

00:00;20:00 - 00:00;54;10

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 today and sign up for a free membership. 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 and analysis over, you know, bloviating and opinion, I guess, this week we are going to be talking about the Supreme Court's oral arguments in *Smith and Wesson v Mexico*, big case that they just heard this week.

00:00;54;10 - 00:01;03;24

Stephen Gutowski

So, to do that, where we have someone back on the show from, the South Texas College of Law professor Dru Stevenson. Welcome back to the show.

00:01;03;27 - 00:01;06;11

Dru Stevenson

Thank you for having me. I'm glad to be here.

00:01;06;13 - 00:01;14;21

Stephen Gutowski

Appreciate you coming on. To give you a perspective on this. Before we get started, can you just give people a little bit of about your background for anyone who might not know you?

00:01;14;24 - 00:01;58;22

Dru Stevenson

So I, I I'm a law professor. I teach legal ethics and also regulatory law, or administrative law and law and economics. For the last 5 or 7 years, I've devoted my research and writing outside of my classes to, firearms policy and firearms regulation. Most of the people, honestly, who write about this, issue academically are focused on constitutional questions and rights, and I, approach it more from someone who has studied the federal bureaucracy a lot and how regulations work and, how they things get made and interpreted and enforced.

00:01;58;22 - 00:02;11;23

Dru Stevenson

And so I like to study it from a regulatory perspective, not just a rights perspective. Although that's also important. And there's a lot of people who cover it consistently from that angle.

00:02;11;28 - 00:02;32;15

Stephen Gutowski

Sure, sure. Yeah. And, this case actually is not a Second Amendment case. That's right. Right. Not not really. At least nothing was made. Some Second Amendment adjacent claims, in this, you know, in their brief. But, and you could argue that the potential fallout could have an effect on people's ability to buy guns or what have you.

00:02;32;15 - 00:03;01;19

Stephen Gutowski

But, but mainly this is, this is, *Palka* case, essentially a that's a lawful Commerce and Arms Act case about whether or not Mexico, the government of Mexico can sue *Smith and Wesson* and other gun manufacturers in America for, liability related to crimes that happened in Mexico, with with guns made by those companies. Right. That so you just set up the the the sort of background of where we are.

00:03;01;19 - 00:03;14;16

Stephen Gutowski

How do we get to this point? The Supreme Court even hearing this case, what exactly is that issue? And what what is the bar like? What stage of the case? We're in this because it's not the merits, right? We're not talking about evidence

and all that. That's right.

00;03;14;18 - 00;03;39;27

Dru Stevenson

So, and on your point, several of the gun cases that have gone to the US Supreme Court in recent years have actually not been Second Amendment cases, but I recognize that there's a certain group of of, people or thinkers who view every gun case as a Second Amendment case. But, Vander Stock, last fall was not a, Second Amendment case.

00;03;40;00 - 00;03;41;17

Stephen Gutowski

That's the so-called, ghost gun.

00;03;41;19 - 00;04;27;15

Dru Stevenson

That ghost gun, that. Right. That's the regulatory case. The bump stock ban case was, regulatory and the NRA versus Verlo was a First Amendment case, not a Second Amendment case. And so there, it is important to keep in mind that there are legal issues about guns that are not just, the Second Amendment. And in this case, if I can just back up a little bit about, placa and the statute and how we got here, in the 90s, in the early to mid 90s, there was a case, against the tobacco industry that was brought by, a coalition of a lot of the state attorney attorneys general.

00;04;27;17 - 00;04;53;20

Dru Stevenson

And this was over the state's costs in providing medical care for people who had been smokers. And so people had tried suing tobacco companies individually for years and years before that, and unsuccessfully because they had made a choice, to smoke. And, but the states don't make a choice about whether to have people smoke, and they end up footing the bill for a lot of the social costs of the health care.

00;04;53;27 - 00;05;24;08

Dru Stevenson

So what happened was they got this enormous, legal settlement, and judgment out of the tobacco industry. And that case was kind of monumental for our legal system, regardless of what you think about the merits of it. So what was happening was a lot of, people in the legal system looked at that and said, well, we've had congressional gridlock on a lot of other issues like the environment or gun policy and things like that.

00;05;24;08 - 00;05;56;23

Dru Stevenson

For years. Maybe we should try suing. And so what happened is some of the, are large cities that have a lot of crime, started to bring lawsuits against the gun manufacturers for basically flooding the streets with, and contributing to arms proliferation. And they got a couple of settlements, from gun makers and the gun industry got spooked and went to Congress in, the mid 90s and said, we need statutory immunity.

00;05;56;23 - 00;06;29;15

Dru Stevenson

And they weren't the only industry that did this. Around the same time, rental car companies were, getting sued for, because there was a disproportionate likelihood that people, when there were traffic accidents in traffic fatalities, that one of the, the person who caused it was driving a rental car. And so Congress had this kind of series of, issues that they decided to grant immunity to an industry for a lot of the lawsuits and guns was one of them.

00;06;29;15 - 00;06;50;13

Dru Stevenson

And that's where we got the protection of lawful arms. And, the, in Commerce Act and Commerce and Arms Act, I'm sorry. And they, since then and it, it did end a lot of the litigation, especially by big cities against the gun manufacturers.

00;06;50;15 - 00;06;56;05

Stephen Gutowski

Right? Yeah. The argument on the, the industry side was that these were frivolous lawsuits.

00;06;56;07 - 00;06;57;00

Dru Stevenson

Right.

00;06;57;03 - 00;07;14;05

Stephen Gutowski

That they offered a lot of money to defend and we shouldn't be held responsible for the criminal acts. And that's that was the debate. And Congress passed this law. But that the law does have and I that's very relevant to this particular case. Right. Some exceptions.

00;07;14;09 - 00;07;39;01

Dru Stevenson

It does have some exceptions. And so you're still allowed to sue a gun manufacturer. Under one of the exceptions if your gun is defective. So. Right. So there's and there was a kind of wave of lawsuits against SIG Sauer, in recent years over, one of their models that would fire, tended to fire accidentally and things like that.

00;07;39;01 - 00;08;18;01

Dru Stevenson

And so people would get injured. Or if somebody made a gun that one time out of ten blows up in your hand when you shoot it, you could still sue the manufacturer. Right? And then the, the and then there's a couple other exceptions. So if a gun manufacturer is clearly violating state laws. So for example, they are not registered to operate in the states, they're selling shipping to, unlicensed dealers or people who are, you know, not supposed to be buying guns and, and so forth that they could be, held liable for that as well.

00;08;18;03 - 00;08;38;07

Dru Stevenson

And when they were debating the statute, this was one of the concerns and a promise from the bill sponsors. No, no, no. If a gun manufacturers actually is breaking the law or, doing or somebody. Yeah. Or something like that or a dealer, then we can you could still they will still be responsible for that under our legal system.

00;08;38;09 - 00;08;59;22

Dru Stevenson

Right. And, and the concern is, if I can make an analogy kind of to a product that we all use a cell phone, but there's a, you know, there's a segment of that series Better Call Saul, where he's down on his luck and he's selling burner phones to drug dealers and, sex workers and stuff like that under, highway overpass.

00;08;59;22 - 00;09;41;17

Dru Stevenson

Right. So he goes through this phase where he is clearly supplying, knows that he is supplying the criminal underground with burner phones and weather. And even though that's not illegal, it's I think it if we can at least see why people would question whether that's good policy to allow that and that. And so we get this one exception that's called the predicate exception that basically says that if you are aiding and abetting another person in a crime and are the proximate cause of the harm, then you don't get the immunity from lawsuits that, the court provides right.

00;09;41;20 - 00;10;09;07

Dru Stevenson

And so some sort of knowing cooperation. So Mexico, a couple of years ago brought this claim that basically there are, hundreds of thousands of guns flowing across the border, every year into Mexico. And so just like there's immigration coming north and drug trade coming north, there's guns to the cartels, coming south. And they they're law enforcement agency.

00;10;09;07 - 00;10;34;27

Dru Stevenson

They're federal police. When they clean up after a crime scene, if they recover arms, they buy their claims. 70% of them are coming from the United States or from American, manufactured gun companies. And what they will do is they contact ATF or the Niman system to do a gun trace. And, so which means that the gun companies get notified.

00;10;34;27 - 00;11;11;12

Dru Stevenson

And so they are definitely aware of the scope of how many guns are ending up in Mexico. And this is an illegal trade. Mexico has pretty strong, gun laws and only one gun government, authorized gun dealer in the country. And these guns are not coming through the legal channel. The, on the other hand, as we all know, the central government of Mexico is, is weak compared in comparison to the power and strength and resources of the cartels right now.

00;11;11;14 - 00;11;19;08

Dru Stevenson

And they would argue that part of that is our fault is the fault of the American gun manufacturers. For, arming the cartels.

00;11;19;15 - 00;11;22;08

Stephen Gutowski

Right. That's what excuse argument in this. Yeah.

00;11;22;10 - 00;11;32;27

Dru Stevenson

Is that the cartels are getting armed on the level of ISIS or Hamas or something like that from these straw purchasers. And then the second piece of their case is.

00;11;33;02 - 00;11;41;28

Stephen Gutowski

Stop shop purchasers being people who go to American gun stores and lie about who they're buying the guns for. So that's what the straw purchases, right?

00;11;41;28 - 00;11;42;22

Dru Stevenson

That's what your.

00;11;42;25 - 00;11;58;12

Stephen Gutowski

Purchase just goes in and commits this crime of, of lying to obtain a gun for somebody else. In this case, you know, somebody connected to the cartels. And that's how they will often obtain firearms, you know, across the border.

00;11;58;19 - 00;12;00;13

Dru Stevenson

Exactly. And, and.

00;12;00;13 - 00;12;02;00

Stephen Gutowski

That's a big part of this, who.

00;12;02;02 - 00;12;29;18

Dru Stevenson

It is. And this has been a longstanding problem that the gun dealers like a lot of industries, they're not unique in this. There's kind of a bad Apple problem, right. So there's about like 95% of the crime guns or 90% of the crime guns are coming from a handful of, rogue dealers or negligent dealers who aren't really trying to screen for straw purchasers.

00;12;29;20 - 00;12;34;06

Stephen Gutowski

And this is another point of contention, right. And that's right. Lawsuit.

00;12;34;06 - 00;12;56;19

Dru Stevenson

And and in the lawsuit and generally the recognition is. So look, I, I'm not a fan of civilian arms proliferation. And wish we had fewer dealers, but I, I underst I will also concede that most dealers are trying to comply with the law and follow the rules and so forth, and then there's a handful who don't care.

00;12;56;21 - 00;13;34;27

Dru Stevenson

And so this is what Mexico argues is that different reporters have tracked this down over the years. There's been a number of investigative journalism stories about the kind of dirty dozen arms dealers near the border or outside of Chicago, in Illinois and so forth. And, and they can also tell the gun manufacturer from their shipments that and it's an incredible number of, let's say, assault rifles are going through one kind of, small dealer in Brownsville or something or someplace like that or Arizona.

00;13;34;29 - 00;13;59;14

Dru Stevenson

And so they it it's kind of an inference. How could they not know the exactly who the bad dealers are, and that this is the kind of pipeline or channel for the guns to get to Mexico. And so they're not asking them to implement gun control nationwide or something like that. They're basically saying, I understand that that's a counter argument.

00;13;59;14 - 00;14;03;24

Stephen Gutowski

Is there other there's other things that they're saying as well, just making those types of guns first.

00;14;03;25 - 00;14;28;19

Dru Stevenson

So there's certain types of guns that they, that they think are designed to appeal to the cartel that have logos of the Mexican Revolution embossed on them and stuff like that. They're kind of and have a lot of bling and stuff. Right? We're not talking about your standard Glock that a lot of people buy. And but the bigger part of their case, they they could drop the claim.

00;14;28;19 - 00;14;52;04

Dru Stevenson

I think about marketing. Does product design. I think that's actually probably the weaker part of the weakest part of their case. And just focus on the fact that, manufacturers should have a responsibility to cut off retailers who there's if there's a lot of reason to think that that retailer is breaking the law and breaking the law, a lot.

00;14;52;07 - 00;15;14;07

Stephen Gutowski

And that's and that's where that so that's sort of their main argument right from the Mexican side for the Mexican government. Now, obviously, Smith and Wesson's counterargument, focuses mainly on the disconnect between the actual claimed harm in Mexico having to pay to to deal with the gun violence that occurs there, committed, carried out by people breaking the law.

00;15;14;09 - 00;15;37;19

Stephen Gutowski

Right. And their actions, which is, you know, the manufacturer of the guns in the first place and then the sell to because the other thing is that the spending less and doesn't sell directly to gun dealers either. So the chain here is Smith must make a gun. They sell it to a distributor wholesaler. The wholesaler sells it to a retailer.

00;15;37;22 - 00;16;08;14

Stephen Gutowski

The retailer sells it to what, turns out to be a straw purchaser, which then gives it or sells it to the cartels, who then carry out the violence that that. So their their argument is that this is too far removed. No one is even being charged with crimes along this chain that they're talking about. You know, it's not like Smith and Wesson is continuing to sell guns or the distributors to dealers who have been arrested for you know, participating knowingly in straw purchases.

00;16;08;16 - 00;16;12;02

Stephen Gutowski

That's that's the counterargument here, right? That that's the main counter argument.

00;16;12;06 - 00;16;31;07

Dru Stevenson

The main argument is that there are too many are too many intervening actors here. And so the fact that I make, I'm a car company, let's say, and I manufacture a car and it ends up at a used car dealership, which gets bought by somebody who sells it to somebody across the street who then sells it.

00;16;31;07 - 00;16;55;16

Dru Stevenson

And six steps later, it's used as a getaway car in a crime, or to, to run somebody over. That's their argument. I will say the and then the problem with this, and this isn't the only area where we have this problem with there's a lot of areas of criminal law where you get a conspiracy, like in the drug trade, and they do precisely this on purpose, right?

00;16;55;16 - 00;17;27;11

Dru Stevenson

So they will have the drugs get passed through several steps so that it makes it harder to trace things to that cartel, the drug lord, or the cartel leader or gang leaders or so forth. And so if we say something like six steps removed is where we draw the line, then, people who are engaged in a large criminal, criminal enterprise will just have a seventh step, every time, to insulate themselves from criminal liability.

00;17;27;14 - 00;17;29;05

Dru Stevenson

Now, about the procedures that.

00;17;29;06 - 00;17;32;15

Stephen Gutowski

They show that they were knowingly that's doing this, right?

00;17;32;15 - 00;17;33;01

Dru Stevenson

Yes.

00;17;33;01 - 00;17;38;06

Stephen Gutowski

At least for criminal liability, I guess to some, maybe the difference here is that this is a civil case.

00;17;38;06 - 00;18;01;03

Dru Stevenson

And that's part of the problem is that this is a, a confusing area of law where we have a civil statute that has an exception that's based on criminal law concepts. And as you know, criminal law requires a different burden of proof beyond a reasonable doubt. And things like that process, depends on prosecutors resources and so on.

00;18;01;05 - 00;18;18;18

Dru Stevenson

And the, and so and then we have some of these undefined terms like proximate cause and what really counts as aiding and abetting someone else's crime. This is the only scenario where those questions come up. Of course.

00;18;18;18 - 00;18;46;11

Stephen Gutowski

Certainly. So yeah. And that's, you know, part of the thing, the Supreme Court is that they're usually not deciding case just to decide that one case. They want to put some meat on the bone for these other issues at play, proximate cause and things like that. In most cases. So, you know, that's the dispute. I think we've that's a pretty fair summary of what the basic there's there's more to it, you know, but but that's sort of the basic arguments on either side.

00;18;46;13 - 00;18;49;12

Stephen Gutowski

What's the standard that the Supreme Court is looking at in this case now.

00;18;49;18 - 00;19;26;21

Dru Stevenson

So yeah, this so what happens is they Mexico gets into district court and and the district judge dismissed the case for and basically said, sorry, that this doesn't, fit within one of the exceptions under the statute. And the Mexico appealed it to the, to the First Circuit. And the First Circuit said, actually, they're at least the stuff they're alleging it leads to could, it could fall under the predicate exception.

00;19;26;23 - 00;19;32;11

Stephen Gutowski

Because that's the important point, right? That at this stage they have to accept this similar to the case. Right?

00;19;32;11 - 00;19;33;05

Dru Stevenson

It is have to.

00;19;33;05 - 00;19;45;05

Stephen Gutowski

Accept whatever the plaintiffs are pleading as true. Like if this is true and we're going to assume it is at this point, then yes, your case can go forward or then no, it still doesn't work. That's basically what we're talking about.

00;19;45;11 - 00;20;10;21

Dru Stevenson

That is and that was the you were absolutely right. That was the case situation in the NRA versus Verlo and here. So it's not enough to just make sort of vague generalizations. So we're going to take it as true. But you have to the flip side of that is your accusations or allegations have to be specific enough to sort of sound.

00;20;10;27 - 00;20;18;25

Dru Stevenson

So we know what kind of evidence to be looking for in the case. And that's what a lot of the oral arguments were about yesterday.

00;20;18;28 - 00;20;39;18

Stephen Gutowski

And but the lower court, as you said, it went to an appeals court and they said this case is okay to move forward. And there they are. Ruling was based on this idea of force, the ability. Right, because it was foreseeable that, you know, when Smith medicine makes a gun, they know that this change is going to happen, even if they don't sort of actively participate in it necessarily.

00;20;39;20 - 00;20;50;13

Stephen Gutowski

They're not encouraging it to happen, but they can foresee that eventually some of their guns are going to end up in Mexico, under the way they do business and therefore it can go forward. There's just, sort of summary of what the like.

00;20;50;17 - 00;21;13;10

Dru Stevenson

Yeah. That's right. And I mean, if we're not talking about a handful of guns, we're talking about tens of thousands or hundreds of thousands of guns a year. And so that's something that isn't just, a write off on the spread on the budget spreadsheet. This this is, a big dollar item for, guns that are going to the border states.

00;21;13;13 - 00;21;36;27

Dru Stevenson

The the issue here, though, that I, I hope your, your viewers, pick up on is we haven't had a trial in this case. And so on the one hand, Mexico even if this hadn't gone to the Supreme Court, the First Circuit had sent it back and said, look, you need to start moving towards a trial. And that means Mexico actually has to prove their argument.

00;21;36;27 - 00;21;59;22

Dru Stevenson

So they have to start putting on enough evidence to make it, at least more probable than not that the gun manufacturers or their executives know enough of what's going on and have made enough deliberate choices to keep it going, that they should be held responsible. And that's going to take a lot of evidence. It's going to be an uphill battle.

00;21;59;24 - 00;22;14;09

Dru Stevenson

But they didn't even get a chance to do that. So I do want to say even even if they win at one at the Supreme Court, which I don't think they're going to. But if they did, they then it goes back to trial and they could still lose at trial, and that could still happen with the NRA. And Rouleau.

00;22;14;09 - 00;22;34;19

Dru Stevenson

Right. That Casey's in discovery right now. And there's some early indications the NRA might actually have trouble proving some of what they, alleged. And so you still, if you're going to go to trial, you've got to put on evidence. It has to be it can't be just stuff people read on the internet. It has to be admissible evidence in court that can be verified.

00;22;34;19 - 00;22;42;28

Dru Stevenson

And so forth. And so Mexico would still have to do that. And all they're really asking is for the chance to do that. And

00;22;43;00 - 00;23;01;24

Stephen Gutowski

And, and and to be fair, that is the right that's, that's the standard and that's what we're that's the stakes that we're talking about. It is and obviously, the argument is on the other side of it is, the whole point of the polka was to prevent these kind of lawsuits, because even if they fail on the merits, eventually they still cost a lot of money to conceal.

00;23;01;26 - 00;23;30;13

Dru Stevenson

They cost a lot of money. And so a lot of times companies will just settle to make the case go away. And so it could end. And they they have a valid argument that this could open the door to other lawsuits or encourage other lawsuits. You know, maybe now Mexico's a special case because you can drive guns across the border and but maybe the next place would be the Bahamas or Guatemala or something like that would suit them.

00;23;30;15 - 00;23;34;18

Stephen Gutowski

And America makes a lot of guns that end up in a lot of places all over the world.



00;23;34;20 - 00;23;53;14

Dru Stevenson

That's right. And and I will concede that most of the guns made and sold in America don't end up being used in crimes. And so I, I'm not a gun guy, but I, I, I think that we it's important to concede that, that, a fraction of the guns that are made.

00;23;53;16 - 00;24;13;13

Stephen Gutowski

Right, right. Certainly. But, but so you know, we, I think we've gone through a lot of to get the details of what exactly is being claimed in this case. Now, I want to get into what what happened at oral arguments. Right. Because, I mean, you noted there that you even you don't think that there's Mexico is necessarily going to come out a winner on this case.

00;24;13;15 - 00;24;45;24

Stephen Gutowski

One of the reasons I want to have you on is because I think a lot of the initial reaction to oral arguments in my own reaction to listening to it was, this may be a lopsided, win for Smith and Wesson. And, you know, it's not just MythBusters like a bunch of other gun companies, too, but but, you know, it felt like there was a lot of skepticism that this, about Mexico's argument here, about the specificity of it, about whether it really does clear those exceptions that are in the CIA or it's just a they're just trying to make a workaround.

00;24;45;26 - 00;25;18;05

Stephen Gutowski

And it came from some of the even heard some of those points made by some of the more liberal justices. So I'm interested in having, because one, you clearly have very, followed this case very closely. And you listened to the oral arguments. You did a thread on this on, the blue Sky or. Yeah, one of the social media sites and, and, you know, I just thought it was wanted to hear your, your, your thoughts because I feel like you, you're taking a little bit of a different view than what I've seen in a lot of other even just, regular, you know, legal news outlets that have covered this feel

00;25;18;05 - 00;25;23;23

Stephen Gutowski

it's going to go significantly one way. So let's get into the oral arguments. What what was it that stuck out to you?

00;25;24;00 - 00;26;08;05

Dru Stevenson

So first of all, I, I disagreed with a lot of the other headlines and takes that the justices, you know, I, I think Bloomberg Law or somebody said at Law360 that the justices seemed poised to rule against Mexico and stuff like that. I, I don't know, I listen to it. I read the transcript, a lot of it and I, they were not so the the thing, the reason I think it's a little unlikely Mexico is going to win or it's, is that there was no one who on among the justices, even the liberals who were clearly, like, really signaling that they were on Mexico's side.

00;26;08;07 - 00;26;24;22

Dru Stevenson

And usually we get that in these Partizan, these cases that split on party lines, we'll have, a couple people on each side who are clearly, kind of trying to make the case through their questions.

00;26;24;22 - 00;26;25;15

Stephen Gutowski

Yes. Yeah.

00;26;25;15 - 00;26;29;00

Dru Stevenson

For, for, decide that they favor.

00;26;29;00 - 00;26;30;08

Stephen Gutowski

You do get a lot of that. Yeah.

00;26;30;15 - 00;27;08;09

Dru Stevenson

Yeah. And I didn't, the closest we got to that, I thought, was, Justice Gorsuch threw a softball question at Kate Stetson that Mexico's lawyer, giving her a chance to answer, explain away a case that the, the Smith and Wesson lawyer had really, focused on, and I. So there were a couple of, like, softball things like that, but nothing that not any of the sort of, sermonizing through questions that we usually get from the people at the two wings of the court.

00;27;08;11 - 00;27;12;11

Dru Stevenson

And so I thought that was bad news for Mexico. On.

00;27;12;11 - 00;27;34;04

Stephen Gutowski

The other, that's an interesting point. Because, yeah, I mean, not as much as I do want to caution people, but I think it's it's good to caution people that what happens in oral arguments does not always, give you a full understanding of how the court is actually going to come out in written, opinions. Right. But, you know, but it is often pretty easy to tell when a justice has already made up their mind.

00;27;34;11 - 00;27;35;02

Stephen Gutowski

Right?

00;27;35;05 - 00;27;35;27

Dru Stevenson

That's right.

00;27;36;00 - 00;27;41;22

Stephen Gutowski

And yeah, maybe we didn't see that much of that in this. In this particular case, we really we really didn't.

00;27;41;22 - 00;28;13;10

Dru Stevenson

I thought that they in some ways, I thought across most of them were, actually could see the legal questions that they had agreed to talk about. Proximate cause and aiding and abetting are really kind of, mind tees or brainteasers or puzzling. And they're they are aware that there could be implications completely apart from lawsuits against gun manufacturers for what they say.

00;28;13;12 - 00;28;45;25

Dru Stevenson

So here's my my counter take, though, is that I also didn't pick up, hostility towards the Mexico's case, like, outright, you've got to be kidding me. Or acting like their claim was laughable or ridiculous and, at all. And so instead, what I picked up is that they were, they thought that Mexico's case wasn't at their pleadings weren't specific enough.

00;28;45;28 - 00;29;19;04

Dru Stevenson

Yes. And but that they really didn't want to narrow the predicate exception in a way, a lot of them, in a way that would make it hard to sue, a rogue dealer or somebody that's selling to gangs. Here in the States. And. Right. And, and so there were questions from, Gorsuch and, Amy Barrett that, you know, Amy Barrett kept harping on this issue of.

00;29;19;07 - 00;29;43;25

Dru Stevenson

But even so, if somebody sells to a bad guy, they could still and they know it. And they intended to do it, then they could be held liable. And so I think that some of the conservatives on the court, want to have an ability to hold the true bad apple gun dealer or gun manufacturer, a responsible.

00:29:43;28 - 00:30:00;19

Dru Stevenson

And so what I'm expecting is I don't think we're going to get a unanimous opinion like we did in NRA versus Verlo. I, I think we're going to get a whole bunch of concurring opinions, and maybe a dissent from Sotomayor. But.

00:30:00;21 - 00:30:02;21

Stephen Gutowski

And what makes you say that about Sotomayor?

00:30:02;22 - 00:30:27;16

Dru Stevenson

Well, because she brought up this, it was her kind of one of her final comments in the oral arguments is so she was very she just kind of came out and after asking a few questions, said, that she doesn't like the the doctrine of force, the ability for proximate cause that she said, which.

00:30:27;19 - 00:30:29;08

Stephen Gutowski

Is that the lower court was talking about this.

00:30:29;09 - 00:31:00;03

Dru Stevenson

Case that doesn't do anything for her. That's the phrase she use it and, and I there are conceptual problems with because when you talk about what do people know, it's we we don't have a way to read people's minds, and especially not in the past. And so she didn't like that she there's a treatise or sort of a thing called the Restatement of Law that's like a model statute for torts that, that she wanted to use that uses a scope of the risk test.

00:31:00;05 - 00:31:09;09

Dru Stevenson

And so that's all fine. But she really belabored the point to the, to where it became clear that she's going to write a separate opinion about the scope of the risk test. I think that's what I'm expecting.

00:31:09;13 - 00:31:11;12

Stephen Gutowski

And what is that, exactly?

00:31:11;14 - 00:31:44;28

Dru Stevenson

It's basically saying, so what is the risk of the activity you're doing? And is this harm falling within that sort of as objectively not who did you know or have reason to know which would be foreseeable? But is. And then she said, and I think that what is happening with Mexico falls within that. So maybe we're going to get one that was this the most close, as we heard to somebody maybe signaling that they were sympathetic to Mexico's case.

00:31:45;00 - 00:32:04;26

Dru Stevenson

But I got to say in the first part, but in that case, she would still be reversing the circuit court opinion, which is go against Mexico and saying and but the reason I'm reversing is because I think they used the wrong standard for proximate cause.

00:32:04;28 - 00:32:10;00

Stephen Gutowski

Okay. And so you see that a lot for the liberal justice in this case, maybe.

00;32;10;02 - 00;32;20;27

Dru Stevenson

Even some conservatives. And so the Justice Jackson kind of was of all the justices, I think she gave the Mexico's lawyer the hardest time.

00;32;21;04 - 00;32;40;04

Stephen Gutowski

Yeah, actually, let me give a quote. Yeah, sure. Real quick, because I, I agree, and this was one of the reasons, one of the things that was surprising and one of the reasons that I thought maybe this will be kind of a lopsided ruling, against Mexico, because Brown Jackson said I, I guess I'm just, you know, here's the quote.

00;32;40;04 - 00;32;58;19

Stephen Gutowski

I guess I'm just wondering whether the LCA statute itself is telling us that we don't want the courts to be the ones to be crafting remedies that amount to regulation on this industry. That was really the point of the entire thing, to the extent that we're now reading an exception to allow the very thing that the statute seems to preclude.

00;32;58;19 - 00;33;02;16

Stephen Gutowski

I'm concerned about that. I mean, that's a pretty that is a pretty strong statement, right?

00;33;02;17 - 00;33;41;16

Dru Stevenson

It is. And I was surprised by that. And I but I wondered, to be honest, if she is if the views this case is kind of a lost cause and is laying the groundwork for the many cases that are in the pipeline right now that are about with the Trump administration and Elon Musk's Doge are doing with dismantling the defunding and dismantling federal agencies and programs that actually were authorized by statute, by Congress, and funded by Congress in previous budgets.

00;33;41;18 - 00;33;54;09

Dru Stevenson

And so now, you know, we're supposed to have some sort of separation of powers. And it was. And the thing that made me think that is that she kept talking about, I mean, we have to be faithful to what Congress wanted and what Congress intended.

00;33;54;11 - 00;33;58;27

Stephen Gutowski

And so you think she's saying more than just what's going on in this case? I think she she.

00;33;58;27 - 00;34;32;01

Dru Stevenson

Was are starting to make her argument for all the cases about USA aid and, the Securities and Exchange Commission and the that Cfpb that are already in court. Right. There's 80 cases at least already in court about that. And it's going to come down to a pretty big question about how much do statutes matter, or does the president get to thwart the intent of Congress if the current Congress lets him?

00;34;32;01 - 00;34;36;17

Dru Stevenson

And, and so that, so I, I did think that.

00;34;36;19 - 00;35;00;22

Stephen Gutowski

Because one of the other interesting things about her questioning to, because she was pretty strong questioning the laws from Mexico, but she was also fairly strong in questioning Smith, my son's lawyer, specifically about the, definition of aid and a bad as it relates to this particular to the CIA in particular. She seemed to be arguing that maybe or at least questioning.

00:35:00:22 - 00:35:21:00

Stephen Gutowski

And this is where, you know, this may be just something where she doesn't have a firm view on and she's wondering, you know, actually legitimately questioning, the parties here. But, you know, she seemed to think maybe the definition of aiding abetting in other circumstances is not the same as in this statute. What did you make of that?

00:35:21:03 - 00:35:46:29

Dru Stevenson

So, in some ways, I was surprised that, the other justices didn't talk more about this problem, that we have a civil statute, as we said earlier, that incorporates this criminal law concept of aiding and abetting. Right. So you buy the gun or drive the getaway car for somebody who commits a crime that you're aiding and abetting, or you provide a safe house for them to hide from the police, that's aiding and abetting.

00:35:47:04 - 00:36:11:00

Dru Stevenson

But but where you draw the line for what counts as aiding and abetting actually is it doesn't just very on the facts. It might vary state to state and in the federal system a little bit, depending on which statute we're talking about. And so I'll give an example. We have a federal statute against material support of terrorism for foreign terrorist organizations.

00:36:11:03 - 00:36:38:06

Dru Stevenson

And we've had some cases go to the Supreme Court where they were pretty strict about, even giving legal advice to a foreign terrorist organization about how to go legit and become a, legitimate political party, in another country could still subject come under material supportive of terrorism. And so I think her point is that this is a statute.

00:36:38:07 - 00:37:14:22

Dru Stevenson

We have text and we could we could be strict textualist about this and say we're not deciding, aiding and abetting for, every criminal case that's out there for drugs or immigration or everything else we are. This is only for what it means when we're applying the predicate exception under Plaka. And there is some logic to that. And the and again, it's that's something that's very hard to predict from yesterday's oral argument where the other justices are going to come down on that.

00:37:14:24 - 00:37:16:04

Dru Stevenson

I thought that.

00:37:16:06 - 00:37:56:00

Stephen Gutowski

It did seem like a lot of them, even the liberal ones, were concerned about. You mentioned this earlier specificity, but like because the Mexican complaint doesn't mention, you know, it has the structure that we talked about earlier and this idea that because there are traces that happen, from gun, crime scenes in Mexico that go back to the manufacturers, to try and figure out how the gun ended up, where it did, that they have some knowledge that these gun, that their guns end up in these crime scenes, and, you know, it's it's sort of a general rule that they must know then that somewhere along the line, somebody is doing something

00:37:56:00 - 00:38:18:04

Stephen Gutowski

wrong, but they didn't have any actual specific examples of anyone, you know, they didn't point to any specific gun

dealers, or any. There were no crimes. You know, nobody's been arrested in this chain of events that they could trace back to having, you know, some sort of direct connection to Smith and Wesson or the other gun dealer gun companies involved.

00:38;18;06 - 00:38;20;13

Stephen Gutowski

And that seemed to bother a lot of the justices. Right.

00:38;20;16 - 00:38;39;26

Dru Stevenson

If it did. And there's a couple different ways to take that, though. And so on the one hand, and near the end and I don't know why she took so long to work around at this point. Mexico's lawyer, attorney Stetson did point them to a few pages in the the complaint is very law, right? Like, I mean, yes.

00:38;39;29 - 00;39;22;19

Dru Stevenson

And, the she said so paragraphs, I don't know, 241 or something to to 259 do give some specific examples and mentioned, dealers. But I don't know why she didn't lead with that because they've been talking about it the whole time up to that point. The other thing that and I said this in my thread on blue Sky, the single biggest surprise to me about the, oral arguments was that, Mexico has a parallel case against specific gun dealers pending in Arizona, which is actually kind of currently on hold awaiting for what happens in this case.

00:39;22;21 - 00;39;47;22

Dru Stevenson

So it's two related cases, I and I, when I gave a presentation to my, the faculty by law school about this case a few weeks ago, this was a question I that everyone kept asking me. Why don't you just sue the dealers? Right. Why the right manufacturers? Well, they they are suing the dealers. And that case is moving very slowly and is probably in suspended animation at the moment.

00:39;47;25 - 00;40;12;16

Dru Stevenson

And I, I, I don't want to criticize Kate Stetson because she's better than I would ever be at what she does, but I wondered if she was brought in just to argue at the Supreme Court and wasn't aware of the parallel case that Mexico has in Arizona, because that would have been the easy answer is, oh, no, we're suing the we we're suing specific dealers to.

00:40;12;18 - 00;40;30;26

Dru Stevenson

But for jurisdictional reasons, we can't get those dealers in court in Massachusetts. We we're suing them in Arizona. We're suing the manufacturers in Massachusetts. And and and so that that would have been the easy answer. And I don't know why she never got around to that.

00:40;30;28 - 00;40;47;11

Stephen Gutowski

And I think Thomas also sort of objected to the idea that, you know, that this sort of without criminal charges against any of the people involved in this chain. Can you really say that anyone is being aided and abetted at all? I know what did you make of that?

00:40;47;13 - 00;41;11;04

Dru Stevenson

So I thought that was wrong. I thought that was weird. Like. And I'm expecting a kind of, sort of a Justice Thomas special where we get this sort of quirky concurrence or dissent asking, advocating for something pretty radical, like, no one should ever be held liable for aiding and abetting unless there's a prior conviction or a predicate conviction first.

00:41;11;06 - 00;41;40;28

Dru Stevenson

Well, it doesn't always work that way because, for example, we could have someone who, has committed a crime, but they make a deal that they're willing to testify against someone else, and so they get put in witness protection instead of sent to jail. And but they still had people aiding and abetting them. Right. We also have situations where, let's say you help someone rob a bank, you help them plan, a big bank heist.

00:41:41:01 - 00:42:04:02

Dru Stevenson

And so you are aiding and abetting, and then they get shot during the attempted bank heist. As an example. Well, then there would be no conviction right there. We don't convict dead people, but we could still come after you for aiding and abetting. Even though there was no prior. Nobody else was arrested for the crime that you aided and abetted because they're dead or they have disappeared.

00:42:04:03 - 00:42:28:06

Dru Stevenson

They fled the jurisdiction. We can't find them. Or as I said, they made a deal or something has gone wrong. Their case is being delayed. That that, something like that. So there could be a ton of reasons that we, we have never really required that for aiding and abetting a prior conviction. That's the basis for the case.

00:42:28:09 - 00:42:58:22

Dru Stevenson

If I can. But since we're talking about Justice Thomas, I got to say the other thing that drove me crazy that he kept bringing up was, has ATF, taken the position that these dealers are doing this and these purchasers are straw purchasers? Well, ATF is chronically underfunded every year. And, most for most of their existence, they've had an acting director because it's so politicized, it's hard to get a director confirmed.

00:42:58:24 - 00:43:22:27

Dru Stevenson

And so, ATF, it might be a decade that they can't do an audit of it, of a dealer. So he and he knows that he knows that they have a limit. And I, I know that there's people out there who ATF is, the agency. They love to hate. But ATF is, has always been operating on a skeleton crew, and, and Thomas knows that.

00:43:22:27 - 00:43:32:23

Dru Stevenson

And the fact that they didn't want to weigh in on this case or get involved, to me, isn't that important or wasn't that good of a point.

00:43:32:26 - 00:43:47:20

Stephen Gutowski

Right. But, but I guess, I mean, it gets to the deeper point of, like, you have to show that somebody is someone is breaking the law here, but it's not clear that it's necessarily the dealers or the wholesalers or the make the manufacturers. And so that's one of the big.

00:43:47:22 - 00:44:14:20

Dru Stevenson

And so this is one of the things that I'm kind of wondering if we're going to get is that, in this opinion, when it comes out is that they kept focusing on you needed to specify who did what in your complaint, and in a sense, they're they're kind of trying telling Mexico or other people that want to sue the gun manufacturers how to draft to their complaint next time.

00:44:14:23 - 00:44:36:15

Dru Stevenson

Right. And so sometimes we we're a court will or an appellate court will reverse someone's case. I've seen the Supreme Court do this in the past, where they basically rule against someone. But basically if you read the opinion, it tells them

how to win next time. Yeah. And and so don't wait and just think you're going to bring all of this in at trial.

00:44:36;15 - 00:44:43;15

Dru Stevenson

You need to name names in your complaint. And then we would have let it stand. And so yeah, the the.

00:44:43;15 - 00:45:09;24

Stephen Gutowski

Company makes sense because like I said, a conservative justice is here weren't it. Didn't feel like they were have the position that you can never sue gun makers. They just want to see like evidence that the gun maker knowingly was helping with criminals carry out, either through ignoring straw purchasers or what have you. But like, if they a lot of it seem like they want more specificity.

00:45:09;26 - 00:45:29;27

Stephen Gutowski

That's right. In a suit like this, if you're going to if you're going to get one way, especially given that there is a law that specifically is trying to block certain kinds of lawsuits. Right, right. So yeah, that would be interesting. Like maybe it will be a ruling that's like, this case doesn't work, but if you had XYZ, it could work.

00:45:29;29 - 00:45:30;22

Stephen Gutowski

Is that right?

00:45:30;24 - 00:45:51;23

Dru Stevenson

And and I got to tell you, I so for me, I, I like, or I'm sorry, I like the predicate exception, and I, I was afraid, when they agreed to take the case, And you, you were right earlier, if you indicated that, the the fact that they took the case was itself was bad for Mexico.

00:45:51;24 - 00:45:56;18

Stephen Gutowski

Yeah, that's what I was thinking when they took it up, because it's like if they agreed with the lower court, they could adjust.

00:45:56;18 - 00:46:02;05

Dru Stevenson

The they could have just let it go to trial and then dealt with the case after the evidence.

00:46:02;05 - 00:46:04;26

Stephen Gutowski

Which they did in the Remington Sandy hook case.

00:46:04;26 - 00:46:34;14

Dru Stevenson

That's all that they did. And so they have done that before. And by the way, it's still possible they every term now they've in the a handful of cases or 2 or 3 cases, they have after oral argument, regretted taking a case and dismissed it. The word is dismissed for as improvident late granted. So it's technically possible that if they decide, you know what, we shouldn't have even taken this case.

00:46:34;14 - 00:46:49;03

Dru Stevenson

Let's send it back and let it go to trial, and then we'll they'll get rid of the case on summary judgment or something for not being able to give the proof. So I think it's a there's a non-zero chance of that.



00:46:49:05 - 00:46:50:25

Stephen Gutowski

That it has to be a small percentage.

00:46:51:01 - 00:47:16:16

Dru Stevenson

I said, that's why I said non-zero. Yeah. And there's also a non-zero. So a few of the justices really went on this extended discussion about the distributor intermediary problem here. Right. And that they thought, makes it so it was pretty clear from, I thought, oral arguments that they thought Mexico's case was weakest against the distribute ers.

00:47:16:18 - 00:47:43:16

Dru Stevenson

And I think that there's a small chance that some and I don't know if they'll get to five are going to say we should, dismiss this as a regards to the distributors because they didn't allege specific enough facts that they knew that they are aiding and abetting or that they're accessories to this, but we're going to let them proceed with putting on evidence against the manufacturers.

00:47:43:18 - 00:47:48:08

Dru Stevenson

It's not inconceivable that we could get some of the justices saying that.

00:47:48:08 - 00:47:55:11

Stephen Gutowski

And why do you think that when the manufacturers even another step removed from the distributors.

00:47:55:13 - 00:48:15:10

Dru Stevenson

The because the, the distributors have in some ways, so they can't do product design as much, they're not the ones that are contacted with when there's gun traces from law enforcement, it's going to be the manufacturer. And so it's a.

00:48:15:10 - 00:48:21:29

Stephen Gutowski

Little bit I would think the distributors are involved in that as well, because it's tracing back through maybe the sales.

00:48:22:00 - 00:48:48:10

Dru Stevenson

Mistake. And if we're doing it based on serial numbers, they contact the manufacturer and then and then they get go through downstream, through the distributor and to the retailer and try to figure out who purchased a gun. Yes. But they it could be that they just didn't. You would have to allege, make a more specific case about what the distributors know.

00:48:48:12 - 00:49:15:09

Dru Stevenson

And to get this and so the the question is does, could are is it easier to argue that the manufacturer could instruct the distributor, we're going to switch to a different distributor. If you don't run a tighter ship and control which retailers you're dealing with or something like that. And we the question is going to be how.

00:49:15:09 - 00:49:39:03

Dru Stevenson

And this was what they kept harping on it. Oral argument. They're not sure that distributors have as much information as the manufacturers. And so we'll see what happens with that. I will say something about Justice Alito. Justice Alito in recent years has kind of become notorious for being a little rude to whichever side he doesn't agree with to to their lawyer.

00:49:39:06 - 00:50:08:29

Dru Stevenson

And, and sort of mocking their position or argument. And one of the surprises yesterday was that he didn't do that. He, in fact, at one point, his last comment was that he, he to say that this raised a very interesting, thought provoking questions about criminal law, about aiding and abetting and proximate cause, and that both sides had done an excellent job with their briefs and arguments.

00;50;09;01 - 00;50;33;01

Dru Stevenson

And that's for from Alito. It's kind of, a banner day if you get a compliment for whichever side he's ruling against. So I don't I didn't I don't think that he thought that Mexico he at least thought Mexico's lawyer did the best that anyone could do in this situation. I'm not sure he thought that Mexico's case was ridiculous.

00;50;33;01 - 00;50;55;07

Dru Stevenson

I think that he was recognize saying that causation is a very like a complicated philosophical problem when you start getting into it and aiding and abetting is to because they both involve drawing lines. And that depends on facts and but we don't have a trial yet, so we don't have all the facts. But maybe we should have to spell out some facts.

00;50;55;07 - 00;51;01;10

Dru Stevenson

And, and so forth. And so there are yeah, difficult issues there.

00;51;01;10 - 00;51;18;16

Stephen Gutowski

That's a good point to, to bring it back to the standard we're talking about here, this these justice are not deciding whether or not they think Mexico's, merits claims are correct. They're just deciding whether or not they've reached the bar to be able to move forward to making a merits claim.

00;51;18;18 - 00;51;19;20

Dru Stevenson

That's right.

00;51;19;22 - 00;51;40;25

Stephen Gutowski

So, I guess people who to get justice, who think that, the, the case is not going to be won on the merits, but that there's enough of a concept here for the case to meet the, exception in the polka. I mean, I, I think we both agree. That's not likely. That's how it'll come out.

00;51;40;25 - 00;52;03;07

Stephen Gutowski

But this is just important to remember what we're talking about. As far as you know, it's just as they're listening to a legal argument about, you know, whether these claims fit this exception or not, whether or not these gun companies should actually be held liable based on the, you know, evidence that Mexico would have to present. So it's a sort of a different conversation you're having, right?

00;52;03;14 - 00;52;03;29

Dru Stevenson

It is.

00;52;03;29 - 00;52;06;18

Stephen Gutowski

Might produce some surprising results.

00;52;06;18 - 00;52;32;12

Dru Stevenson

It could. And it's a problem where we have a we have a statute. So we have actually a legal text that we have to interpret beyond just saying, who do we think should win this case? On that note, though, if I, I'm going to poke fun at a couple other justices, a couple of them kept bringing up, you know, should we hold knife manufacturers liable in baseball, bat manufacturers liable and so forth?

00:52:32;12 - 00:53:04;06

Dru Stevenson

And, and I, I think that that's I understand why that's, the rhetorical effect of that, but it's not the same at all. Right. So, we, we don't have a baseball bat tracing, apparatus in place like we do for, gun traces or for knives. So if the the police recover a knife from a gun scene, they they can't trace the chain of custody back to the manufacturer the same way they can with a gun.

00:53:04;09 - 00:53:26;03

Dru Stevenson

And the fact is, you can sue. We don't have Plaka for knives, so you you actually can sue a knife manufacturer or a baseball bat manufacturer if you can show that they are knowingly and deliberately like selling truckloads of them to a drug cartel, or something like that. And so that's the other fallacy of that is they don't have immunity.

00:53:26;03 - 00:53:32;04

Stephen Gutowski

And you can you can sue gun manufacturers if they're knowingly if you can show they're knowingly selling.

00:53:32;06 - 00:53:41;15

Dru Stevenson

And no, I agree, I agree, except the these other products that you could get in trouble for selling to criminals, aren't covered by Plunkett.

00:53:41;15 - 00:53:42;20

Stephen Gutowski

They don't have the same legal protection.

00:53:42;20 - 00:54:07;05

Dru Stevenson

And so the fact the problem is we have a text and the question is, should we decide every case on which party we like more, or do we need to be a strict constructionist about the text and textualist and stick to what the text said? And that's part of what's going on in this case. I mentioned in my thread, you know, they also brought up the car manufacturer, you know, can we hold car companies liable?

00:54:07;05 - 00:54:08;24

Dru Stevenson

And as I said earlier, there's.

00:54:08;24 - 00:54:11;08

Stephen Gutowski

A common what what's it.

00:54:11;08 - 00:54:38;10

Dru Stevenson

That's right. And when I was in practice, years ago, 20, 30 years ago in Connecticut, I, I was told that we actually had a state statute that rental car companies were, strictly liable for accidents that people committed. And so, and we do I mean, the car companies are in litigation all the time for accidents that wrongful deaths by third parties that get hit by the car because of the brakes failing or the tires.

00:54:38;10 - 00:54:52;29

Stephen Gutowski

Blow out, but that's similar to the defective design lawsuits you can bring against gun manufacturers. It is. The argument you often hear is you can't sue Ford because a drunk driver hit you with a Ford, right? That that's that's more you.

00:54:53;01 - 00:55:19;07

Dru Stevenson

That that's right. And so we have this question of the kind of the intervening cause, right issue and, and it's a valid point, but the it's, you know, there's arguments both ways, right? So Ford isn't making something that's basically a designed primary to be a weapon to, to cause a fatal injury. And I don't think we can deny that.

00:55:19;07 - 00:55:28;13

Dru Stevenson

That's what the gun manufacturers aren't making beach balls. Right. They're making something that's useful for self-defense or or,

00:55:28;16 - 00:55:29;18

Stephen Gutowski

War criminal actions.

00:55:29;19 - 00:55:31;08

Dru Stevenson

Right. Exactly.

00:55:31;10 - 00:55:37;21

Stephen Gutowski

Although that's where the criminal act by third party that you're not involved with is, is where a lot of people will draw the line.

00:55:37;22 - 00:55:39;13

Dru Stevenson

And I and I understand that.

00:55:39;13 - 00:56:03;01

Stephen Gutowski

Yeah. But like you said, the case here is more about, you just sort of whether because they, they know that these guns are well, some of them will end up in cartels is the process that they're even though they're they may be abiding by all American gun laws is the way that they're doing business leading to that.

00:56:03;03 - 00:56:26;16

Stephen Gutowski

And they, they are, aiding and abetting that process. Then by, by, you know, but by relationship with those things, that's more or less the argument that they're getting into. And, and I think, you know, we can we can agree that I think the majority of the justices probably aren't going to go for that. But it may be, more interesting opinion than on first glance listening and that sort of bottom line.

00:56:26;16 - 00:56:26;25

Stephen Gutowski

Yeah.

00:56:26;27 - 00:56:50;07

Dru Stevenson

I was worried when they took the case that they were going to, interpret aiding and abetting. So in such a way that it would make it, block the rest of block, it it would basically make it impossible to sue a gun dealer, no matter how bad

they were, right? No matter what they did.

00;56;50;09 - 00;57;12;07

Dru Stevenson

And I don't think we're going to get that. So we're not getting my worst case scenario, which is that they would somehow make things worse than it already is. Or give like, yeah. Or give some sort of super immunity so that someone gun dealers are like somehow above the law or, can't be ever held responsible no matter what they do.

00;57;12;10 - 00;57;30;26

Dru Stevenson

And I, it was pretty clear yesterday in the oral arguments that we're not getting that there were several conservative justices who are are concerned about people supplying guns to criminal organizations. And I, and deliberately and.

00;57;30;26 - 00;57;46;25

Stephen Gutowski

And I think there's a pretty I think that would be a pretty popular position generally like if you knowingly sell guns to soap criminals, you should be sued and, and arrested and charged were really you should be criminally prosecuted. Right.

00;57;46;27 - 00;57;56;11

Dru Stevenson

And I agree. And that's why there was they were able to get the predicate exception in, you know, past with the statute. Sometimes.

00;57;56;13 - 00;58;17;21

Stephen Gutowski

But they're also probably not going to trial very, they're not going to expand the predicate exception to fit these more vague claims that they just nonspecific claims, like they have an outline of how the process works, but they don't have specific accusations of or at least in there. Well, let me let.

00;58;17;21 - 00;58;18;03

Dru Stevenson

Me give you an.

00;58;18;03 - 00;58;28;00

Stephen Gutowski

Example. Civic accusations of how the Smith and Wesson was, like, actively involved in specifically aiding and abetting, I guess. Seems like where they're headed.

00;58;28;03 - 00;59;00;19

Dru Stevenson

So if I can go back to the, the case with Soto versus, Bushmaster, that a case about the Sandy hook ones in that case, because they decided not to take it and to let the Connecticut Supreme Court's decision stand. The Connecticut Supreme Court, but basically said you can be, violating state marketing laws. And by marketing your guns to criminals for criminal activity, it fits under the exception.

00;59;00;21 - 00;59;03;02

Dru Stevenson

And so, as you probably know, and they.

00;59;03;02 - 00;59;06;20

Stephen Gutowski

Were skeptical that they proved that on the merits. And it never did get to the there.

00:59:06:21 - 00:59:31:08

Dru Stevenson

That's right. But what that did was it gave a blueprint to a whole bunch of states to adopt statutes that were were tailor made to avail yourself of the to sue gun manufacturers and, and work under the predicate exception. And what we're going to get from this case might be another blueprint for how exactly to bring a legit case.

00:59:31:14 - 00:59:38:03

Dru Stevenson

And in that sense, they're meant for the people suing gun manufacturers. There might be a silver lining to this.

00:59:38:05 - 00:59:46:12

Stephen Gutowski

Although that is another reason that maybe they took this case up and they regretted not taking the the Remington case at the time, although it was a different court then as well.

00:59:46:14 - 00:59:47:01

Dru Stevenson

It was.

00:59:47:06 - 00:59:48:11

Stephen Gutowski

Slightly different. At least.

00:59:48:17 - 00:59:49:11

Dru Stevenson

It was a different.

00:59:49:11 - 00:59:50:02

Stephen Gutowski

Court.

00:59:50:06 - 00:59:54:29

Dru Stevenson

And a different administration, a different political climate about guns. Yes, everything.

00:59:55:00 - 01:00:24:28

Stephen Gutowski

So we'll have to see. Exactly. Because that might be in some of their minds, like maybe we don't want to, we don't want to put down a blueprint for how to, you know, sue down companies necessarily. Or at least we want to maybe we want it to be a very narrow one. So we'll see. Yeah, I definitely agree with you that it'll be it'll be interesting to see exactly what the opinion is and how it shakes out, because I still feel like it could be fairly lopsided, but maybe it'll have a lot of we'll get a lot of concurrence.

01:00:25:00 - 01:00:26:11

Stephen Gutowski

Yeah. Like you suggested.

01:00:26:12 - 01:00:42:24

Dru Stevenson

I'm expecting what I call a splintered opinion or fractured opinion. And the problem with those is forever after it's there's a debate about what does the case stand for, right? Yes. If if we had seven different opinions. What, like in Bruen. What does Bruen really stand for?

01:00:43:02 - 01:01:02:05

Stephen Gutowski

Right. Yeah. It is an issue. Yeah. The court doesn't speak as one. You're always going to be wondering exactly what where what they meant. And you'll probably just need more cases down the line to figure it out. That's right. I, appreciate you coming on we went for a little longer than normally. I thought there was a lot of interesting stuff to get into here.

01;01;02;05 - 01;01;07;24

Stephen Gutowski

Yeah. If people want to follow your writing, where can they do that?

01;01;07;26 - 01;01;25;03

Dru Stevenson

So they. If they can, Google me. I have their SSRN.com. If you go for Drury Stevenson. They, it has all my articles and papers, listed for free download.

01;01;25;05 - 01;01;34;24

Stephen Gutowski

That's a wonderful. I appreciate you coming on and giving your perspective on this, and we'll, we'll have to have you back on in the future. We'd like to get a variety of points of view here. So. Yeah. Appreciate you doing that.

01;01;34;28 - 01;01;36;13

Dru Stevenson

Thanks for having me, Steve.

01;01;36;15 - 01;01;42;18

Stephen Gutowski

All right. We're going to I'm going to hand it over to myself to tell you guys a little bit more about the dispatch as we continue our our art swap this week.