a new rule that implies many, most people who are selling used guns ought to get a federal license to do so.

00;05;57;27 - 00;06;19;27

David Kopel

And that's. Yeah. And that that's also a, a troublesome one because it's always been. And by the way, on on the, the making thing with, you know, 80% receivers and all that, that's currently in front of the Supreme Court and they've had oral argument. Right. And I would say based on that, I'd expect the government to win that case.

00;06;20;00 - 00;06;39;02

Stephen Gutowski

It does seem to lean that way. Yeah, yeah. Actually, a question on that. I don't know, maybe, you know, this may be outside of both our areas expertise, but is there something that could even actually do at this stage now that oral arguments are over and we're just waiting on the court to deliver an opinion with the so-called ghost gun rule, is there anything that the Trump administration can do?

00;06;39;05 - 00;06;56;29

David Kopel

I think, you know, the the, I don't think that's going to happen, but the attorney general could say we, you know, we petitioned for search warrant. You granted it, and you did everything. But we'd like to let you now know that we, we confess here, and we were legally wrong. So if you let us withdraw the case, as well.

00;06;57;05 - 00;06;59;11

David Kopel

And if not, please rule against us.

00;06;59;14 - 00;07;14;16

Stephen Gutowski

Okay, so that's one thing they actually that they could do. Yes or not. And we'll get into later on maybe some of the things you think they might actually do out of this executive order. But I just want to establish, you know, some of this stuff that we could that it's realistic to expect from this order as a possibility.

00;07;14;21 - 00;07;37;08

Stephen Gutowski

And so one is that they could try to and this, this may be hits on two parts of this. Exactly one because the other there's another one we'll get into later that deals with, you know, reconsidering their legal positions in court, in gun related cases. But this so they could try to effectively moot the Supreme Court case or with, you know, draw the DOJ's position and prevent the Supreme Court from issuing an opinion.

00;07;37;08 - 00;07;37;15

Stephen Gutowski

Yeah.

00;07;37;16 - 00;07;56;17

David Kopel

To say we're we're planning on repealing this rule. So there's no there's no case or controversy anymore, because we're going to get rid of the rule, but getting rid of one once you've got a rule that's been, you know, published in the federal Register as a final rule, then you can't just wave your hands and and get rid of it.

00;07;56;19 - 00;08;17;22

David Kopel

You've got to go through typically the Administrative Procedure Act process of like, okay, we're going to, you know, just as when you created the rule, what do you want to repeal it? You got to publish a proposal, put it out for a, say, a 60 day notice and comment period, then revise the rule based on the the comments and and then take action.

00:08;17;22 - 00:08;35;25

David Kopel

And that's a slower process than, the Supreme Court, which is which wraps up its term in late June and always rules on all the cases that it prior to oral argument on, by them, you know, they're they're taken.

00:08;35;25 - 00:08;36;07

Stephen Gutowski

Out of here.

00:08;36;07 - 00:08;43;12

David Kopel

Right under continue to over the next term. But the normal thing is the Supreme Court is going to have a result for us by June 30th.

00:08;43;15 - 00:08;52;26

Stephen Gutowski

You know, so there's limited time to act for the the frames and receivers rule, right. Although they could start the process, I suppose. And. Right.

00:08;52;28 - 00:09;03;23

David Kopel

And even if they say they've started the process they can say, oh court, you know, don't bother publishing an opinion because but you know, it's going to go away anyway. So we just want to save you some time.

00:09;03;26 - 00:09;23;14

Stephen Gutowski

Right. So bottom line on this first section here with these ATF rules, what they can do is start the rulemaking process over again to withdraw these rules or to change their interpretation away from what the Biden administration had done. And that would fit within, what Trump had promised to do on the campaign trail.

00:09;23;14 - 00:09;26;12

David Kopel

I believe he's promised to do some of the stuff on day one.

00:09;26;14 - 00:09;43;10

Stephen Gutowski

He tries to do in the first week. But yeah, it's not timetable wise, but it is what he promised. Undo the Biden rules, essentially, right. Although he didn't, he was never, you know, specific about which rules. He just kind of said all of them. So we'll see if they go that far. But, okay. So that's good to establish that.

00:09;43;10 - 00:10;13;14

David Kopel

You mentioned the, the sales rule. And I think that's actually one that that might have the most practical impact on people, you know, the general rule on by congressional statute and the Gun Control Act, as amended by the Farms Under Protection Act 1986, is you need a federal firearms license if you are engaged in the business and engaged in the business means repetitive activity, for profit.

00:10;13;17 - 00:11;08;11

David Kopel

So, you know, if you're going to gun shows and flea markets, running a table there and over the course of a year, you by 23 guns and you resell 20 of them, over the year for a profit, then you're plainly engaged in the business and actually president of, Obama, in a sort of flurry of executive and regulatory action in January of his final year in 2016, came out with a ATF, interpretive guideline on that, which was actually that despite all the uproar, you know, in a Partizan sense,

it was it was a perfect explanation of that rule and its correct application and and what it also means is if you,

00;11;08;13 - 00;11;29;00

David Kopel

you know, you have 15 guns and your wife says, we need some money to, to go on vacation in the summer. So why don't you go to the gun show this weekend and sell a few? The husband does and sells three guns. That's not a that's not repetitive transactions. And he's not engaged to the business.

00;11;29;03 - 00;11;50;17

David Kopel

There might be state laws. Well, there will be state laws that apply to that. But he doesn't need a federal firearms license, to do that kind of one time occasional thing. But what the new Biden rule seems to say is, if you ever sell a gun for a nominal profit, then you're supposedly engaged in the business.

00;11;50;17 - 00;11;51;28

David Kopel

Which is wrong.

00;11;52;00 - 00;11;54;06

Stephen Gutowski

It could be. Yeah, well, sort of vague.

00;11;54;06 - 00;12;23;18

David Kopel

Well, yeah. I mean, let's suppose you bought a revolver in 1977, for \$275, you know, which would be a good high, you know, high quality, fairly high priced revolver at the time. And now you turn around, in 2025 and you sell it for 300. Well, thanks to inflation, you're actually selling for a loss. But you've made a nominal profit of \$25.

00;12;23;18 - 00;12;48;29

David Kopel

25, Federal Reserve notes as fee dollars in Federal Reserve notes. People sometimes column and Biden would say you needed to get a federal firearms license, for doing that. And that that seems obviously wrong, contrary to the statute, and ought to be one of the easiest things, for the new administration to, go the other way on.

00;12;49;02 - 00;13;10;09

Stephen Gutowski

And that that was something where, the 2022 bipartisan Safer Communities Act had slightly modified the language. Yes. And so they were using that as a justification, even though the language is still pretty similar to previous statute. But, and we've actually seen a couple of Republican senators who voted for that, that legislation say that this was not their intention.

00;13;10;09 - 00;13;12;06

Stephen Gutowski

So, yeah.

00;13;12;09 - 00;13;13;04

David Kopel

Charlie Brown.

00;13;13;07 - 00;13;14;28

Stephen Gutowski

Some questionable stuff.

00;13;15;01 - 00;13;44;12

David Kopel

Yeah. I mean, if they were trying I understand they were trying to be nice and bipartisan and all that. But then then actually the statute, that was going to be implemented with further regulations by the Biden administration, which does not. And if it had been the Biden administration full of people who were like Joe Biden in 1987, the guy who voted for the farms Owners Protection Act, but was also in favor of some gun control.

00;13;44;14 - 00;13;59;12

David Kopel

It could have been fine. But the Biden we had, was a guy who just turned over, the all his domestic policy to the extreme left of the Democratic Party and including the gun ban lobbies.

00;13;59;14 - 00;14;12;08

Stephen Gutowski

All right. Well, so, I guess bottom line here in this first section of this order is the pass. What's possible is that you'll see, all these Biden rules, undone through rulemaking, through the rulemaking process.

00;14;12;08 - 00;14;12;17

David Kopel

Some of.

00;14;12;17 - 00;14;30;26

Stephen Gutowski

Them. Yes. That. Yeah, we'll get into whether whether or not they're going to do all of them. But yeah, that's that's the potential. Yeah. Including maybe, the effectively muting this Supreme Court decision in Vander Stock. But you know, before it comes out. Yeah. So that's the possibility the next take.

00;14;30;28 - 00;14;33;14

David Kopel

50 bet on a prediction market on that happening.

00;14;33;16 - 00;15;01;00

Stephen Gutowski

Right. The next section here, deals with what the, what they call the, enhanced regulatory enforcement policy at the ATF. Yeah. And so this is, what people usually referred to as zero tolerance policy towards, gun dealers. Which has seen the number of license revocations increase quite significantly during the, the end of the Biden administration.

00;15;01;03 - 00;15;23;24

Stephen Gutowski

And that the industry has been, you know, very upset with and claims that, you know, most of these revocations are over minor paperwork violations that don't actually, end up with anyone obtaining a gun who shouldn't have it or, you know, results in any sort of, you know, really bad outcomes. So, you know, again, that is still in place at the moment.

00;15;23;26 - 00;15;31;09

Stephen Gutowski

We've heard from NSF, the National Shooting Sports Foundation, but this order is is saying, go and look at this policy.

00;15;31;11 - 00;16;02;04

David Kopel

Right? Yes. And and I think that there my guess is that ought to be one of the easy ones. And, you know, the, the, the Trump administration conceives of itself as pro-business, you know, he's been a real estate developer in New York. So he knows about paperwork and business. And and this is really just abusive stuff. It's you should take away the licenses from gun dealers who are, you know, for example, selling guns off the books.

00;16;02;06 - 00;16;30;04

David Kopel

But minor paperwork violations, first time offense, low quantity, things like that. The Biden administration's just been abusive because, again, it was under the control, for gun policy for the most part of the gun ban lobbies who just hate the existence of gun stores at all. And men hate gun ownership as Gabby Giffords. Said, no more guns gone.

00;16;30;06 - 00;16;43;08

David Kopel

So anything they can do, this anti-gun, even if it doesn't enhance public safety in a realistic sense, if it helps get rid of guns. They did it. And so that that certainly ought to be something they fix.

00;16;43;11 - 00;16;55;20

Stephen Gutowski

So that's the outcome. There is just they could potentially revoke that zero tolerance policy and go back to, I guess, a more nuanced approach toward enforcement, for, for firearms licenses.

00;16;55;22 - 00;17;19;26

David Kopel

Yeah. I mean, you know, it wasn't like the Barack Obama administration, was considered all loose and, soft on, on road gun dealers. I mean, all they got to do is just go back to the historic ATF policy that's existed, for many decades, including the Obama administration. And, that one that's easier to do because that's not a formal regulation published in the Federal Register.

00;17;19;26 - 00;17;24;13

David Kopel

It's just it's just a policy which a department can change whenever it wants.

00;17;24;15 - 00;17;44;03

Stephen Gutowski

Yeah. So that that ones you could get instant action if they decide to do it. Okay. The next, next one we got here, this deals with, the white House Office of Gun Violence Prevention. Yeah. And any of the reports and related documents from that now, it's still a bit unclear exactly what's going on with that office.

00;17;44;03 - 00;18;04;23

Stephen Gutowski

It seems to. It seems the website is no longer up. Yeah. The the people who had work there, and this was sort of a clearinghouse for gun rights or so gun control activists in the white House. That was kind of a honestly, it was mostly, symbolic thing. From, to kind of satisfy that, that constituency.

00;18;05;00 - 00;18;06;07

Stephen Gutowski

Well, no, it's I'd.

00;18;06;07 - 00;18;42;03

David Kopel

Say more I'd say more than symbolic because, you know, the federal government is this huge, sprawling thing, and it's not like the ATF director and talks to the attorney general that often, let alone talking to the president. So, you know, be if, as Woody Allen said, half of life is just showing up and having an office in the white House itself or next door in the Executive Office building is a really important thing for connecting and pushing stuff.

00;18;42;05 - 00;18;43;17

David Kopel

You know, because of the president's.

00;18;43;19 - 00;18;44;29

Stephen Gutowski
Idea of coordination. Right.

00;18;45;03 - 00;19;02;18

David Kopel

Well, if the president says I'll, you know, go do something anti-gun and he gives a speech about it, well, you know, he's got the speech, but no president, even ones who have all their marbles, and are very much on top of things like, say, you know, Jimmy Carter, who was, you know, known as a micromanager, even.

00;19;02;18 - 00;19;21;25

David Kopel

They aren't going to be making the phone calls down the bureaucracy to get things done. So when you put this, I have create a white House office, among other things, you create the follow up to keep pushing the rest of the, the, federal executive, branch, in the direction they want.

00;19;21;28 - 00;19;41;14

Stephen Gutowski

Yeah. Fair point. I just recall when they were advocate, when the gun rights guys keep saying the wrong thing here, the gun control groups were advocating for the creation of this office. The argument was over whether it would be, you know, all that effective. And, implementing policy. And and they still wanted it, even just for the symbolic purposes.

00;19;41;14 - 00;20;06;05

Stephen Gutowski

So it may still. Well, you know, I think it's a fair point you raise in there that the idea was to coordinate across different executive branches with this office. But it seems to be gone to people who worked there before seem to be, in under the belief that it's gone. They're no longer working there. Yeah. And, the, the website's down that the administration, for whatever reason, has not, confirmed or denied that this office has been closed down.

00;20;06;07 - 00;20;21;03

Stephen Gutowski

You know, there were some talk about maybe reorganizing it to do something else or just shutting it down. Either way, this executive order talks about looking at the reports and, yeah, I think these things that the office released, what do you make of that?

00;20;21;10 - 00;20;49;25

David Kopel

Well, and, you know, and I'm, I'm purely speculating here, but it's possible the white, the white House silence you described so far might reflect thoughts of, oh, do we actually want to keep this thing around and bring our own people into it? So you could actually bring in people who believe in preventing, the misuse of guns. Whereas in fact, this call the white House Office of Gun Violence Prevention.

00;20;49;25 - 00;21;20;02

David Kopel

But more honestly, it would have just been called the white House Office of Gun Prevention. You know, it was staffed by anti-gun nuts and extremists, who just don't like you come often, come from organizations. That heat gun ownership in general. So you could conceivably have an office which says, no, what we'd actually like to do is reduce victimization by violence of by violent gun crime, violent gun criminals.

00;21;20;05 - 00;21;53;29

David Kopel

And so we might issue reports talking about, how sentencing laws should be changed so that repeat, armed robbers serve longer sentences in state prisons. And you might also, put out documents with honest data on licensed carry or on what's called constitutional carry and say, well, you know, we the data taken as a whole don't seem to show large statistic significant effects on crime plus or minus.

00;21;54;02 - 00;22;21;03

David Kopel

But we have anecdotally, huge numbers of people who have been able to defend themselves because they have the right to carry to defend their families, defend other innocent people, stop mass shooters. And so a real white House Office of Gun Violence Prevention, might take an advocacy role, and criticize laws such as in New York or Hawaii that basically say, well, we'll give you a carry permit.

00;22;21;03 - 00;22;23;06

David Kopel

You just can't use it anywhere.

00;22;23;09 - 00;22;34;24

Stephen Gutowski

Yeah. Or they could, suppose they could also just delete everything that the, the, the previous office had put out. They've been kind of doing that in a lot of areas. Yeah. Coming to this point.

00;22;34;26 - 00;22;48;25

David Kopel

It would make me happy if besides deleting it, they also published a report on the deletion explaining why the statistics you were used in a misleading way or, didn't look at the full picture, for example.

00;22;48;27 - 00;23;06;16

Stephen Gutowski

All right. So there's some of the possibilities that could lead to, you know, obviously a lot of these things we don't you get one line in, in this order for each of these things, we don't we don't have a ton to go off. We're just trying to put some meat on, on the bone. So to speak, here as to what these might look like.

00;23;06;19 - 00;23;22;18

Stephen Gutowski

All right. So the next thing from there is, and this one could be pretty soon. And we kind of mentioned it earlier, but, the, the AG is supposed to review positions taken by the United States and any and all ongoing and potential litigation that affects or could affect the ability of Americans to exercise their second minute.

00;23;22;18 - 00;23;40;25

Stephen Gutowski

Right. So this seems like, and we have seen, actually some action on this, I mean, or acknowledgment of this in, in some of these cases, I think it was a pistol band, pistol brass band case. You saw the DOJ lawyers file a request for a stay or for like an extension. They wanted more time to.

00;23;41;01 - 00;23;47;29

David Kopel

The one year they wanted to pursue. Exactly the argument, which is, I believe, scheduled for for the first week in March. Yeah, in the fifth circuit.

00;23;48;01 - 00;24;15;12

Stephen Gutowski

Right. So they the government's lawyers, they're the DOJ has asked the court to let them basically do what this executive order is suggesting and review their position in the case and then decide, you know, before deciding what to do, right, and how to approach all arguments. Yeah. But, so that that seems like something they might, I guess they could do across all sorts of gun related cases throughout the entire federal judiciary.

00;24;15;12 - 00;24;17;24

Stephen Gutowski

Right. Well, in theory.

00;24;17;26 - 00;24;44;21

David Kopel

It in theory, yes. And let's go into so first of all, the the United States in the lower federal courts rarely files amicus briefs, you know, so if if you've got individual plaintiffs suing the state of New York and the Second Circuit Court of Appeals, you're not going to expect the Department of Justice to come in with an amicus brief on on either side of that.

00;24;44;21 - 00;25;22;20

David Kopel

And that's that that's longstanding. And and it's still that way, on gun cases, the then you've got the question of when there's a, you know, affirmative lawsuit filed by the NRA or the Second Amendment Foundation or gun Owners America Firearms Policy Coalition groups like that, that challenge a federal law as violating the Second Amendment. And so there's, a number of cases right now challenging the ban on 18 to 20 year olds, buying handguns from felons.

00;25;22;22 - 00;25;57;27

David Kopel

And, and there's a whole bunch of cases that are direct attacks on the Gun Control Act statute, the norm arm of statist state attorneys general and the United States Attorney general from time immemorial. You know, as long as we've had attorneys general, is that the attorney general in this way operates as the lawyer for the government and defends the statute no matter what.

00;25;57;29 - 00;26;29;16

David Kopel

And that's even true of the attorney general can say, you know what? This might have been okay, under the precedents that existed 30 years ago, but the Supreme Court's been going in a different direction. And I think if we defend this law, we're going to lose, the general approach is fine. Go, go ahead and lose. You know, but just like every felony defendant gets a lawyer who will speak up for him, every, every statute, gets an attorney general who will defend it.

00;26;29;18 - 00;27;00;22

David Kopel

You know, and that was and that. And I'll say to the Biden administration's credit, when there were cases involving plaque at the protect 2005 Protection of Lawful Commerce in Arms Act, which outlaws many of the abuse of lawsuits that were going on against firearms manufacturers and stores. Biden hated that bill, fought it in the Senate and as president campaigned against it and as president repeatedly and often in it, accurately, denounced it.

00;27;00;24 - 00;27;37;11

David Kopel

But nevertheless, the Department of Justice in court, made good arguments that, well, whatever it is, is policy. It's not it's not unconstitutional. You know, you can argue the constitutionality both ways, but I think the stronger case is it is constitutional. But the point is, the Department of Justice did its job and defended that statute. So, and I think what I well, I think I think what we've seen from Pam Bondi as Florida attorney general is she's going to be in that general mold.

00;27;37;11 - 00;27;48;25

David Kopel

She's not. Yeah. So I'm going to somebody is going to be different from every other attorney general in history. So I would expect her office to continue, defending those statutes.

00;27;48;27 - 00;28;00;11

Stephen Gutowski

Right. Well, and I think you're right, as far as, like the most likely outcome here. Yeah, is that the government will continue to defend that the ag office will continue to defend federal laws.

00;28;00;13 - 00;28;26;19

David Kopel

Oh, I'm almost certain on that one. And the cases weren't. And AG steps out and says I won't defend the law like when the California's happened. What it virtually never at the federal level. And and occasionally at the state level, like the California attorney general at one point refused to defend Colin California's legal definition of marriage as one man and one woman.

00;28;26;21 - 00;28;42;16

David Kopel

And that was, you know, that that was a big sensation when that happened. And it was seen by many as quite improper, regardless of what one's feelings are on that issue, which was unresolved at the time, legally speaking.

00;28;42;18 - 00;28;43;02

Stephen Gutowski

Sure.

00;28;43;04 - 00;29;10;29

David Kopel

But so the, the, the the the more intricate question is what happens if you're defending a federal statute and you lose? How far do you have to appeal it? You know, if you lose in the Fifth Circuit, do you have to ask the Supreme Court for search Ferrari? You know, I mean, yeah, the there's nothing more likely to get a grant of search, Girardi, than a federal statute being held unconstitutional.

00;29;11;01 - 00;29;40;01

David Kopel

But not every federal statute that is held unconstitutional. A lower court gets a cert petition, from the Solicitor General's office to the US Supreme Court. Most do, but not every single one. So there will be some some room for discretion in there. But really, that's more where you see, Pam Bondi is Florida AG, defended, the law that was enacted in 2013, the banned, young adult Floridians from buying retail, long guns.

00;29;40;03 - 00;29;56;28

Stephen Gutowski

Yeah, yeah. And we'll we'll get into a little bit more about Pam Bondi. Okay. And and her background in a minute. But but this is so that this is the more I guess realistic path of that you see potential changes maybe how they argue the cases, how aggressive they are and appealing them up the chain, that sort of thing.

00;29;57;02 - 00;30;33;14

David Kopel

Well, sure. And there's the the how you argue thing. And, you know, starting under the first term of President George W Bush, Attorney General Ashcroft, came out with a memo to the Department of Justice lawyers, saying it is that now the Department of Justice's position that the Second Amendment guarantees an individual right. Which was great, but that didn't stop the Department of Justice from defending every federal gun law, you know, including in criminal cases.

00;30;33;17 - 00;30;49;27

David Kopel

So did affect how they argue. You know, they say, yeah. You know, there's definitely an individual Second Amendment. Right. But this federal statute that bans a convicted violent felon, from having a gun is consistent with the Second Amendment individual. Right.

00;30;49;29 - 00;31;13;06

Stephen Gutowski

Right, right. Okay. And and like I said, there have been cases, you know, I think Barr at one point refused to defend a federal law. And I think there was actually just one just recently about firing, minority members of agencies like the FTC or FCC, where they're, where they're not going to defend the.

00:31;13;06 - 00:31;13;15

Stephen Gutowski

Well.

00:31;13;15 - 00:31;40;14

David Kopel

And, and, and if you're in the on the attorney general side of that, you know, you're still have what's rule 11 of the federal Rules of Civil Procedure and their state parallels says you can't make bad faith arguments. You know, you you can't. Yeah. You can't do frivolous arguments. You can't do an argument that's contrary to precedent, you know, unless you're also arguing that the precedent should be overturned.

00:31;40;14 - 00:32;03;17

David Kopel

And I'm just preserving this issue for appeal. So if there's really nothing you can legitimately say in defense of a statute, then then the attorney general might do that, but that's, that's at the very extreme edge. You know, you can imagine statutes like I have statute says, three members of the Federal Communications Commission have to be black.

00:32;03;20 - 00:32;13;09

David Kopel

That's plainly unconstitutional. And the attorney general in that case would have to confess error and say that we would we can't defend this under existing precedent.

00:32;13;11 - 00:32;42;29

Stephen Gutowski

Right. Okay. The next section here also has, I think the potential to be there's there's a lot of potential within this, although it's only a few words here that it just talks about, looking at agencies, classifications of firearms and ammunition, which, maybe it doesn't sound like there's a lot of, space for, for maneuvering there, but, with how some federal laws are written that could there could be some significant action under that subhead.

00:32;42;29 - 00:32;43;20

Stephen Gutowski

Right? Yeah.

00:32;43;20 - 00:33;10;03

David Kopel

And there's, there's always stuff going on in that, although it's often, you know, it's not it's often not the kind of thing that that comes up to broader consciousness. You know, even among the gun owning, public. But, you know, for example, there, you know, there's always issues on what is a machine gun under the National Firearms Act.

00:33;10;06 - 00:33;33;01

David Kopel

And, you know, Constitution is like, oh, this thing was made, you know, in Austria in 1970. And when it was made, it was a machine gun, but it's been altered. So now it's a semi-auto only. You see, if you've had many times over the years of ATF saying, well, you know, it's like original sin and, there's no way to expiate it.

00:33;33;04 - 00:33;58;21

David Kopel

You're it's still a machine gun that that happens. 18 U.S code 922 are, enacted in the, the George H.W. Bush administration says you cannot the Bush administration had banned the import of a lot of semi-auto rifles under the claim that they're not used for sporting purposes.

00:33;58;23 - 00:34;03;07

Stephen Gutowski

Yeah. Sporting purposes is a big exception in federal law, especially for imports. Right.

00:34:03:07 - 00:34:04:10

David Kopel
That that right.

00:34:04:10 - 00:34:05:10

Stephen Gutowski
That's that's.

00:34:05:12 - 00:34:06:22

David Kopel
Such a gigantic issue.

00:34:06:24 - 00:34:11:22

Stephen Gutowski
And a lot of discrepancy. A lot a lot of, subjective, freedom there for the wealthy.

00:34:11:22 - 00:34:55:14

David Kopel
And so on, on the broad classification of sporting purposes. You know, ATF has taken the position that sometimes, you know, as in the Bush ban, that's the only thing they really care about is hunting. So if this isn't a gun that's recommended by hunting guides, that it can't have sporting purposes and you know, even back in the early days after the Gun Control Act of 68, the bureau took the position that plinking at tin cans of wood, which is, you know, probably the most common sporting activities of American gun owners in real life, that that didn't count as a sporting purpose, because if they they because they wanted to outlaw inexpensive German

00:34:55:14 - 00:35:31:25

David Kopel
and other foreign made handguns, which are, you know, unquestionably used for plinking. So they they have to say plinking doesn't count. So there's a lot of, you know, does a, under current interpretations, you know, the fact that a gun is, is ideal for, say, a three gun competition or IDPs for an international defensive pistol association, those kinds of things which are sports that have winners and losers and people who train really hard and all those, those things, that's still generally not counted as a sporting purpose for import ability.

00:35:31:27 - 00:35:55:00

David Kopel
But then on the this 922 it says we've got the whatever it is that we've got these guns that are banned from import by, a federal regulation. 922 says. And we'll add on to that by saying, you can't assemble one of those guns in the United States if it's made from foreign parts, and that that's what the statute says, that the regulation is.

00:35:55:00 - 00:36:27:27

David Kopel
Well, exactly how many foreign parts, you know, if the gun's got 87 parts and one foreign part, that one foreign part is the trigger spring. Does that violate 922 or not? And HF has a regulation on this. And that regulation could be changed to say, you know, no, we're really only, you know, it could be the number of foreign parts that qualify, to be put on the bad list and become illegal could be narrowed.

00:36:28:00 - 00:36:35:13

Stephen Gutowski
Right. And that's something that maybe not your average gun buyers walking into a gun shop might care about, but it's definitely something that collectors have been.

00:36:35:16 - 00:36:35:20

David Kopel
Yeah.

00:36:35:27 - 00:36:37:03
Stephen Gutowski
Are very well aware of.

00:36:37:03 - 00:36:38:11
David Kopel
Right.

00:36:38:13 - 00:37:00:07
Stephen Gutowski
Yeah. Okay. So there's, there's some of the things that could fall under that, potentially, not saying they will do these things, but these are that this is the potential. And then the last one is again, another maybe potentially large, a little bit vague. The processing of applications to make, manufacture, transport or export firearms and more things.

00:37:00:07 - 00:37:17:27
Stephen Gutowski
I'm wondering, there is, you know, does that implicate perhaps the Biden administration's changes to firearm export regulations? Or, what are we just talking about? Things like processing times for NSA applications or stuff like, what do you make of it?

00:37:18:04 - 00:37:44:03
David Kopel
I think it includes both. And, you know, the Biden administration, ATF to its credit, there was an enormous backlog of applications on suppressors. And they worked through that and they got it done. And now my understanding is if you walk into the store, you want to buy a suppressor, you know, they'll they'll ship the form.

00:37:44:03 - 00:37:57:03
David Kopel
I guess form for, to ATF for you. And you'll probably you may get a, an approval from ATF in 24 hours or maybe 72, but they've they've really, cut that delay from.

00:37:57:04 - 00:37:59:03
Stephen Gutowski
That used to be like nine months or more.

00:37:59:04 - 00:38:27:28
David Kopel
Yeah. Yeah, exactly. And it is an obvious barrier now. And now that and by doing that, they've made the statute more defensible, in, in court because there's a difference between a one day wait and a and a nine month wait. But the point you made about firms, about exports is huge. And I am not an expert on this thing, but my understanding is they came in, about a year ago with a extremely harsh rule.

00:38:28:00 - 00:38:39:06
David Kopel
That, again, was more in the, the nature of gun prevention rather than in, the nature of reasonable, regulation to keep guns out of the wrong hands.

00:38:39:08 - 00:39:05:14
Stephen Gutowski
Yeah. So, yeah, they, they put a lot of further restrictions on exporting certain kinds of guns, but most what would often fall under the, so-called assault weapon category, you know, semiautomatic center fire rifles. Yeah. Certain features like

the AR 15, and, you know, made it harder to export those and then ban them from export in certain countries like, including Israel and Ukraine, some of our allies.

00:39:05;15 - 00:39:07;22

Stephen Gutowski
So, you know, we.

00:39:07;24 - 00:39:21;19

David Kopel

Want to have them, them to have effective guns, which was the Biden administration policy of, on both of those countries, is will we're willing to help you defend yourself? But not not we don't want you to go too far and actually try to win the war.

00:39:21;21 - 00:39:44;21

Stephen Gutowski

Yeah. Now, these were civilian and gun exports. So it's a little bit different than the more than that. But yes, I take your point. So, yeah. So I guess that that fleshes out what exactly could happen. Yeah. From from this executive order. What what we might see at the end of this 30 days. But I guess the question then is, what do you think we're actually going to see?

00:39:44;21 - 00:40:01;17

Stephen Gutowski

Because as we alluded to earlier here, you know, Pam Bondi seems to have at least, some sway in what exactly the administration's going to do on any of these areas. She's the one who's going to be reviewing, or at least her office is going to be reviewing the stuff and then coordinating with the white House policy office.

00:40:01;17 - 00:40:24;20

Stephen Gutowski

But, you know, and obviously, one of the concerns about her from gun rights activists, is, is her history, some of which you mentioned in, defending and advocating for certain gun restrictions, including age restrictions. Red flag laws was another area that people, didn't didn't like her activism after parkland to help pass that bill in Florida.

00:40:24;22 - 00:40:49;21

Stephen Gutowski

And and so there's a lot of skepticism of her that Pam Bondi now it hadn't I don't think it's reached necessarily Republican, congressmen and senators because there was no opposition to her. In confirmation. She didn't really even get questioned about this. But yeah, but it does, you know, raise the, the idea of what? How far do you think she would realistically be willing to go on this stuff?

00:40:49;21 - 00:41:04;06

Stephen Gutowski

I mean, I don't know, the frames and receivers or do we even know Donald Trump as opposed to something like that or Pam Bondi as opposed to to that kind of regulation to begin with? I mean, what are your thoughts?

00:41:04;09 - 00:41:46;20

David Kopel

I think she's, her record is overall as a Republican who's not who goes along with what, whatever the mainstream of the Republican Party thinks, usually and is not typically a, an and an envelope pusher, you know, trying to see how far we can go now, maybe on, on, on immigration, where she's got an extremely strong mandate, from the president and likewise on, you know, chemical castration of children and racial discrimination and things like that.

00:41:46;22 - 00:42:11;10

David Kopel

She might be fairly aggressive, because that that that's clearly what the president wants. And, and those are all positions

that, that, that are generally pretty popular with the American people as a whole. On the gun stuff. I think she's got to come back and give the white House some things to crow about and say, look what we did for you gun owners.

00:42:11;13 - 00:42:34;20

David Kopel

But, you know, if we had the folks on from Gun Owners of America, which, you know, defines itself as a group that's always going to take the, the most ultra position, I would say their list versus the Pam Bondi I did it list. There's going to be a large gap between those two things.

00:42:34;22 - 00:42:35;07

Stephen Gutowski

Yeah.

00:42:35;09 - 00:42:39;02

David Kopel

That's what I think. She'll I think there will be some significant things.

00:42:39;04 - 00:42:55;25

Stephen Gutowski

Yeah. I mean I would be surprised given the way they wrote this. I know I have a couple of thoughts on it. Right. The if they were going to do all of these things, they could have just done them right. There's no real need for this 30 day review period, or am I?

00:42:56;00 - 00:42:56;25

David Kopel

Well, I.

00:42:56;25 - 00:42:57;21

Stephen Gutowski

Remember being to.

00:42:57;21 - 00:43:03;04

David Kopel

Too well, changing a withdrawing a regulation. You can't just do that.

00:43:03;04 - 00:43:07;22

Stephen Gutowski

And that's why you can't just stop doing it. But you can you can say, start doing it.

00:43:07;26 - 00:43:19;03

David Kopel

We yes, we can initiate it. But, you know, that's the kind of thing that that's better initiated when you have the actual attorney general in office, right? Yeah. Acting attorney general.

00:43:19;06 - 00:43:21;28

Stephen Gutowski

Yeah. Now, I guess my question on it is like.

00:43:21;28 - 00:43:26;10

David Kopel

And there's no confirmed ATF director yet, or even no, no one even nominated.

00:43:26;13 - 00:43:41;25

Stephen Gutowski

Right then I don't even are we sure they're going to nominate anyone? There's another thing to. I didn't promise to do that. Yeah. And he, he had an acting director for most of it. For the entirety of it. I mean, he did try to nominate somebody that they found, so I don't know if that's going to what's going to come down with that.

00:43:41;25 - 00:44:03;10

Stephen Gutowski

But, I guess my question is we're just first off here, the 30 day thing. Do you view this review period as a legitimate, useful thing or maybe just a way to delay a little bit before they decide what they want to do? Because they are all pretty well known issues. They know they seem to know exactly what the gun rights, advocates want them to do.

00:44:03;13 - 00:44:42;13

David Kopel

I. I think it, I think it's useful because you saw in Trump's first term and including those first, first several months, you know, he was like the dog that caught the fire truck and then didn't know what to do with it. And so a lot of things that his appointees did, you know, it's a EPA, they made decisions that that I think were scientifically correct and, and beneficial, but they often then get their decisions got overturned in the courts because they hadn't gone through the full and proper procedures.

00:44:42;15 - 00:44:47;17

Stephen Gutowski

So I think they seem to be doing that again here. Some of these early, very aggressive actions as well.

00:44:47;18 - 00:44:51;29

David Kopel

On, on the yeah on the personnel stuff that that's true. And then we'll we'll see how that turns out.

00:44:51;29 - 00:44:53;06

Stephen Gutowski

See. Yeah.

00:44:53;08 - 00:45:03;21

David Kopel

They're running some of them I mean it just sure, sure. The I believe the First Circuit just upheld their, their buyout plan.

00:45:03;24 - 00:45:09;03

Stephen Gutowski

All they said there was no standing for the employees, I think so, yeah, right. That you that one's going for.

00:45:09;03 - 00:45:32;09

David Kopel

Right. And then the, you know, so these things that there's there's a lot of room for clarification between a preliminary injunction motion on Thursday versus a Circuit Court of Appeals decision two weeks later. So but on the on the regulatory front, you know, within the this kind of thing, I think it's okay to do.

00:45:32;09 - 00:45:35;03

Stephen Gutowski

Prefer the slower more managed approach.

00:45:35;03 - 00:46:00;03

David Kopel

Yeah. And it's and I think it's also better for the white House because to the extent they're trying to show, civil rights advocates that we're doing something on this issue, it's better to come back with a package. Okay. You know, to say, oh, you know, rather than dribbling it out. It's like, oh, we we fixed the thing that, you know, says if you sell your gun for a

loss, but it's a nominal profit.

00:46:00:03 - 00:46:17:15

David Kopel

And because of inflation, you need an FFL. Well, fine. But that, you know, that's not going to be the top story of the day. It's not one of these sure. Like blockbuster thing, like the protecting women's sports executive order, which just, you know, could stand on its own and B be gigantic.

00:46:17:18 - 00:46:30:21

Stephen Gutowski

Okay. So yeah. So you don't view the 30 day thing as, you know, the sort of difference in urgency or expediency with some of the way they've done some other stuff. You don't think that's concerning you? In fact, do you think it's perhaps the.

00:46:30:21 - 00:46:33:05

David Kopel

Right I think it's it's. Yeah.

00:46:33:08 - 00:46:35:01

Stephen Gutowski

Okay. Well, now.

00:46:35:01 - 00:46:41:13

David Kopel

I'll be gone is halfway done, as they say. So if they start it right, that's that gives them a good, better chance of success.

00:46:41:15 - 00:46:58:14

Stephen Gutowski

Okay. That's that's fair. And then, you know, for me, you know, I look at it and I see the list and I think, well, it'd be pretty wild if they they put out this list that covers pretty much everything that the gun rights, movement wants from the executive branch in this term, and then don't do any of them.

00:46:58:14 - 00:47:00:03

Stephen Gutowski

So that seems very unlikely. Right?

00:47:00:03 - 00:47:01:12

David Kopel

Right.

00:47:01:14 - 00:47:17:14

Stephen Gutowski

And but at the same time, it also makes me feel like delegating this to Bonnie. Let's let's not do necessarily everything right now. Do you think that's fair to have. So probably come down somewhere in the middle. Maybe. But maybe most of the the big ticket stuff, these rules especially. Right. Rolling them back.

00:47:17:19 - 00:47:19:10

David Kopel

I I'm.

00:47:19:13 - 00:47:20:14

Stephen Gutowski

Cautious speculation.

00:47:20;14 - 00:47:22;05

David Kopel

Consciously optimistic.

00:47:22;08 - 00:47:23;08

Stephen Gutowski

Okay.

00:47:23;10 - 00:47:39;27

David Kopel

Okay. I can guarantee you that the gun bad groups even if she does very little and disappoints the the pro civil rights people, they will all go into complete performative hysterics. Because that that's part of their, their fundraising model and.

00:47:40;01 - 00:48;00;15

Stephen Gutowski

Sure. And that's, that's become a hallmark of our, our politics these days. The, the extreme poll. I mean, I saw RFK Jr is getting confirmed and Giffords was, put out a tweet very upset about that, even though RFK Jr is probably not somebody that a lot of gun rights activists are very happy with, given that he labeled the NRA a terror organization.

00:48;00;15 - 00:48;18;04

Stephen Gutowski

So. Right. And was until very recently for all sorts of new gun restrictions, including an assault weapons ban and so forth. But yeah, but, that's sort of the nature of our politics now because he's, you know, a Trump official, you know, there's a lot of kneejerk.

00:48;18;06 - 00:48;18;22

David Kopel

Yeah.

00:48;18;25 - 00:48;19;04

Stephen Gutowski

In both.

00:48;19;04 - 00:48;47;04

David Kopel

Directions. Yeah. He's not going to sneak anti. Well, you know, it'll be interesting to see from the gun issue. I think his view of that was when when he was running for president this this time was. Trump. It wasn't. No Kennedy was that that Kennedy was not that interested in it, that he was much more concerned, you know, with his things like you know, nutrition and.

00:48;47;06 - 00:48;47;15

Stephen Gutowski

Foreign.

00:48;47;17 - 00:49;00;05

David Kopel

Affairs and all that kind of stuff. And then he and to the extent he had to take positions on gun issues, he would, but he really didn't. He he'd rather would prefer to run a campaign where that wasn't a topic one way or the other.

00:49;00;08 - 00:49;22;11

Stephen Gutowski

Perhaps. And I think he did reverse himself later on in the campaign, or at least when he endorsed Trump, I believe. But regardless, that's a that's a whole nother topic. RFK and some, you know, some of the potential, obviously he's running

HHS, which does have some, potential realm in, in gun policy is certainly the gun control.

00:49:22;13 - 00:49:26;19

Stephen Gutowski

Advocates have have pushed for gun violence to be treated as an epidemic.

00:49:26;23 - 00:49:36;25

David Kopel

Well, and right, and to try to issue guidelines on physicians requiring them to, interrogate, patients about gun ownership and things like that.

00:49:36;25 - 00:49:44;12

Stephen Gutowski

So we'll see if RFK goes down that path or what, whatnot. Obviously, I think most people are more focused on the other areas of him, and.

00:49:44;15 - 00:49:44;29

David Kopel

I.

00:49:45;00 - 00:49:45;27

Stephen Gutowski

Think I.

00:49:45;27 - 00:49:50;15

David Kopel

Think he'll he'll I think he'll stay as far away from it as he can.

00:49:50;17 - 00:50:03;18

Stephen Gutowski

Well, either way, we will we'll certainly keep an eye on that. But that's a whole nother episode. Certainly. Yeah. So if you want to follow your writing, and follow what you do, where, where can they, And where can they do that?

00:50:03;20 - 00:50:13;28

David Kopel

My website is [Dave kopel.org](http://Davekopel.org) Diaz Explorer, and I'm on Twitter and at, at Dave Dave Capell.

00:50:14;00 - 00:50:30;13

Stephen Gutowski

All right. Wonderful. Well, we appreciate you joining again here and giving us your insight into the potential for this executive order. What what could happen and perhaps what might actually come out of it. You know, as much as we can speculate on at least, and we'll have to have you back on in the future as well.

00:50:30;16 - 00:50:31;29

David Kopel

We'll find out what happened.

00:50:32;02 - 00:50:38;22

Stephen Gutowski

Yes, yes, we'll see what what actually comes out of it. And maybe we'll have you back on the to discuss the details of that.

00:50:38;25 - 00:50:40;05

David Kopel

All right. Sounds good.

00;50;40;07 - 00;50;47;06

Stephen Gutowski

All right. I'm going to hand it off to myself to, tell you guys a little bit about the Dispatch, which is, back sponsoring once again this week.