

00:00;19;25 - 00:00;43;15

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 sober, serious perspective that focuses on hard news reporting and analysis over, you know, hot air and opinion, basically.

00:00;43;18 - 00:01;02;22

Stephen Gutowski

And, of course, if you want to help support the independent and informed reporting we do here at the Reload, you can always buy a membership at TheReload.com. That is how we fund, what we do. This week, though, we also have a mad swap at the dispatch. I'll tell you a little bit more about them. Very similar style publication.

00:01;02;22 - 00:01;24;06

Stephen Gutowski

What we do. But I'll give you a little information on that. At the end of the show, we are going to talk, once again, actually, about the Donald Trump and his administration's approach to guns this second time around. And, some of the potential implications from the executive order that he handed down, just a few weeks ago here.

00:01;24;09 - 00:01;43;23

Stephen Gutowski

This week, though, we are going to get a different perspective from last week's episode with Independent Institute's David Kopel. Instead, this time we have, Andrew Willinger from the Duke Firearms Law Center. Back on the show he's been on before, but we're him back on get a little bit of a different perspective on things. From you, Andrew, welcome.

00:01;43;23 - 00:01;46;14

Stephen Gutowski

Welcome back to the show. Appreciate you. Come on.

00:01;46;16 - 00:01;47;12

Andrew Willinger

Thanks so much for having me.

00:01;47;12 - 00:01;55;14

Stephen Gutowski

So can you tell people just a little bit more about yourself and the Duke Firearms Law Center for anyone who is not informed on that?

00:01;55;17 - 00:02;25;05

Andrew Willinger

Absolutely. So, yeah. So I, I'm the executive director of the, of the center for Firearms Law, which was the first, academic center at a law school, that focused on the second Amendment and gun regulation. We, aim to grow the scholarly field of firearms law within the academy. And we also have a number of resources, including a blog and a database of historical gun laws that are available on our website.

00:02;25;07 - 00:02;50;00

Andrew Willinger

Firearms law at duke.edu. And I've been in this position for, I guess, almost three years now. I was, I was formerly a, commercial litigator. But I've been, you know, thinking, writing, teaching about firearms law for, yeah, for the past, past two and a half years. And I think actually, the, I came on, last time, right after, right after Bruen was decided.

00:02;50;00 - 00:02;55;04

Andrew Willinger

And, that was my first day in the job, when the day that Bruen came down said.

00;02;55;06 - 00;02;55;13

Stephen Gutowski

Big.

00;02;55;13 - 00;02;57;04

Andrew Willinger

Day, a busy start.

00;02;57;06 - 00;03;22;18

Stephen Gutowski

Yeah, that's for sure. That's. And I think you guys are putting together that historical gun, law database kind of in, in anticipation of something like growing because it seemed like that's where the courts were headed. At the federal level at least. And and. Yeah, I think it's, you guys bring a very different perspective, I would say, from independence student Dave Kopel, which is why I think it's valuable to have you on and to go through some of these things.

00;03;22;22 - 00;03;42;26

Stephen Gutowski

Speaking of the blog, you wrote a piece about Trump's executive order. It's a little more focused than what we did last week. It's more, zeroed in on the Department of Justice and how they might change, their approach to some of these, gun cases in the running through the federal courts, as a result of the executive order.

00;03;42;29 - 00;04;05;15

Stephen Gutowski

And, you know, first off, I guess we can start with kind of the ones we've been, everyone's been focused on, you know, some of the big ticket items, I will say, like, sort of in span, litigation or magazine restrictions or carry, restrictions. Those sorts of things that have filled up the, the, the dockets and sort of lifted the hopes of gun rights activists in the wake of Bruen.

00;04;05;21 - 00;04;38;28

Stephen Gutowski

Those really don't have a lot to do with the federal government right. To they're mainly state cases against states. They happen in the federal courts, but they don't they're not cases against the federal government or federal laws. So we've most of what we've seen in terms of federal litigation against the federal government, where the DOJ is going to be tasked with, defending federal laws, gun laws, have to do with, rules that the ATF implemented under, former President Joe Biden.

00;04;39;00 - 00;04;59;06

Stephen Gutowski

And so let's let's start with there. But there's also, of course, you know, age restrictions on handgun, sales, from federally licensed dealers in other area. But but let's start with the rules. Where do you see right now? There's already one at the Supreme Court, right. Vander stock is a case we're waiting for, ruling on from the Supreme Court.

00;04;59;06 - 00;05;29;09

Stephen Gutowski

They already had oral arguments in this case. Last year in October, under the Biden DOJ. What what do you think is, is potentially going to happen there? That's that's the so-called ghost gun case, right? The regulations on unfinished firearm, frames and receivers, that the ATF implemented during the Biden administration. How do you think the Trump DOJ is going to react to that case?

00;05;29;12 - 00;05;50;15

Andrew Willinger

Yeah. So, I mean, I think I think first off, you know, this sort of clearly comes within the language of the the executive

order directing, the attorney general to basically reevaluate, litigation positions in any case that may impact the exercise of Second Amendment rights. It's not a Second Amendment case. So it's been a little further afield from from some others.

00;05;50;15 - 00;06;12;18

Andrew Willinger

But, but I think that language is some broad amount to, to capture, some of these major administrative law challenges. That you've mentioned and Vander Stock, of course, top of mind because, it's already been argued and we're, sort of in the posture of waiting for a decision that presumably would come in the regular course by the end of the term in, in June.

00;06;12;20 - 00;06;12;26

Andrew Willinger

Yeah.

00;06;12;29 - 00;06;14;13

Stephen Gutowski

Almost immediate case.

00;06;14;16 - 00;06;34;12

Andrew Willinger

Exactly. Yeah. And I think also, and just as a way of sort of as kind of an introductory note, I think, I think most court watchers, based on how the oral argument went in the case, I think that the that again, if things are allowed to sort of play out, that the court would uphold, this regulation.

00;06;34;12 - 00;06;42;11

Andrew Willinger

So in contrast to what the court did with the Bostock, ban, that, that they would find this to be a permissible exercise of agency authority.

00;06;42;14 - 00;07;02;11

Stephen Gutowski

Yeah. The court seems interested in kind of, deciding for themselves what they think the statutes mean, and then, siding with the ATF or against that. Based on that, it feels like that's where they're going in both both of those cases. But yeah, by the tenor of oral arguments, it seems like they probably side with the ATF on this one if it reaches that point.

00;07;02;11 - 00;07;04;09

Stephen Gutowski

Right. But that's.

00;07;04;11 - 00;07;32;01

Andrew Willinger

Exactly. And and that's the question. So, you know, we have, presumably a few months, before, you know, it could be could be an earlier decision, but a few months before we might expect it to come down. And the question is whether, the, Trump DOJ will try to, you know, indicate in some way to the court that it is considering or intends to, repeal of this, this rule, get, get, get rid of this rule.

00;07;32;03 - 00;08;06;09

Andrew Willinger

There really isn't, you know, in my understanding, there isn't sort of any sort of formalized process by which this would happen. It's it's just something where the government could, submit a letter, of some kind, indicating what it plans to do. And then it would be up to the justices whether to, you know, decide to put the case on pause or something while, while that file that played out, I'll note that we have seen, the, the Trump DOJ submits similar filings and other high profile cases.

00:08;06;12 - 00:08;44;09

Andrew Willinger

They submitted one in the transgender, medical treatment, Tennessee's ban on on certain treatments for transgender, minors and, basically said that, they had and that's an, that's an instance where it's, it's, you know, the the, the federal government versus Tennessee is, is, the case essentially is is styled, and the, the DOJ said, you know, we've we've looked at this again, we wouldn't have intervened to, to challenge this, this, this lower court ruling which upheld the law.

00:08;44;12 - 00:09;05;18

Andrew Willinger

If we were to sort of do things in you today, and we think that essentially that, Tennessee should win and this law should be, should be, upheld, but we're not going to drop out of the case because it would create difficult issues, and might sort of moot the case. And there's nobody that would be able to take our place.

00:09;05;20 - 00:09;28;26

Andrew Willinger

And I think that's just sort of, because, there's an expectation that the court is going to, rule in that case, that Tennessee's, Tennessee's ban is constitutional, which is that, which is the result that the the administration would prefer. So they're kind of content to let that play out. Now, you might think in Vander Stock, that the opposite is true.

00:09;28;26 - 00:09;49;14

Andrew Willinger

And so they might be much more motivated. If, as I said, you know, as is correct, that the court is poised to, to uphold the ghost gun rule, then, presumably, the administration might be more motivated to try to, to stop that type of decision from coming down again by by making, making a filing with the court.

00:09;49;14 - 00:10;10;26

Andrew Willinger

We haven't we haven't seen that yet. And in some sense, the clock is ticking. And I think as I talked about a little bit in the post, I'm not totally sure it's right that, that the administration, in an ideal world would, you know, would basically do away with the case and move it.

00:10;10;29 - 00:10;38;29

Stephen Gutowski

Yeah. We don't know exactly what Donald Trump or Pam Bondi, the attorney general, actually thinks about this, this policy. Right? These, regulations on unfinished farms and receivers, we don't, I'm not aware of at least Trump speaking out against that. You know, other than just he has broadly spoken out against anything that Joe Biden did on gun policy and this this being one of those one of those things.

00:10;39;01 - 00:11;05;29

Stephen Gutowski

But, you know, I don't know that, especially somebody like Pam Bondi, who has supported a number of, gun restrictions when she was Florida's attorney general. Not necessarily ghost gun restrictions or unfurnished frames and receivers restrictions, more red flag, laws and and age restrictions. But, you know, it's not clear that they actually oppose the what the ATF did in this case.

00:11;06;01 - 00:11;28;22

Stephen Gutowski

I guess that's that's the wrinkle, right, that you're, you're alluding to here. They might not want to stock the Supreme Court ruling. And I guess, you know, like you said, that the Tennessee case is perhaps a, an example of what they could do. It's a little bit different because the federal government's the plaintiff in that case, and the Trump administration might want to lose the case.

00:11;28;22 - 00:11;51;01

Stephen Gutowski

And they seem to, people seem to think they're going that the DOJ is going to lose that case. Or at least that's the the what people are reading of tea leaves. But, and in, in this case, you know, the DOJ is in a position to maybe win. But if the I don't know, they're not moving as quickly.

00;11;51;04 - 00;12;11;06

Stephen Gutowski

And this is a common theme that you've seen in the early administration here on when it comes to gun, priorities. They're not moving as fast on this stuff as they are on a lot of other things, and we just don't know exactly where they'll come down. And you think perhaps they won't side with gun rights activists in this particular instance?

00;12;11;09 - 00;12;45;00

Andrew Willinger

Yeah, I think that's right. I mean, certainly in the category of, of reading tea leaves. But but I think it, you know, it seems like a, you know, maybe where it, where the administration would prefer to be here is in a situation where the Supreme Court issued its decision, upholds the rule, and then they sort of, you know, deal with this after the fact on the side of, of sort of setting enforcement priorities and basically saying, you know, we don't really intend to go out there and aggressively prosecute people under this, under this, ghost gun rule.

00;12;45;00 - 00;13;05;28

Andrew Willinger

But, you know, there are high profile instances of criminals using, you know, self manufactured, or self, self built firearms. And so it's important for public safety reasons to have this type of rule on the books. And I think, in fact, in that situation, the Supreme Court ruling maybe provides a little bit of cover for that if that's ultimately where the administration wants to go.

00;13;06;00 - 00;13;28;29

Stephen Gutowski

Yeah. Because obviously the other priority that they have to balance any sort of gun rights thoughts against is is this sort of law and order approach that they, you know, that Trump likes to talk about, you know, he's and he has talked about taking people, taking guns first and having due process second, obviously was, fairly infamous comments he made in his first term.

00;13;29;01 - 00;13;56;04

Stephen Gutowski

More recently, he's talked about letting police use essentially, he supported stop and frisk policies, in the past and even during the 2024 campaign. So, you know, there there are some areas where there may be tension between, you know, gun rights, priorities and, sort of law and order type priorities. But, Where, I guess.

00;13;56;07 - 00;14;13;16

Stephen Gutowski

The couple was fairly skeptical that they could actually do this in, in the time that's left to, have an effect in this case. But I think you've seen a little more, of the, of the mind that they that they absolutely could if they wanted to.

00;14;13;19 - 00;14;31;16

Andrew Willinger

Yeah. I and I think that's, I think it's a subtle difference, but I mean, I think I'm totally, I have no reason to question. I listen to your conversation with Dave, and I have no reason to question what he said about sort of the actual timeline, you know, amount of time it would take for them to get this regulation off the books.

00;14;31;19 - 00;14;46;29

Andrew Willinger

What the administration certainly could do is indicate to the Supreme Court if that's the path that was going down. Right. And I think they I think they probably would do that if they had made that decision. They would have on the

court, then it would be up to the justices again how to handle it. But I.

00;14;46;29 - 00;15;06;28

Stephen Gutowski

Again and they certainly still could do this. I mean, the, you know, Gibson gives them gives DOJ 30 days. We're not at that 30 day period that we don't know exactly what the Department of Justice is going to do. A lot of this is just, you know, speculation based on past actions. But, it does remind me a bit of the the pre Bruin case that made it to the Supreme Court.

00;15;06;28 - 00;15;36;06

Stephen Gutowski

And then was muted before that. They, before they could rule on it, against the New York City and their firearms transportation restrictions. But that was muted because the city actually, and the state went out of their way to pass legislation and put it into place. During the period after that, the Supreme Court accepted the case, and so the Supreme Court agreed to moot that case because there had already been the changes made to invalidated.

00;15;36;08 - 00;15;44;00

Stephen Gutowski

Right. Whereas here, I guess you'd have to rely on them accepting a letter that says we're going to reverse this.

00;15;44;02 - 00;16;09;24

Andrew Willinger

Yeah, yeah, I think that's an important difference. And and I also think that on the margins, the fact that, you know, that the federal government is obviously a repeat litigant before the Supreme Court and the justices, you know, they recognize, I'm sure that that that reversals happen, that the new administrations come in and take different positions. But they're, you know, if, if, if that happens one too many times, you can imagine some frustration.

00;16;09;24 - 00;16;24;09

Andrew Willinger

And so there may be a calculus as well that, you know, you're going to only do this in cases where they really find it. You know, there's sort of like, like a complete determination. You we obviously need to reverse this position because it's untenable.

00;16;24;12 - 00;16;47;23

Stephen Gutowski

And so what about the other rules? They obviously all honestly, they've all fared pretty poorly in court so far. You know, these these Biden era ATF rules, the pistol brace rule, the, the one about use gun sales requiring federal licenses or, you know, some, some changes to try and force more people to get a license to sell used guns.

00;16;47;26 - 00;17;09;19

Stephen Gutowski

And I guess the export controls that were put in place last year as well, although that I don't think has been litigated and may not be subject to quite the same Second Amendment arguments that the other ones are, because, you know, it's we're talking about exporting firearms instead of, you know, which may not implicate the Second Amendment the same way.

00;17;09;21 - 00;17;13;20

Stephen Gutowski

But, we've seen action in one of those cases. Right.

00;17;13;23 - 00;17;45;27

Andrew Willinger

All right. Yeah. That's right. So we've seen, we've seen action in one of the, circuit cases, I believe, where there was a request for a continuance, which is kind of the same. It, the type of the type of letter I was I was referencing earlier, but I

think carries a lot more weight before circuit court, where, you know, if the government comes in and says there's a pretty good chance we're going to change our position here, can we have some time to, you know, dot the I's and cross the T's on that the judge is going to the judges are going to give them that time,

00;17;45;27 - 00;17;47;11  
Andrew Willinger  
generally speaking.

00;17;47;13 - 00;17;49;11  
Stephen Gutowski  
And that was the pistol brace rule, I believe.

00;17;49;11 - 00;17;50;22  
Andrew Willinger  
And I think that I think.

00;17;50;24 - 00;18;06;17  
Stephen Gutowski  
I think they asked for that because oral arguments were supposed to be at the beginning of next month. And so they're kind of like, hey, we got this, executive order from President. He wants us to review all these cases. We need some time to do that. Please give us some time. That's basically what they did, right?

00;18;06;19 - 00;18;38;17  
Andrew Willinger  
Yes. That's right, that's right. And I should I mean, I should say, well, I think it's a couple of things just to kind of reacting to the some we said earlier, the first is that I think, one of the things that struck me and is I haven't really written about this, but we're looking back over the executive order is the, is sort of like, you know, almost going back and forth between referring to Second Amendment rights, referring to, you know, infringement of the Second Amendment and then referring more broadly to gun rights, to rights that might impact the exercise of the Second Amendment.

00;18;38;19 - 00;18;55;16  
Andrew Willinger  
And it's just to just sort of to put a finer point on it. These are not Second Amendment cases. There are and in some instances, atmospheric arguments, maybe sort of constitutional avoidance type of claims about the Second Amendment. But there but they're squarely administrative law cases. And.

00;18;55;16 - 00;19;23;18  
Stephen Gutowski  
That is a fair point, right. Yeah. I, I, you know, I mentioned they implicate the Second Amendment, but really these are, these cases are not claim second movement claims. They're administrative law claims. The most of them are based on the Administrative Procedures Act. Right. That's actually saying that the the ATF has exceeded its authority to do these kind of regulations because it's over, over interpreting federal law, and they're not really using Second Amendment arguments.

00;19;23;18 - 00;19;29;16  
Stephen Gutowski  
Most of these cases, at least not as the primary point.

00;19;29;19 - 00;19;49;27  
Andrew Willinger  
And then on the on the point about the pistol brace, case, I do I think it's a little bit interesting that you have, you know, you maybe this is just a timing issue, but, you know, you have that request to continue the oral argument there. The government did, argue and defend it before circuit court.

00;19;50;01 - 00;20;12;25

Andrew Willinger

The, federal, federal ban on handgun sales by FFL to 18 to 28 rules in the Fourth Circuit. And that was after the, administration had turned over. So again, maybe that that's there's wasn't enough time for them to, to formulate a change there. But it's not to take a whole lot of work to, you know, ask the court to say, hey, can you, can you push this, this argument date back a little bit?

00;20;12;25 - 00;20;14;06

Andrew Willinger

And they didn't do that in for a circuit.

00;20;14;09 - 00;20;17;07

Stephen Gutowski

And was that was that before the executive order came down?

00;20;17;07 - 00;20;20;00

Andrew Willinger

I guess I think that was the week before. Yeah.

00;20;20;02 - 00;20;38;11

Stephen Gutowski

So maybe, maybe that part of it just hasn't received, you know, the request to review these cases and, and so these kind of move forward with how things have been, I don't know, or maybe they're not going to change course on that in that area. That would be a surprising one because that is a Second Amendment plate.

00;20;38;14 - 00;20;59;20

Andrew Willinger

That's a Second Amendment claim. And yeah, I think that'll be a really interesting one to watch because, you know, we now have we have the Fifth Circuit's, decision. And Reese, striking down that set of statutes. And then the Fourth Circuit case, where have having listened to the argument there, I, I would be very surprised if, if they reached the same outcome.

00;20;59;20 - 00;21;24;29

Andrew Willinger

So I think things are going to uphold the law, at least at the panel level. You know, and then this goes to a point that you talked about a little bit with Dave. Which is it? It's easier in some sense, to sort of change position by just deciding not to appeal when you lose. Right. And then sort of coming into court and saying, oh, no, we now have these all these different arguments and sort of the opposite of what we, you know, what we told you before.

00;21;25;05 - 00;21;42;14

Andrew Willinger

So you could see in the recent case, maybe, maybe the government just decides not to seek cert there. It'll be interesting. I think they have they have 90 days from, you know, whenever that that was issued. But then they'll still have to deal with this fourth circuit case where it may not be up to them, whether it goes up to the Supreme Court.

00;21;42;16 - 00;22;16;23

Stephen Gutowski

Yeah. I mean, that's that's another really key, point to get at is sort of the, the litigation strategy involved, from us on the in the Second Amendment cases because that's something where you can have a pretty significant impact on just how you choose to litigate things. You know, just the timing of stuff. I mean, the post grew in the Biden administration, did a pretty masterful job of, in how they sought to get certain cases in front of the Supreme Court, ones that they thought were going to come out the way that they liked.

00;22;16;23 - 00;22;41;07



Stephen Gutowski

And that's how we got Rajini right, that that they, the DOJ, you know, they prioritized getting Rahimi in front of the Supreme Court over, you know, something like range, right. Which is on the opposite end of the spectrum as far as, you know, pursuing cases go where you where it seems very likely that the Supreme Court probably side with the plaintiff in range.

00;22;41;10 - 00;23;04;22

Stephen Gutowski

But the plaintiff in for the defendant in Rahimi was much less sympathetic, and the circumstances were much more favorable to getting what the Biden DOJ wanted in that case. And so they maneuvered how they, you know, chose to appeal those cases. They did eventually try to get the, range in some of these other cases in front of the court, to no avail.

00;23;04;24 - 00;23;41;03

Stephen Gutowski

But, you know, they they wanted to prioritize range and they did or sorry. Rahimi and they did, and they got the outcome that they wanted from that, even under a very, strict new, test for Second Amendment, cases. Right. And so you could see certainly the DOJ under Trump, if they're smart about how they litigate these second, in other cases, they you know, maybe they they're going to have the ability, perhaps to get the cases they think are most favorable to them in front of the court before later cases that they maybe don't think are as variable.

00;23;41;06 - 00;24;05;20

Stephen Gutowski

Right? I mean, I think that's a perhaps an overlooked part of, of all of this, that, you know, people focus a lot on. Oh, well, maybe they'll stop defending, you know, federal law that I don't like, or maybe they'll change their position in this gun rights case. Perhaps more important than any of that is just how they move to get certain cases to the Supreme Court in certain order.

00;24;05;22 - 00;24;06;18

Stephen Gutowski

Right?

00;24;06;21 - 00;24;22;03

Andrew Willinger

Yeah, I think I think that I think that's a really good point. I have some I have some, quibbles with the Rahimi, observation just because I think that, you know, the Fifth Circuit easily could have decided we need to send this case back to the district court for for a fact, historical fact finding. Right.

00;24;22;03 - 00;24;40;29

Andrew Willinger

Which would have been a very defensible position. They chose not to do that and issued this decision right away. So it was kind of first in line. But I think you're I think your broader point is, is is absolutely correct, which is that the, the, DOJ has a lot of ability to steer things and to get things up to the court that it that it wants to go up to the court.

00;24;40;29 - 00;24;56;21

Andrew Willinger

So whether that's, you know, whether that's range, whether that's, you know, it's maybe, you know, maybe they want the case to go up and then be able to say, well, okay, we think the Supreme Court's going to strike down this, this, you know, this, this provision of the Gun Control Act, and we're okay with that. So we're going to we're going to enforce their hand.

00;24;56;29 - 00;24;58;22

Andrew Willinger

That's possibility too.

00;24;58;24 - 00;25;26;14

Stephen Gutowski

Yeah. But speaking of, you know, federal cases and sort of the more overlooked ones, we obviously spent a lot of time discussing, the high profile, high profile cases, you know, sort of ins band case, age restrictions, concealed carry restrictions. These ATF rules stuff like that. But the bread and butter of federal gun prosecutions are felon in possession, infractions.

00;25;26;14 - 00;25;38;05

Stephen Gutowski

Right. This is what the vast majority of actual cases are. And that's another area that's potentially interesting under a Trump DOJ. Right?

00;25;38;08 - 00;26;25;12

Andrew Willinger

Yeah. That's right. So, so as you mentioned, you know, this is by far the most frequently utilized subsection of 922 guarantees these person based, prohibited in federal law. And I, you know, the way I see this potentially, playing out is, is sort of, a maybe a subtle shift in how these cases are, are argued, which is that I think we're starting to see the emergence of a view that, you know, you kind of a court should look at different categories of underlying felonies and then also do some kind of examination of the criminal history of a, of a defendant, and, and try to figure out

00;26;25;12 - 00;26;54;08

Andrew Willinger

whether, you know, there's any indication, of dangerousness now as, as, as some of the circuits to adopt that view have applied it. I think it's actually not a huge practical shift, because they're essentially saying that even nonviolent offenses are qualifying and it's constitutional to to apply the felon ban to them. If there's a risk of violent confrontation.

00;26;54;11 - 00;27;16;23

Andrew Willinger

And that would include things like drug offenses, for example, which I was trying to find some numbers before this, I couldn't, I couldn't find the statistics. But I have to imagine that many, many, defendants who are charged under the felony possession ban have underlying convictions for drug offenses. So that's that's a big one. And, so, so anyway, so that that's the view that's sort of starting to take to take shape.

00;27;16;25 - 00;27;46;16

Andrew Willinger

And I think I can imagine, the, the Trump DOJ kind of kind of embracing that position in some of these cases. Now how they get there is, is sort of an open question. But, you have, you know, you have cases like range where presumably, they will want to either get a ruling from the Supreme Court that that application of the ban to somebody with these, with this type of pure nonviolent offense and, you know, upstanding history of being a good citizen, that that's that that's unconstitutional.

00;27;46;18 - 00;27;50;12

Stephen Gutowski

Because is offense was food stamp from flying.

00;27;50;14 - 00;27;51;28

Andrew Willinger

Yeah. And application for.

00;27;52;01 - 00;27;54;10

Stephen Gutowski

For like \$2,000 of food stamps or something.

00;27;54;17 - 00;27;55;11

Andrew Willinger

Yeah. I think it was.

00;27;55;11 - 00;28;01;16

Stephen Gutowski

Actually never served actual jail time for it. It's just that he had the potential to serve jail time. That.

00;28;01;18 - 00;28;03;12

Andrew Willinger

Right. Exactly.

00;28;03;15 - 00;28;10;10

Stephen Gutowski

There's a similar case of a homeless woman. I think writing that check for, like, \$500.

00;28;10;11 - 00;28;11;01

Andrew Willinger

00;28;11;04 - 00;28;34;08

Stephen Gutowski

There's a couple cases like that out there that these people still end up under the lifetime ban. But what's interesting there is to me is, you know, if you go back to Rahimi. Right. And the Biden DOJ arguments in that case centered around the idea of less of dangerousness, although they kind of got a knocked it down to toward closer to dangerousness by the Supreme Court in oral arguments.

00;28;34;08 - 00;29;02;14

Stephen Gutowski

But they started off with this idea of like, yeah, you know, irresponsibility or if you're irresponsible, if you if you've broken laws that Congress has created, that, that shows that you're not a responsible, you know, citizen, as is some of the terms the Supreme Court themselves had used in Heller and Bruen. You know, and that was their position was wasn't you had you didn't have to have like a violent history.

00;29;02;14 - 00;29;31;09

Stephen Gutowski

You just had to be sort of an irresponsible person, as evidenced by your convictions of these crimes, certain more serious crimes that the you know, the Congress has deemed felons. And the court didn't like that very much. And and that's where I'm guessing you see you see Trump DOJ could go from a, a much stricter idea of dangerous behavior being the what's needed for lifetime prohibition.

00;29;31;11 - 00;29;48;20

Andrew Willinger

I think a strict right. I don't know if I would say much stricter because again, I think I think the view that they that the Trump DOJ is likely to embrace is one where as these sort of these courts have started to hold things like, you know, any drug offense would qualify, right, even if it's an inherently nonviolent offense.

00;29;48;20 - 00;30;14;08

Andrew Willinger

But again, it creates the risk of a violent confrontation. And the reason I say that is because I think that, you know, again, we we talked a little bit about the law and order focus and. Right, and some of the some of the focus on illegal drug trafficking. I think when those, you know, when there are instances where there where drug, you know, enforcement of drug related prohibitions and cracking down on drug trafficking might conflict with gun rights, I think the drug policies are going to prevail.

00:30;14;08 - 00:30;35;13

Andrew Willinger

Those are, frankly, just more important. And so, you know, I wouldn't expect I wouldn't expect the, the Trump DOJ to take any, any sort of drastic steps to, to, to, to argue whether it's in a nine, 20, 21 case or a case in the unlawful user prohibition. Right. I just don't I don't really see it, see them changing things drastically in those areas.

00:30;35;13 - 00:30;58;04

Stephen Gutowski

Yeah, definitely a friction point, especially given that they were very much in favor of the prosecution of Hunter Biden for his, gun crimes, which stem from him being a drug user and not any sort of violent crimes that he committed. He wasn't accused of any any violent crimes during the, the course of his prosecution. They were financial crimes and tax evasion, things like that.

00:30;58;04 - 00:31;25;23

Stephen Gutowski

And and, being a drug user and buying a gun, lying on the background check that he wasn't a drug user, that sort of thing. And they were, you know, there wasn't, outrage from the Trump campaign around his prosecution. So, yeah, you would think perhaps that and obviously, Trump is very, one of the key priorities he has is, is going after, you know, drug dealers and drug trafficking and that that's always been a top talking point of his.

00:31;25;23 - 00:31;48;02

Stephen Gutowski

And so, yeah, there's definitely friction there. Because presumably a lot of the selling and possession, nonviolent selling them possession cases probably do stem from some sort of drug crime being the initial predator. Although, you know, it is interesting to think through this, too, just with Donald Trump's own background. Right? I mean, he's technically I mean, not technically is a prohibited person.

00:31;48;02 - 00:32;09;06

Stephen Gutowski

He's a convicted felon. His crime is a nonviolent crime, obviously, finance and another sort of financial crime, campaign finance related crime, you know, not reporting, you know, campaign expenditure essentially is what, what he was convicted of and, not a drug crime, but, maybe that's where there was something closer.

00:32;09;09 - 00:32;10;00

Andrew Willinger

I think. Is that.

00:32;10;02 - 00:32;10;12

Stephen Gutowski

The.

00:32;10;14 - 00:32;13;02

Andrew Willinger

Falsification? Falsifying business records.

00:32;13;09 - 00:32;13;12

Stephen Gutowski

Right.

00:32;13;14 - 00:32;20;07

Andrew Willinger

That would that would qualify, too, I think, again, as a as a second offense with, with the level of punishment that meets the, the definition.

00;32;20;07 - 00;32;43;21

Stephen Gutowski

Right? He was he was convicted of, you know, he was spent this money to help advance his campaign by covering up the affair with the porn star. And but he reported it as something else in his books that that's what he's convicted of. And so obviously not a violent crime nor a drug crime. Right. And maybe that influences how DOJ is going to approach cases like range or, or some of these other nonviolent crimes that aren't drug related.

00;32;43;23 - 00;32;46;03

Stephen Gutowski

I don't know, what do you think?

00;32;46;05 - 00;33;13;14

Andrew Willinger

I think I think it's definitely possible. And, and I think those are probably the most likely ones, where we'll see a, just a full scale reversal of, of the government, not not saying, you know, this is this is a, a categorical prohibition that is, is okay in all of its applications. Right? And instead saying there are certain areas where, where, the, the felon ban cannot be, appropriately applied.

00;33;13;17 - 00;33;28;18

Andrew Willinger

When you have, when you have a purely nonviolent offense. And again, I think they have, I guess maybe look at it in sort of a menu of options of how to how to get there. You know, they could, they could, they could try to take it to our, to our earlier discussion. They could try to take a case up.

00;33;28;21 - 00;33;45;22

Andrew Willinger

And actually, that might be, that might be the quickest way for them to sort of settle the area if there is a pretty confident that the current Supreme Court would side with somebody like range. They could they could not appeal. Right. The Third Circuit found in ranges favor. Right. So maybe they just don't choose not to to to take the case.

00;33;45;24 - 00;33;55;05

Andrew Willinger

And more broadly, they could just outright begin to argue these cases differently. And yeah, sort of, you know, take a, take a softer position and, and then the Biden DOJ did.

00;33;55;07 - 00;34;04;20

Stephen Gutowski

Is that calling for DOJ to take a case where they're hoping they'll like to pursue a case where they hope they lose? Is that a you know, I don't I.

00;34;04;22 - 00;34;10;23

Andrew Willinger

Don't think it's I don't think it's common. Yeah. I'd probably put that. Yeah. Now, you know, it's probably pretty low on that.

00;34;10;25 - 00;34;18;27

Stephen Gutowski

Like strategically I understand it. Right. But, is it really something that DOJ does? I can't think of an example of it.

00;34;18;29 - 00;34;21;11

Andrew Willinger

Yeah, I yeah I'm not I'm not sure. Yeah.

00:34:21;11 - 00:34:22;25

Stephen Gutowski

Certainly possible. I just.

00:34:23;01 - 00:34:24;00

Andrew Willinger

Yeah.

00:34:24;02 - 00:34:45;23

Stephen Gutowski

Usually though like I can think of them I mean I'm fairly rare and Kopel made this was pretty, adamant about this that, you know, refusing to defend a law, right, is something that's very rare and unlikely, though not impossible. It has happened, including the Trump administration the previous Trump administration refused to defend, federal laws on very rare occasions.

00:34:45;25 - 00:34:47;04

Stephen Gutowski

So.

00:34:47;06 - 00:35;11;15

Andrew Willinger

You know, yeah, I guess I guess the better, the more or maybe the more the, the much more likely option there would be a case like Vincent where you have the, you know, the circuit court saying we can't entertain any supply challenges. You have a purely nonviolent felony. You know, no, no subsequent misconduct. And then and then that that would that would be the case.

00:35;11;18 - 00:35;13;24

Andrew Willinger

To to to take up.

00:35;13;26 - 00:35;42;25

Stephen Gutowski

Yeah. Yeah. Because, I mean, DOJ can come out and say we don't see a viable path to defending this, this law under, you know, the Second Amendment or under or how the courts are interpreting the Second Amendment, that that sort of thing, I guess, is the way that would be, rare but not unheard of approach. But yeah, ultimately, I guess, you're still of the mind that this that it's likely we'll see significant.

00:35;42;27 - 00:35;56;19

Stephen Gutowski

Changes in the approach of the DOJ to gun cases, whether they're Second Amendment cases or administrative law cases. As a result of that, you know, maybe not as a result of this executive order, but just as a result of a new administration coming in. Right?

00:35;56;22 - 00:36;22;00

Andrew Willinger

Yes, I think that's true. And then especially in some of the areas we've talked about, I do again, want to emphasize there that I think when there are these conflicts between gun rights and other policy priorities, that just, you know, the evidence clearly suggests are more important to to Trump and to the Trump administration. And we're going to see, gun rights be sort of, secondary.

00:36;22;00 - 00:36;43;17

Andrew Willinger

Right. And I think another area, to highlight there is immigration, where you see some of these, you know, you have cases under 922 G5, which, which bans, legal immigrants and some other immigrants from, from having guns. And so

these are some interesting opinions in those cases, I, consider judges who are, who are quite, quite pro-gun, quite expansive in their view of the Second Amendment.

00:36:43;17 - 00:36:52;07

Andrew Willinger

But, not in those not in those contexts. And I think that's an indication of what might happen with those those two, considerations collide.

00:36:52;10 - 00:37:12;15

Stephen Gutowski

Yeah, that that does seem to be the path that they're on right now. It's not it's not necessarily you know, obviously the Biden administration was actively hostile to the interests of the gun rights movement. And was was an ally for, for, you know, gun control movement or however you want to label each. But, we're not going to see that from the Trump administration, certainly.

00:37:12;18 - 00:37:40;17

Stephen Gutowski

But, it does appear that the priorities list has gun rights pretty far down. Not it's not that it isn't on there or, you know, that there won't be changes that gun rights activists like from this administration. It's just that, yeah, like you said, at least so far when we've seen them conflict with other interests that, Trump and the administration seem to value more, they lose out.

00:37:40;17 - 00:38:05;01

Stephen Gutowski

I mean, we just, on the news update this week, we talked about the export, license ban or pause freeze, which is probably not targeted at the gun exporters like the Biden one was from last year, but it's actually more expansive and hurts them probably more of the longer it drags on because it affects more firearms export, more countries.

00:38:05;01 - 00:38:36;15

Stephen Gutowski

So, and that seems to be borne out of this priority to rearrange, our trade policy. And so that takes precedence over what, you know, any sort of short term harm done to gun exporters or what have you. So, yeah, I mean, that's the, the, the yeah, I think that's been borne out so far. Maybe it'll change down the line, but but yeah, I think that's a fair observation to this point.

00:38:36;17 - 00:38:50;28

Stephen Gutowski

All right. Well, look, I appreciate you coming on and given your point of view and giving us a little bit of a different perspective from what we got last week. If people want to follow more of your writing and and the work that you do, over at Duke, where can they where can they do that?

00:38:51;01 - 00:39:11;21

Andrew Willinger

Yeah, absolutely. So, most of what I write is published on the center's blog. Second Thoughts, which is available from our website. Firearms log2.edu. And I am also occasionally on, Twitter or X and blue sky. So, my name is not very common. Should be easy to find me if you're interested.

00:39:11;24 - 00:39:24;15

Stephen Gutowski

All right. Wonderful. Well, appreciate you, joining us. And we'll have to have you back on again in the future. I'm going to hand it off to my myself to tell everyone a little bit more about, the dispatch and our little ad swap that we have going on.