

00;00;19;26 - 00;00;43;24

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](http://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 reporting and analysis instead of, you know, opinion.

00;00;44;00 - 00;01;11;14

Stephen Gutowski

And I, you know, keep trying. I need to come up with, as I say, hot air. And I want to change that opinion and, and, bluster. Would that be a good one? I don't know, you guys tell me. Anyway, this week we are talking with, gun rights lawyer Alan Beck. About, really an interesting sort of legal argument, a new legal argument, surrounding the gun rights of 18 to 20 year olds and,

00;01;11;18 - 00;01;28;08

Stephen Gutowski

Yeah. So welcome back to the show, Alan. I sort of one of our working gun lawyers, you know, we have a lot of gun scholars, academic types on the show, and it's. I think it's good and refreshing to have somebody who's, you know, actually in the courtroom doing this work, on a daily basis, maybe a little bit of a different perspective there.

00;01;28;08 - 00;01;31;23

Stephen Gutowski

So I appreciate you, being here. And and welcome back to the show.

00;01;31;25 - 00;01;33;12

Alan Beck

Thank you for having me, Stephen.

00;01;33;15 - 00;01;38;25

Stephen Gutowski

Yeah, absolutely. For anyone who doesn't know, can you just give them a little bit of a refresher on your background?

00;01;38;28 - 00;02;07;03

Alan Beck

Well, you know, I've been, practicing attorney since, 2009. I'm licensed in California and Hawaii, and I'm also, licensed a few other federal courts, including the ones in DC. And, you know, I actually practice law in, DC, California and Hawaii in, federal court. And, you know, I'm not, doing, you know, Second Amendment law.

00;02;07;03 - 00;02;15;18

Alan Beck

You know, I work in a few other areas, including, you know, personal injury and other areas of, civil rights litigation.

00;02;15;20 - 00;02;36;26

Stephen Gutowski

And, so, you know, Hawaii being one of the, key states in the fight over, gun rights in the united, in the United States. I think you've had quite a lot of cases over the years, where, you've kind of set the standard. I mean, you're kind of one of the only lawyers who's doing work in, on the gun front in Hawaii right now.

00;02;36;28 - 00;02;38;09

Alan Beck

That's correct.

00;02;38;12 - 00;02;41;18

Stephen Gutowski  
And, Oh. So, you know, could.

00;02;41;21 - 00;02;54;17

Alan Beck

I, there are a couple other people that I work with, but, sure, there's no one that, is, licensed. Why? That's actively, doing the Second Amendment law, apart from me and my colleagues.

00;02;54;20 - 00;03;17;12

Stephen Gutowski

And that's led to a number of, pretty prominent cases that you've been a part of, coming out of Hawaii, like the young case. Yes. Years ago, and, and, and a bunch of other ones, but most, relevant to what we're going to start off here with is, a case that you have, dealing with restrictions on guns for 18 to 20 year olds.

00;03;17;12 - 00;03;20;09

Stephen Gutowski

Right. Can you tell us a little just a little bit about that one?

00;03;20;11 - 00;03;50;03

Alan Beck

Well, first I'd like to note that, I'm here on this podcast in my personal capacity and, the views I espouse share my own. However, I am, representing, a number of our clients through the Second Amendment Foundation and a, challenge to, Hawaii's, ban on, young adults between the ages of 18 and 20 owning firearms in the state of Hawaii.

00;03;50;05 - 00;03;54;23

Alan Beck

And the name of that case is, for now, is V Lopez.

00;03;54;25 - 00;04;14;14

Stephen Gutowski

And you've had, already one ruling in this case that didn't go your way, right, on the preliminary injunction. But maybe, you know, oftentimes when we see one side lose on a preliminary injunction, you think, oh, that's probably it, you're not going to pull it out in the merits, part of the case, but there may be some reason to think otherwise in this one, right?

00;04;14;16 - 00;04;41;22

Alan Beck

Yeah. I mean, the judge is very clear. It's a, fairly old law. I mean, there's a couple new ones, but, the main ban on, firearms about, 30 years old and the judge, you know, she was ready to make up her mind, essentially, you know, and she made it very clear in our, ruling that, she was amenable to, issuing a a different outcome once has been a fully developed record.

00;04;41;25 - 00;05;08;04

Alan Beck

And so that's what we're doing right now. We've, started the process of, leading the case to the merits, in Pinellas and, we've, you know, it's to be fair to her, you know, we have done a lot more research on the history as presumably as state and, you know, she's, we look forward to, going to, summary judgment.

00;05;08;07 - 00;05;10;08

Alan Beck

Sometime in the future.

00;05;10;11 - 00;05;42;06

Stephen Gutowski

And one of those areas of, of research, right, is kind of a new, argument in this space, this, this issue of gun rights for 18

to 20 year olds, which has been, you know, an active fight in the courts all over the country for for quite a while now, even pre-roe. And you saw a lot of cases surrounding this question of, you know, what what gun rights to 18 to 20 year olds have, what you know, what restrictions are allowed in the Second Amendment and what aren't.

00;05;42;08 - 00;06;03;27

Stephen Gutowski

And we actually just got a major ruling on this out of, one of the, appellate courts, the, the on bunk court. The full court, in other words, of the 11th Circuit ruled in, NRA v Bondy, which is a case out of Florida, referring to, you know, then attorney general of Florida as Pam Bondi.

00;06;03;27 - 00;06;49;08

Stephen Gutowski

Now she's, the U.S. attorney general. But, that was over Florida's ban on the sale of guns to anyone under the age of 21. And, you know, the the, by court, maybe a little bit surprisingly upheld that law. And what was most interesting about their ruling, right, was the standard that they used as sort of a new take on this whole fight, where they argued that, during the founding era, essentially anyone under the age of 21 was considered to be below the age of majority and or, in other words, an infant, as they would have been called at the time, which meant that they didn't have the authority to buy guns.

00;06;49;08 - 00;06;54;05

Stephen Gutowski

That was the basic holding in that case, right?

00;06;54;07 - 00;07;26;21

Alan Beck

Essentially, except, rather than buy guns, the court said they didn't have a right to contract to buy guns, which is a little bit of a distinction. You know, the, court may it's premised on the idea that, most gun sales, not all gun sales were done in some form of contract. So you go to the store, you know, you put something on layaway, you say establish a payment plan, something along that lines, and, yeah.

00;07;26;24 - 00;07;52;24

Alan Beck

And, they, took the position anyway that, those contracts were not enforceable until a person charged 21 and, they also check up what was the logical leap from that, that, a, gun store or, you know, gunsmiths or would not, take the risk to, make that type of sale.

00;07;52;26 - 00;08;15;20

Stephen Gutowski

Now, and this this is a different argument, right, than we've seen to justify these restrictions in the past. Because a lot of those and including at the panel level, in this case, they relied much more on later restrictions during like reconstruction era, bans on, you know, age restrictions for people carrying guns or owning certain types of pistols and so forth.

00;08;15;20 - 00;08;16;07

Stephen Gutowski

Right?

00;08;16;09 - 00;08;17;11

Alan Beck

That's correct.

00;08;17;13 - 00;08;37;22

Stephen Gutowski

So this is a new kind of a it's something a bit unexpected. You hadn't really seen this before. And you actually have, written a piece that we will publish at the reload that, that, kind of, tries to counter this view from the 11th circuit and

with by, pointing to other historical evidences. I think.

00;08;37;24 - 00;09;03;06

Alan Beck

That's correct. I, I've done, a lot of research on this issue and it's, there are a few issues with, the, opinion. It's one thing, and this is sort of outside the scope of the research you talked about, but you can just simply go to the store and hand them money, right? For the sure firearm.

00;09;03;08 - 00;09;08;01

Alan Beck

And then the transactions are so there's no contract. In a practical sense.

00;09;08;03 - 00;09;14;23

Stephen Gutowski

Yeah. In other words, there were there also weren't any laws that actually banned anyone under 21 from buying.

00;09;14;27 - 00;10;00;09

Alan Beck

And I think that's a big reason. Why they relied upon this, because they didn't have any laws to rely upon. Yeah. Same time, the judges at the 11th Circuit that, were in the majority, they needed to find something from 1791 to justify the ruling because, they're actually, Republicans on the majority. And a big split in the courts right now is what year do you look true for historical evidence, or whether a firearm and, you know, a lot of the, Republican appointed judges aren't comfortable using 1868, which is what has been used.

00;10;00;09 - 00;10;30;03

Alan Beck

And, you know, what our courts are, have more Democrat appointees, i.e., the second Ninth Circuit have used as evidence against, the public appointees, it appears, are uncomfortable using that, that time period. And since there are no laws from 1791, everything, they had looked at something and the right contract was what they found.

00;10;30;06 - 00;10;57;03

Stephen Gutowski

Right? Yeah. Because the Supreme Court in Bruen. Right. They discuss this idea of, of the historical tradition and that they don't actually answer this question, right. Of when, when the cutoff point would be for a law that can serve as an analog to the modern regulations. But they do talk about how laws closer to the ratification of the second Amendment are going to be, presumptively stronger evidence.

00;10;57;03 - 00;10;59;01

Stephen Gutowski

Right. So the courts.

00;10;59;03 - 00;11;45;09

Alan Beck

You said that's contrary to what the second Ninth Circuit has said, that, both second Ninth Circuit give equal weight to the laws, 1868 and, just in case viewers are wondering, 1868 is the year the 14th amendment was, ratified. And, the idea is since the Second Amendment, as, laid out in the old opinion, before Chicago, was made applicable to the states by the 14th amendment, the argument is that, 1868 is just as important because, it was the 14th amendment ratification day, and that's what brought the right to the states.

00;11;45;12 - 00;11;47;06

Alan Beck

Right. And,

00;11;47;09 - 00;11;48;26

Stephen Gutowski  
That's the debate.

00;11;48;28 - 00;12;19;07

Alan Beck

So, the other courts have, said that, we can look at 1868, but only if it confirms a tradition from 1791. So if something's different in 1868, from 1791, we have to disregard the 1868 evidence. And, you know, stuff from the 19th century can be used to confirm an enduring tradition from the time of the founding.

00;12;19;09 - 00;12;52;11

Alan Beck

And, you know, the 11th circuit, is on that side of the argument. And they just, didn't want to to go with, second Ninth Circuit on this issue who are willing to say that even if it's something brand new at 1868, we're right. We're able to use that as evidence. And, you know, to be fair, there are some, firearm restrictions on, adults under 21 at 1868 that you have to, you know, that there weren't complete bans, that's for sure.

00;12;52;11 - 00;13;02;18

Alan Beck

But, there were some restrictions. But, you know, if you've stopped that 1790 is the year like the 11th Circuit did. You can't look to this.

00;13;02;20 - 00;13;23;21

Stephen Gutowski

Right. And so and I would just say, practically speaking, that the 11th Circuit's argument is probably stronger because it's citing whether, you know, obviously, we'll get into the your critiques of, of what they're doing up there, their logic here, or at least, the, the, the evidence that you found contradicts some of what they're claiming.

00;13;23;21 - 00;13;49;25

Stephen Gutowski

But, but, you know, that is citing from the founding era, and that probably will would have a better, better reception at the Supreme Court should it make it there. And honestly, probably one of these cases will eventually make it there because there has been a lot of disagreement on age restrictions in the lower courts. But, you know, this, it does feel like a stronger, argument under brewing than some of these previous ones.

00;13;49;25 - 00;14;04;01

Stephen Gutowski

Some of the other ones you discussed where they're looking at later, traditions. So, so let's get into what you found to be deficient about the 11th Circuit's argument. What what was the main problem with.

00;14;04;04 - 00;14;38;14

Alan Beck

The the main problem with the 11th Circuit's opinion is it's, premised on a pretty faulty premise. So it is true that, young adults, that minors do not have a right to contract and that there was an important carve out for that, and that was for necessities and necessity is, something that you needed to maintain your station life.

00;14;38;14 - 00;14;58;09

Alan Beck

That's the language the series around that time frame. And, unlike a, you know, it wasn't a fair. Exaclty the 11th Circuit made it sound like we're talking about food, water, shelter, clothing and clothing, too. You know, the because they.

00;14;58;09 - 00;15;03;22

Stephen Gutowski

Didn't get the necessity exception in the law, they just thought it was limited to very small amounts.

00;15;03;22 - 00;15;39;01

Alan Beck

And, in reality, it was a much broader doctrine, a necessity was anything you needed to maintain your life. Right? And maintain your station life. Do the things that a normal person does for your age, socio economic background, for example, a what I read was a necessity, because, you know, a marriage, marriage is part of your, you know, maintain your station as a, say, night year, 20 year old that time frame.

00;15;39;04 - 00;16;10;01

Alan Beck

So the courts found that, you know, if you're buying your fiancÃ© a wedding ring or other type of jewelry associated with marriage, then that's something that would be a necessity. And the important thing is that means that your contract to purchase the wedding ring was enforceable in court. So if you decide to void the contract or not pay, then the merchant that sold you the, what a ring could sue you in court.

00;16;10;02 - 00;16;46;11

Alan Beck

You get the money that he was entitled to. And, that's true with, but there are a lot of other areas, for example, a, livery which, like military uniforms were found to be necessity or need a military uniform to get to survive. Right. But, the courts found that, they were disasters because, you know, serving in the military, even, in one case was just a volunteer form was, you know, part of maintaining your station life, being productive member of society, essentially.

00;16;46;11 - 00;17;08;23

Alan Beck

Right. And, and sort of that this is what I tell you, the English case, but, English case from, 1800, or maybe 18 before I should say, was, there I found a case where a servant for an officer was deemed a necessity. You know, assistant, essentially. Right. So this guy is a military officer.

00;17;09;01 - 00;17;48;11

Alan Beck

It's just natural that he's going to have an assistant. And, who, wasn't, so, we're going to find that he's, bound to, that this is a necessity. So any sort of contract regarding this individual, he, he's bound by, you know, and so that same reasoning applies to, firearms. Now, the 11th circuit found what example of, a pistol not being, being declared something that was not a necessity, but, and they based their whole opinion on that.

00;17;48;14 - 00;18;23;16

Alan Beck

However, that was in there, the a pistol, certainly has some function, but, there are two important things about, the case that, the 11th Circuit relied upon. One, a pistol is much different than a rifle or a shotgun called fowling piece. At the time, in 1791, you had to have a long arm to show up for mandatory militia duty in, every single colony.

00;18;23;19 - 00;19;10;11

Alan Beck

And that applied to, anyone that was 18 years old. And so, whereas a pistol just simply wouldn't have been, usable for that. So at least, arguably, if the a pistol wouldn't have been necessary to maintain your, your function lives in the same way that a rifle or a shotgun would have been. Additionally, you know, for a lot of, people around that time period, they got their food from hunting, you know, it's, you don't, hunt with a pistol that's just, you know, it's I'm not saying that, you never can, but, during that time period with that pistols that they were using, you

00;19;10;11 - 00;19;55;02

Alan Beck

know, that just simply wouldn't be an efficient use of your time. The typical person used either a fowling piece, hence the name. You know, that's, you shoot fowls, our birds, or, the rifle or a musket. So those are the arms. Those arms very clearly would have been deemed a necessity. And okay. To look further into this opinion, the is very clear that, we look into a person's particular circumstances when you decide whether something is a necessity and there's language out

there that, the 11th Circuit relied upon that said, you know, the necessities, you know, food, drink, shelter, basic clothing.

00;19;55;02 - 00;20;19;10

Alan Beck

Right. What what's courts really saying? There is this stuff because everyone needs it to literally survive, you know, to not die. We don't need to do a deep analysis because you know who doesn't need food, right? Right. But, and with other things, say, like that, wedding ring that, I brought up. You don't. We're going to actually take a look at this person.

00;20;19;10 - 00;20;40;11

Alan Beck

Is he about to get married? Is he married? Or is he, single and just bought a girl a ring? Right. And we're going to make a fact based determination on whether this person actually needs to have this item in order to maintain a station in life. And that's the analysis that was used in the 11th in the case.

00;20;40;11 - 00;21;08;09

Alan Beck

The 11th Circuit relied upon. This guy had bought a saddle, stirrups, a pistol and a couple other things. And after looking into this fellow's particular circumstance, he didn't need any of those things to maintain his function in life, whereas another person very easily could have, been a, had a pistol deemed a necessity, for example.

00;21;08;09 - 00;21;09;27

Stephen Gutowski

Cavalry officer, I guess.

00;21;09;27 - 00;21;43;28

Alan Beck

Right? Yes. Say someone officer in the militia or someone that is serving in the Calvary. Now, that's a mandatory arm for a Calvary man. And, and off the saddle to. Yeah, exactly, exactly. And, so that's, so, yeah, there's just a big difference there if you just want to have, that pistol recreationally and, so, you know, you don't grab that guy, use it to hunt, etc., you know, things like that.

00;21;43;28 - 00;22;12;21

Stephen Gutowski

So, so, you know, your basic view here is, is that the 11th Circuit came up with came to this conclusion that, you know, anyone under 21 at the founding couldn't enter into contracts to buy things that weren't considered necessities. And they only thought that, you know, the basic that the bare necessities of life as the, the, The Jungle Book, as they, they put it in there, were the only things covered by that.

00;22;12;24 - 00;22;37;06

Stephen Gutowski

But but you're saying that if you look closer at these rulings from the time, and similar ones, that really what the standard courts had used for necessities was not bare necessities. It was also anything that would, you know, be necessary for somebody to maintain their, their life, as, you know, at least, their station in life.

00;22;37;08 - 00;23;21;27

Alan Beck

Yeah. That's that's exactly right. I mean, there is, another case where, furniture, for example, is, deemed a necessity. And, you know, I've got further evidence from, bankruptcy law from that time in, bankruptcy law, they used a very similar standard as in, this, necessity as a safety doctrine for, contractual and, in, bankruptcy law, you know, the court could seize your, goods and, they would unless they were necessary for, maintaining your life.

00;23;21;29 - 00;23;52;14

Alan Beck

And the court's very clear that, this wasn't literally what you need to survive. This is, you know, things you need to, you know, to get by in life. For example, you know, a stove, for example, or something that I found, in, very early 19th century case where the court said, you know, you can't, you know, your daughter can't go, the collection agency can't come after your stove because you need that cook.

00;23;52;16 - 00;24;08;23

Alan Beck

Right? That's that's necessary. And, in that same opinion, they expressly say that at least some circumstances alms are, necessities. So. Okay.

00;24;08;26 - 00;24;14;04

Stephen Gutowski

So then they say that specifically in these bankruptcy records.

00;24;14;07 - 00;24;37;16

Alan Beck

Yes. In fact there are laws that also there are actually laws on the books, not just court appearance, but there's laws on the books that exempted, some alms from, any type of collection action. Right. And that's why the same legal standard that, was used in, in this nasty context.

00;24;37;19 - 00;25;00;13

Stephen Gutowski

Okay. And so the idea here was that the founding era, while those under the age of majority, which would have been 21, couldn't enter into contracts for certain things, they could enter into contracts for necessities. And among those at the time, what a necessity was would kind of be determined based on their individual circumstance.

00;25;00;13 - 00;25;12;13

Stephen Gutowski

But very likely that would include at least, you know, basic firearms for hunting and, and maliciously. I mean, people also had to, had a requirement to serve, to be available to serve in the.

00;25;12;13 - 00;25;41;18

Alan Beck

Militia, right? Yeah. So, I mean, I think that there would have been a universal right to, purchase arms, through a contract, because or, it's because, you know, every single person at 18 years of age had to serve the militia. It was a requirement. And as part of that, you know, people, you know, need to train with their, bullsh arms.

00;25;41;18 - 00;26;04;08

Alan Beck

And, so that would have been deep in society. Therefore, if an 18 year old entered into a contract to, purchase a long arm that was suitable for militia use, that would have been absolutely deemed a, necessity. And that applies to essentially every single, 18 year old, you know, young adult at at their the following.

00;26;04;10 - 00;26;21;08

Stephen Gutowski

For there were there also laws that required you as you brought up in, in your analysis, the, that people be armed when they went to church, or large gatherings out of sort of a communal safety.

00;26;21;10 - 00;26;21;26

Alan Beck

Yes.

00;26;21;29 - 00;26;23;11

Stephen Gutowski



Concern.

00;26;23;14 - 00;26;57;01

Alan Beck

So church was a place where the entire town would react and there was a legitimate fear of, Native American attack and or a bandits or something like that, where the whole community is in one location. And so if you were armed, the whole town get wiped out. So not just a church, but some other large gathering, people were required to, bring firearms if they did it.

00;26;57;04 - 00;26;59;24

Alan Beck

That was a final blow. If that's.

00;26;59;26 - 00;27;23;14

Stephen Gutowski

Okay. Right. So. Yeah. So essentially here you have this, corresponding record from the time of people being required to have arms in order to serve in the militia, people under 21, being required to have arms in order to serve in the militia, being required to, meeting them for, you know, basic survival in terms of hunting and self-defense.

00;27;23;17 - 00;27;48;07

Stephen Gutowski

And then also, you know, there were other requirements like community defense in the, you know, these laws that require people to, to be armed, at large gatherings or at church. And so that implies at least that this necessity standard, which looked at sort of the didn't set wasn't based on just the very basic food, water, shelter, concept.

00;27;48;07 - 00;28;27;17

Stephen Gutowski

It looked at the individual circumstance and, and so at the very least for everyone under, 21, 18 to 20, perhaps, we'll get into the, I guess, the bottom up of this in a moment. But, you know, for, for just the average person under 20, you know, average adult under 21 would have, would have been viewed as needing those as necessities and therefore could have entered into contracts, despite with the and that there may have also been circumstances where even, for one person, the pistol may not be viewed as a necessity like the case that the 11th Circuit cited.

00;28;27;17 - 00;28;31;26

Stephen Gutowski

But for another, it could be, depending on their their circumstances.

00;28;31;26 - 00;29;01;16

Alan Beck

Yeah. That's correct. So, okay. Fundamentally, the 11th Circuit relied upon one case, added the street type of arm, a pistol that wasn't suitable for most of the activities that young adults were required to engage in and said, based upon that, this is our evidence that a, that, firearms, a general matter, were not, deemed necessities.

00;29;01;18 - 00;29;10;04

Alan Beck

That's just fundamentally incorrect based on, just case law, history and just reality of colonial America, you know?

00;29;10;09 - 00;29;43;03

Stephen Gutowski

Okay. And, you know, so I guess that that gets to the question then of like, what is the, the bottom limit to this? Like what age would have been considered too young for somebody to buy a firearm at the founding? I mean, I guess there weren't any specific laws that related to that, right? But now, is there anything, you know, anything in the record that, like, points to an age that, you know, these sort of, this record that we're talking about here of necessities and contracts and bankruptcy and so forth, or is it's something, you know.

00;29;43;03 - 00;29;57;25

Alan Beck

I, I haven't come across a specific age at I mean, I think there's some practical considerations. Once you get to a certain age, you're not going to have access to money, right? Sure. But, you know, I, I haven't, but now I, I, it's not the.

00;29;57;25 - 00;30;15;24

Stephen Gutowski

Bottom line is less clear. Yeah. And this is another, you know, because honestly, it's the standard. Sounds like it was very individualized, on this, on this point, like what the individual person was considered to need, as a necessity in their life. And so maybe that was also how their age.

00;30;15;28 - 00;30;44;17

Alan Beck

It's just that, no, no, you're absolutely right. I mean, we're talking about people's individual circumstances. So if you get to a certain age, you know, I mean, a, fire isn't going to be if get young enough eventually a firearm is not going to be an ancestor, you know, or more to the point, you know, a, it would be accepted that, maybe the firearm would come from, you know, some sort of familial relation, you know.

00;30;44;17 - 00;30;45;07

Alan Beck

Yeah.

00;30;45;09 - 00;30;47;26

Stephen Gutowski

Well, I guess that age for the militia, right?

00;30;47;28 - 00;30;48;16

Alan Beck

Yeah, absolutely.

00;30;48;16 - 00;30;51;29

Stephen Gutowski

You so have a limit on who could join or who was required.

00;30;52;00 - 00;31;12;19

Alan Beck

So that's why I'm saying, I mean, below the age the wanted to serve the militia. I mean, that there would be a, argument to this, that firearms were not a necessity. But, once you got to militia age, I couldn't see a, real argument that these were necessary to maintain your station.

00;31;12;21 - 00;31;33;20

Stephen Gutowski

Okay, well, we will, that piece will be out on the reload. So people should go and read it and look at the your citations and some of these cases that you pointed to. And maybe if anyone, you know, I assume you're still looking for more examples, because any additional examples of somebody entering into a contract like this for a firearm under.

00;31;33;22 - 00;32;18;11

Alan Beck

Yeah, absolutely. I'm useful. I'm a sole practitioner. I only have so much bandwidth to conduct. Research in colonial history. And, you know, I've got, pretty standard, research engines that, lawyers have that, unfortunately, is not as in-depth into, final law as I'd like it to be. So, yeah, especially if you're a law professor or maybe just, very attracted law student that, wants to spend a little bit of time on this and you can find additional, evidence that, a long arm was, a, necessity.

00;32;18;14 - 00;32;32;28

Alan Beck

I know it's out there. And, you know, I could very much, you'd very much be, helping, both myself and the Second Amendment movement if, you spent some time on this. So, please feel free.

00;32;33;01 - 00;33;06;11

Stephen Gutowski

Sure. Well, so this, we think this issue, at least maybe, whether it's this 11th circuit case or your case in the, out of Hawaii or the Fifth Circuit case, there's a lot of these cases, at the moment, that that, are ripe for the Supreme Court to potentially take up, you know, it seems like with the amount of disagreement at the lower levels, they, they may well eventually address this, but, perhaps before that happens, you have another case that you just submitted cert for at the Supreme Court, right?

00;33;06;13 - 00;33;39;07

Alan Beck

That's correct. I have a case I'm on, petition for, search jury where, you know, I'm asking the Supreme Court to, grant it called, Walford v Lopez and that deals with why sensitive places law in, Walford. You know, the Hawaii legislature, in all its wisdom, I spent, ten years litigating a, challenge to, Hawaii's, effective, no issue policy for can all counties.

00;33;39;10 - 00;33;41;14

Alan Beck

Yeah. Called young v Hawaii. Yeah.

00;33;41;16 - 00;33;42;17

Stephen Gutowski

And concealed carry.

00;33;42;17 - 00;34;08;22

Alan Beck

You know, I, I went to the Supreme Court on that, you know, we, went after the case, so, Bruin gets ruled on Supreme Court rules on mine, and, you know, thankfully, I, prevailed there, you know, based upon the Bruen opinion. And, anyway, long story short, Hawaii had to start issuing CCW, and it did not like that.

00;34;08;25 - 00;34;33;25

Alan Beck

So what they did, they passed a law that bans carry. My clients live in Maui and, in Maui, they it they passed a, series of laws that prohibited carry even with a CCW in 96.4% of the county of Maui. So, you know, they,

00;34;33;27 - 00;34;41;20

Stephen Gutowski

They that was and that was a common response you saw in a lot of these states that were forced to change their, concealed carry permitting.

00;34;41;23 - 00;34;43;06

Alan Beck

Oh, yeah.

00;34;43;09 - 00;34;49;05

Stephen Gutowski

So I think that's why one is maybe one of the most, aggressive forms of, yeah.

00;34;49;08 - 00;35;28;03

Alan Beck

It's not done, as part of national movement on behalf of, you know, by the obviously important coordinating with, New York, New Jersey, Maryland, California and, you know, I actually don't think Massachusetts passed one. So I, I think that's those are the states, and, yeah, it's, it's a very egregious, form of, you know, it's a very egregious violation of the Second Amendment because, you know, broad says you have a right to carry a god for lawful self-defense.

00:35:28;06 - 00:35:57;08

Alan Beck

And as a practical matter, you've banned carry a 96.4% of the publicly available, publicly accessible space in, an area. Well, you know, I mean, how are you possibly going to be able to carry even within that remaining, you know, 3.6%, which is the faculty, the sidewalk in the road, you know, now, if you want to go anyplace, you gotta figure out some place to, take, you know, storm, fire.

00:35:57;11 - 00:36:20;26

Alan Beck

So, you know, it's actively turned into a, no carry place. Now, there is a, yeah, there is, one law that they've, it's we call it the default rule, or as one of your other, legal, consultants. Costas,

00:36:20;28 - 00:36:22;25

Stephen Gutowski

Likes to go, naked gun rights law.

00:36:22;26 - 00:36:37;00

Alan Beck

You know, there's a there's a split of authority right now. Was that the, legal community about which of these, they are going to, prevail? So, well.

00:36:37;02 - 00:36:44;03

Stephen Gutowski

Yeah. And they call it the vampire rule because you have to be invited in, before you can legally carry somewhere.

00:36:44;05 - 00:37:03;18

Alan Beck

Yeah. So, the, you know, you have a law that says, a person needs, business owner needs to put up a sign before, a CCW holder can, can, dog can carry in their premises, which is.

00:37:03;21 - 00:37:04;21

Stephen Gutowski

How vampires work.

00:37:04;21 - 00:37:05;04

Alan Beck

Right? Yeah.

00:37:05;07 - 00:37:30;14

Stephen Gutowski

You can't enter unless you invite them in. Yeah. But so. So this case, you know, obviously the the court has a couple of these cases to, these sensitive places, cases and, so, you know, you very well could be the one that gets picked. But what I'm interested in your thoughts. Well, first off, like, what if you just give a little bit of insight on what it's actually like to file cert to the Supreme Court?

00:37:30;14 - 00:37:35;24

Stephen Gutowski

I think you have like the. Yeah, I think people don't necessarily know this. Right. But you have like a book you.

00;37;35;24 - 00;37;57;21

Alan Beck

Have to start. It's actually a fairly costly process because this is the petition for writ of jury. Yeah. Well for v Lopez you don't just file a brief like you do what a lot of courts say. Just print out on, you know, eight by five, you actually have to get printed a book. Now, it's pretty thick, but it's a nice book.

00;37;57;25 - 00;38;31;22

Alan Beck

And it, there's actually very specific formatting requirements on not just the cover, but throughout, you know, and these are very specific, you know, requirements need to be filed. Most attorneys don't need file. Most attorneys don't have, the, capacity to, you know, find these in a very specific manner that the Supreme Court wants. So, you know, you, we do is you go to map a couple of the, of, printing companies.

00;38;31;22 - 00;38;56;19

Alan Beck

Okay, handful in the whole country that do, prepare these and, you know, you, you pay them to print them out, and the Supreme Court requires 40 copies to, go to them so they could pass Brown, the clerks and Supreme Court justices during their conference. And then they said three to, the, your opposing counsel in the mail and.

00;38;56;21 - 00;38;58;03

Stephen Gutowski

Yeah, not cheap.

00;38;58;05 - 00;39;13;14

Alan Beck

Now, it's not cheap. And, but, you know, it's, does, make for a nice, accessory for the coffee table that I after. Yeah. Exactly. Right. It's like, yeah, here's my Supreme Court.

00;39;13;17 - 00;39;31;29

Stephen Gutowski

It cost me \$10,000. And then they denied the case. Any. But, yeah, I'm interested in your point of view, too, as a as sort of a working lawyer, I guess, somebody who's directly dealt with a bunch of cases in the post brewing. Yeah. Space here.

00;39;31;29 - 00;39;33;10

Alan Beck

And, you know, I,

00;39;33;12 - 00;39;47;13

Stephen Gutowski

You know what, one what, you know, what have you experienced so far in the post brewing landscape? What do you what do you think the court needs to address? Given how things have gone since they handed that down?

00;39;47;16 - 00;40;20;13

Alan Beck

Well, you know, I've, I've encountered a couple things, that, one, I've seen a lot of governments get. A lot of, let's call it, like, overreach their pushback to work. And, you know, I've, won a few cases where, you know, this is one someone actually took a lot but was just so obviously unconstitutional that, the other side had to settle, for example, the Big Island of Hawaii had a, policy where you had to sign a waiver.

00;40;20;19 - 00;40;41;20

Alan Beck

We waive your attorney client privilege and all your other privileges. The attorney client privilege start being the big one, and miracle privilege, in order to, carry a gun. And they thought that complied with, bread. And what the idea was,

they could get. What if you matched to, you know, you were charged the crime. If you had a really good lawyer.

00:40:41;22 - 00:41:12;06

Alan Beck

They want to be able to look at the criminal files of your attorney to see that, whether there was a evidence that you are unsafe to carry a gun. Now, that's that's that's a little bit beyond the pale, you know that. But also give them access to, business records and, you know, professional trade secrets, even though that's not what they were saying they, wanted for I was, just a broad, you know, waiver and, you know, I mean, that's a situation.

00:41:12;06 - 00:41:39;22

Alan Beck

Once the attorneys got involved for the county, it's like, well, it's a little bit too far. We're, a little bit worried about this. Police chief, next time you, think about doing something like this, call us first. And you know that, there's some settlement, you know, another issue is not necessarily pushback, but, law enforcement is not prepared to issue the permits logistically.

00:41:39;29 - 00:42:04;11

Alan Beck

They just don't have enough staff. They don't have, you know, the mechanism in place to, efficiently process large influx. So I had another case in Honolulu where my clients have been waiting for over one year for their CCW applications to be processed. And, you know, nothing wrong with them. They just this big backlog. So I filed a lawsuit.

00:42:04;13 - 00:42:31;21

Alan Beck

And, you know, the bottom line here is, the county was hadn't appropriated enough money to, let, police department, process these things. And, they were just sitting on these things indefinitely. And, gentlemen who have been waiting 18 months and, you know, I mean, that's another thing where it's not necessarily intentional.

00:42:31;23 - 00:43:01;07

Alan Beck

Lee. Restricting the Second Amendment, right. They just maybe don't care that much, and they just are not set up on how to do it. And, that's another thing. And, then, you know, I mean, there's, then, a lot of other challenges, you know, that, are, people just not really knowing. Maybe there's an effort to try to apply reserve.

00:43:01;10 - 00:43:10;09

Alan Beck

But people don't really know how to do it. And the courts are having some issues knowing exactly what they need to do to determine whether something is constitutional or not, you know?

00:43:10;09 - 00:43:31;10

Stephen Gutowski

Yeah. And so that's I guess that's the next like, I don't know, how has the standard really been viewed by a lot of these judges in the cases that you've, that you've litigated, like, are they do they do they because you've heard a lot of complaints from, at least from maybe you're more left leaning judges on the standard itself.

00:43:31;11 - 00:43:39;10

Stephen Gutowski

And it being, you know, this history based standard and it's too hard to apply in practice. I don't have you heard that deep what do you I.

00:43:39;10 - 00:44:03;05

Alan Beck

I've certainly heard that to a degree. And, you know, I, I have a case in DC right now where, you know, the judge has suspended page limits on, our briefing because she just wanted. She wants us to that, she didn't say this, but, I mean, the

square. What? She wants us to submit as much as possible.

00;44;03;07 - 00;44;34;14

Alan Beck

Both sides. She wants as much history because, you know, she probably doesn't know exactly, how she wants to apply the standard yet for Byrne. So she'd rather on the side of, you know, getting as much information as possible. You know, I have, had, other judges that, just, are. Yes. They're making a, good faith effort, but, you know, it's, it's still very early on.

00;44;34;16 - 00;44;55;18

Alan Beck

You know, this is not an indictment of Brown. This is just an indictment of charge. Know, after Brown versus Board of Education. I mean, there were several years, easily a decade of, lower courts just not knowing exactly what to do now, you know? And that's just true. Whenever there's a sea change law. So.

00;44;55;20 - 00;45;16;13

Stephen Gutowski

So do you, you know, the court's done one case where they've kind of, you know, where they've at least applied. Bruin in in, in Rahimi. Right. I assume you would hope that they continue to do that. So they kind of whittle down exactly how to apply this and where the will, you know, sketch out the limits on either side.

00;45;16;18 - 00;45;39;28

Stephen Gutowski

Yeah. That was kind of seemed like what he was doing was sketching out the limits on the, the, the straitjacket. So, so to speak, they said, this is neither a blank check or a straitjacket. And the Brahimi kind of puts puts the straitjacket side of things in context. For the majority of the court, at least, that's, and then they haven't done anything on the other end of the blank check side, right?

00;45;40;00 - 00;46;06;12

Alan Beck

Yeah. I mean, I just think that it needs to do I mean, it's if the court doesn't take cases, it's going to, drag out this period where the trial courts are just having a real issue on, how to exactly, apply the standard. You know, there needs to be a lot more cases taken. I'm hopeful right now that, the Supreme Court will take the Snopes petition.

00;46;06;12 - 00;46;08;09

Alan Beck

And Snopes petition is.

00;46;08;12 - 00;46;09;23

Stephen Gutowski

Maryland's assault weapons ban.

00;46;09;29 - 00;46;32;09

Alan Beck

Yes, assault weapons ban. That's currently before the court in my case, there's a circuit split between the Second Circuit. That's the New York courts and, my clerk on the default real issue. And so I think that's pretty at it. And I don't think it's controversial, really. That law and, you know, the fact that you think.

00;46;32;11 - 00;46;35;11

Stephen Gutowski

Do you think it should be pretty straightforward for them to strike down the event that.

00;46;35;14 - 00;46;37;11

Alan Beck

I'd like to fix? So.

00:46:37;14 - 00:46:38;03

Stephen Gutowski

Yeah.

00:46:38;05 - 00:47:10;11

Alan Beck

But, it's but, you know, I mean, when you had the second Circuit, which is not a conservative court, you know, strike down law and you see the Ninth Circuit with identical history and Idaho law upholding it. I mean, that's a very clear indication that the courts need some guidance on this issue. You know, the Supreme Court does need to give that guidance, or else, you know, there's got to be a lot more opinions saying, we don't know, what we're doing here.

00:47:10;14 - 00:47:30;02

Stephen Gutowski

Right, right. Well, hey, maybe they will take up your case and we will get that guidance. That's something we will, we will look forward to covering if it happens. And, and, and people, like I said earlier, they should have to reload and check out your analysis piece on the, the sort of age restrictions and the history of that.

00:47:30;05 - 00:47:37;14

Stephen Gutowski

And, you know, otherwise what where can people find more of, you know, follow more of what you're doing?

00:47:37;17 - 00:48:01;22

Alan Beck

Well, I have a, a professional Facebook page. If you look for Attorney Alan Beck on Facebook, you know, I typically I post about some of my filings and I certainly post whenever I, we get a result, a decision or some sort of settlement in one of our cases, you know, and, so that's probably the best place again.

00:48:01;25 - 00:48:04;03

Alan Beck

Attorney Alan Beck on Facebook.

00:48:04;05 - 00:48:14;26

Stephen Gutowski

All right. Great. Well, we will, we will have to have you back on once we get some more news on some of these cases. But that's it for now. And I'm going to hand it off to, myself to tell you guys a little bit about The Dispatch.