

Stephen Gutowski (00:04.069)

All right, welcome ladies and gentlemen to another episode of the Weekly Reload podcast. I'm your host, Stephen Gutowski. I'm also a CNN contributor and the founder of thereload.com where you can head over and sign up for our free newsletter today. If you want to keep up to date with what's going on with guns in America, you get one email every Friday that keeps you in the loop. And of course you can buy a membership if you want even more access to exclusive pieces that you will not find anywhere else. This week we are discussing the NRA.

the show, but this time I think it's probably relatively good news for the NRA. This is we're discussing the First Amendment case that was just heard, the oral arguments just happened, at the Supreme Court, a case called NRA v. Vullo, and we have with us somebody who filed a brief in the case and somebody who was a First Amendment scholar on this topic, and that is Bob Corn revere from FIRE. Welcome to the show, Bob.

Bob Corn-Revere (00:42.212)

Thank you.

Bob Corn-Revere (00:46.762)

you

Stephen Gutowski (00:59.693)

Absolutely. Can you tell people a little bit more about yourself and your background and as well about fire?

Bob Corn-Revere (01:14.702)

year ago before that practiced in private practice for about 40 years, most recently at the law firm Davis Rights Remain where I was a partner for 20 years and had FIRE as one of my major clients and then came to FIRE full -time last April. FIRE, as I say, is the foundation for individual rights and expression but for the first 23 and a half or so years that FIRE was in existence it was called the

the Foundation for Individual Rights in Education and focused primarily on free speech issues in higher education. Then about a year and a half ago, expanded its mission, renamed itself current name, and focused on First Amendment issues in society at large. And so I came to FIRE to help with that mission. And as part of that,

participates in litigations like the NRA v. Vullo case where we filed an amicus brief.

Stephen Gutowski (02:15.509)

Right, and you've argued cases at the Supreme Court as well in the past.

Bob Corn-Revere (02:17.966)

I have, yes.

Stephen Gutowski (02:21.925)

So you have a lot of experience here and you wrote the brief for fire in support of the NRA's position in this case, right?

Bob Corn-Revere (02:29.354)

Along with other members of our team here at FIRE, I did file that brief and we had on that brief with us the National Coalition for <|pl|> Censorship, the First Amendment Lawyers Association and the Rutherford Institute.

Stephen Gutowski (02:43.557)

Okay, right. And so, so you know, the fires position in this case is one that's in support of the NRA, just, just so people are understand that. But I do want to have you on to try and give your reaction to what we heard in these oral arguments. But first let's, let's discuss the basics of this case, right? This is, this is a case that goes back several years to 2018 in the wake of the.

Bob Corn-Revere (03:09.806)

Yes.

Stephen Gutowski (03:11.525)

the Parkland shooting, there was a lot of anti -NRA sentiment at the time and companies were dropping their affiliation with the group. At the same time, the NRA had been selling a concealed carry insurance program that New York officials didn't like and found that parts of it were unlawful under New York law. And so they investigated these insurance programs.

and ultimately the insurers were forced to stop providing. The NRAD worked with several large insurers, Chubb and Lockton and others in this program that basically were sort of subcontracting with them to handle the insurance part of the whole arrangement. And as part of this investigation and the resulting consent decrees where the insurance companies

agreed to stop working with the NRA. The administrator, the financial administrator at the time in New York, her name I think is Maria Vullo, right? She's the Vullo in NRA V Vullo. She had sent letters to these insurers and then also had, is accused of having a private meeting with, I believe it was Chubb, right? Where she had essentially,

Bob Corn-Revere (04:19.372)

Maria Vullo.

Bob Corn-Revere (04:35.63)

noise.

Stephen Gutowski (04:39.981)

told the insurers not to work with the NRA anymore because it would create reputational harm because of the NRA being the NRA's mission in gun promotion as she described it. And so the NRA sued over this series of this letter and the meeting and the atmosphere that created which resulted in the insurers being dropped, dropping the NRA and doing no business with them at all, including on any other kind of.

potential legal insurance policies. And so they argued that this was a violation of their first amendment rights as an organization. There's viewpoint discrimination going on. And so that's what this case stems from. Am I missing anything in that summary there?

Bob Corn-Revere (05:17.358)

Yes.

Bob Corn-Revere (05:26.062)

No, that's the gist of it, and it was a series of actions taken in 2018 that were designed expressly to target NRA because of its political viewpoints. And they were undertaken by state officials that have no jurisdiction over the gun rights issue, but instead were simply exerting pressure where the state could to advance the state's political views on guns.

and you can agree with them, you can disagree with them, it doesn't matter. The question in this case is whether or not it's a legitimate use of state power to leverage regulatory authority over one sector of the economy to put pressure on businesses to have them essentially not do business with the target of your political position.

Stephen Gutowski (06:16.293)

Right, and so the NRA went through the lower courts. They lost at the appellate court level in this case, but then when they appealed to the Supreme Court, the high court decided to accept it, right? And actually you had the ACLU at that point agreed to represent the NRA in oral arguments. And actually you also had...

Bob Corn-Revere (06:33.164)

Yes.

Stephen Gutowski (06:44.197)

the Solicitor General, the representative of the United States government, the Department of Justice, filing a brief that was not in support of either side, but which, and I think the ACLU lawyer pointed this out during oral arguments, more or less sides with the NRA, agrees that there was at least a plausible First Amendment violation here. Now, and I actually guess this is an important point to get to. Can you explain?

the state of this case. This is not the merits of this particular case, right?

Bob Corn-Revere (07:15.374)

No, none of the courts had gotten to the merits. The district court had rejected the state's motion to dismiss the case, saying that there was a plausible First Amendment claim for this sort of indirect pressure to affect someone's First Amendment rights. It went to the Court of Appeals and the court agreed with the principle that indirect pressure can violate the First Amendment, but that no plausible case had been alleged in the complaint that would violate that standard.

and so it then dismissed the case and that's the basis on which this was taken to the high court. None of the merits have been decided. This is all based on the allegations of the complaint.

Stephen Gutowski (07:56.197)

That matters a lot in this case, right? Because it determines sort of the bar you have to clear in order to win if you're the NRA, right?

Bob Corn-Revere (08:06.062)

Well, the bar you have to clear even to get a day in court, right? You still have to.

Stephen Gutowski (08:09.861)

Right. But to win this, this like section of the case that we're, we're discussing the whether or not they're just deciding whether or not there's the motion to dismiss should, should be upheld. Right. So it's a lower standard, right.

Bob Corn-Revere (08:21.966)

That's right. And so if the NRA wins at the Supreme Court, that gives them a do-over in the lower courts. It doesn't mean that decides the case.

Stephen Gutowski (08:29.221)

Mm -hmm. Right.

Yeah, they'd have to go back down and hear all this on the merits and prove like the meeting that we're discussing that have to present evidence of that that happened the way that they claim and so on and so forth, right?

Bob Corn-Revere (08:43.374)

That's right.

Stephen Gutowski (08:48.133)

And so, you know, that seems like it gives the NRA a pretty good starting place, right? It's a little bit lower. They don't have to win on the merits here. They have to win on the basic concept that this could be a First Amendment violation, right? Okay.

Bob Corn-Revere (09:03.247)

Well, that's right. I mean, what this is about is the underlying principles of the case and not about the case itself.

Stephen Gutowski (09:08.325)

Yes. And so, so the question here is if everything the NRA alleges is true, they're assuming that it's true at this point, that does that constitute a First Amendment violation? And so, yeah, so let's go through your brief. Can you explain to people why you do think it does amount to a First Amendment violation? What Vulu did?

Bob Corn-Revere (09:17.74)

Mm -hmm.

Bob Corn-Revere (09:36.078)

Well, what we tried to say in the brief is to take the politics out of this. This is really just a question of legitimacy of state power when it comes to putting pressure on private actors and their speech. And one of the things that we tried to point out is that these kinds of end runs around the rule of law and around the First Amendment have happened in direct proportion to

First Amendment principles being defined and upheld, you know, when you establish what the First Amendment law is, one of the tactics that governments will use is to try and find a way around it, to say, this isn't a regulation, we're not restricting speech, we're just engaging in our own speech or something like that.

And so the question is when does informal regulation rise to the level of something that violates the First Amendment every bit as much as a law that was passed. Let's say New York State had decided instead they were going to pass a law that said no one can do business with the NRA because we don't like what the NRA stands for.

Well, a direct regulation like that, a direct law like that, would be obviously unconstitutional because, as an under - established law, the state doesn't get to put its thumb on the scale and decide which viewpoints are acceptable and which are not. And so this was an attempt to see if they could achieve the same objective, but by informal means. And that's what we talked about in the brief, that there are many ways in which state governments, or actually government actors at all levels,

try and put pressure on private actors to achieve the goal that they set out to achieve, but to do it without getting in the way of having the First Amendment get in the way of that. This is a principle that's long established in constitutional law. The basic...

Bob Corn-Revere (11:36.314)

landmark decision that was at the heart of this case is one from 1963 called *Bantam Books versus Sullivan* and that's really the paradigmatic example of this kind of informal pressure that violates the First Amendment. And so the question in this case was do the facts that were alleged in the complaint rise to that level?

Stephen Gutowski (11:59.621)

And obviously your answer was yes.

Bob Corn-Revere (12:02.062)

Our answer was yes, and we tried to trace the history of that a little bit to talk about why this is so important.

One of the things that led to *Bantam Books*, for example, was the fact that the Supreme Court during the period that led to *Bantam Books* had issued a number of decisions that were increasingly defining what First Amendment law means. In 1948, it decided a case called *Winters v. New York* that struck down a New York law that tried to regulate books basically out of

books that, in the words of that New York law, amassed stories of bloodshed and lust. Okay, and so that law was struck down in 1948 and it was a landmark decision then. About nine years later, the court returned to the subject in a case called *Butler versus Michigan* that restricted access by minors to books, but it adopted a very broad law. In the court...

unanimously said the state cannot reduce adults to reading only what is fit for a child. And so as the court was getting clearer in drawing a line between what kinds of books the state could regulate,

One of the tactics that arose from that were efforts to create these informal lists that were not enforced by law, but just recommended by members of government. You have citizens committees being set up and so on. And this happened all around the country. Detroit had a very active process for this. But in Rhode Island, they adopted something called the Commission for Morality and Youth. And they would...

Bob Corn-Revere (13:44.212)

distribute a list of what they called inappropriate titles and the Commission would distribute those to bookstores in the state and Even though the Commission had no enforcement authority It couldn't sanction anybody for Carrying those books it could recommend prosecution under the state obscenity laws, but that's all it could do but some

something else that would happen is that they would, the state authorities would send police officers around to the bookstores and just say, are you still selling these books on the list? So it wasn't a surprise that the bookstores stopped stocking the titles that were on these lists. So again, it was not a direct regulation of speech. It was this indirect nudge. It was indirect pressure. And the court... I'm sorry.

Stephen Gutowski (14:28.357)

Right.

Stephen Gutowski (14:35.333)

sort of an implicit threat about it was kept bantam books it's kind of an implicit threat to bookstores booksellers that if they keep stocking certain books on this list that maybe they'll get reported for violating obscenity laws.

Bob Corn-Revere (14:43.598)

That's right.

Bob Corn-Revere (14:51.79)

That's right. And the court held that that was an informal prior restraint on the sale of books. And it was more dangerous than a direct regulation, because if you have a law that directly regulates books, you get due process, right? The state has to prove its case in court. You can defend and all of that. But this informal pressure comes with none of those procedural due process protections that you have with the direct application of law. And so these indirect

measures that governments take to restrict speech are even more dangerous in a couple of ways. One, you have this just amorphous sort of threat hanging out there that is very broad and very vague. And then you also have no recourse to the protections of law if you've got speech that is targeted for suppression.

Stephen Gutowski (15:44.517)

There's no way to appeal that the in Banton books that these committees, there was no way to appeal their decisions or whatever.

Bob Corn-Revere (15:46.03)

That's right. And so this principle established in Van Tumb Books that informal pressure violates the First Amendment is very important, but has not been all that well defined in the 60 years since that decision came down.

Stephen Gutowski (16:07.525)

And so how do you connect that to what happened in the NRA case?

Bob Corn-Revere (16:11.534)

The connection is you have state officials who are not operating under a direct grant of power, but they are using an intermediary, in this case the insurance companies, and putting pressure on them to penalize the NRA for its speech. The goal is the same in both cases. As in Bantam Books, they wanted to suppress certain books. In this case, it wants to suppress certain speech, and that is the advocacy by the NRA. And they are using a third party as the tool.

by exerting pressure on them of either promising leniency in the way they regulate the insurance companies or simply in exhorting them and threatening them to stop doing business. That then leads them to undermine the NRA in its business operations and thereby restricting its message.

Stephen Gutowski (17:04.293)

Right. And because the Vulu herself had this meeting and she had said, if you agree to stop working with the NRA, we

Bob Corn-Revere (19:59.374)

Yeah, well I try never to make predictions after oral argument.

And I can tell you from experience, when you do an oral argument, every oral argument is three arguments. It's the argument you plan, the argument you give, and the argument you wished you'd given. And so all you can really tell coming out of an argument is basically how did you feel? Did you feel it trended in your direction or not in your direction? And those feelings can betray you because you can come out of an argument feeling really good and lose the case.

Stephen Gutowski (20:33.349)

Sure.

Bob Corn-Revere (20:33.616)

I can feel coming out of an argument thinking, got this shit beat out of you, and in the end you prevail. I mean, so it really depends on a lot of different factors. And one of the factors that was important in this case is the idea that this was a double header. This was two arguments, both of them related to the issue of jawboning or the issue of the use of government power to restrict speech. The first of them, which you might say is the headliner,

Stephen Gutowski (20:57.901)

Yeah, Murphy.

Bob Corn-Revere (21:01.07)

uh... murphy versus missouri had to do with the biden administration's accusations of the biden administration had been pressuring social media companies to change their moderation policies and so exactly and so the argument in nra versus bolo while it raised the same basic first amendment problem in a somewhat different context followed an hour and a half of argument

Stephen Gutowski (21:13.701)

Right, to remove like anti -vax posts and various other posts they didn't like.

Bob Corn-Revere (21:31.138)

this other issue that raised some even more complicated factors given the relationship between government and social media companies. So it's hard to evaluate the argument presented in NRA versus Vullo given the fact that it came on the heels of the first argument of the morning. And after an hour and a half of talking about this issue in the Murthy case, it could just be that everyone was pretty much exhausted. So...

the argument in NRA lasted only about two -thirds of the time that the argument did in Murthy v. Missouri. If you follow the transcript, you'll see that some of the questions that the Justice would ask would say, well, as in the first argument this morning, I was talking about this, and here's how the issue is presented here. So, it's all a long wind -up, I understand, for getting to evaluating the argument. But,

I will say that I came out of the argument feeling pretty good for the position that we had advanced, thinking that the court really seemed to be disposed to understanding when government pressure went too far. The same question came up in this case as it had in the earlier one, and that is how do you

How do you set the line on what is going too far? And that was part of what distinguished the NRA's position from the federal government's position. As you mentioned, the Solicitor General had filed a brief in support of the NRA, but only partially in support of the NRA, saying that certain activities appeared to go too far, while others did not. They were within, it believed, the lawful authority of government to speak from the bully pulpit and to advocate positions.

I think when you look at our position at least was when you look at all of those actions taken together and You know given how they were part of a uniform campaign that it's really hard to separate them out and that They were all examples and examples that reinforced each other of the government trying to leverage its regulatory power for illegitimate ends

Stephen Gutowski (23:45.861)

Right, and I mean, I'll say that I thought that the NRA case went much better for, because you guys also filed a brief in support of the Murphy plaintiffs, I guess, in that case, right?

Bob Corn-Revere (24:01.55)

Well, they were the plaintiffs in the lower courts. They were the respondents in the Supreme Court because it was the government that was appealing. And yes.

Stephen Gutowski (24:09.285)

Right. But you, you're in both cases, you take the position that the government went too far and violated the first amendment. Uh, it did seem like, and maybe this is just, like you said, could just be exhaustion from arguing about the same basic concept for so long, but it felt like they were the justice could see a more straightforward path in this one. Uh, perhaps.

Bob Corn-Revere (24:13.902)

We did.

Bob Corn-Revere (24:20.59)

Thank you.

Bob Corn-Revere (24:29.114)

Well, one of the things that made the NRA case perhaps more straightforward is because you had a less complicated record to go through. I mean, in the NRA case, you had a couple of guidance letters, a meeting, you had a press release from the governor, you had a limited set of facts that really focused in on where the problem might be.

That's not something you can say about the Murthy case where you have a 20 ,000 page record, you have all kinds of contacts between various actors in the federal government and various internet platforms. And so...

parsing through all of that to find where the government had overstepped, and by precisely how much and by what means, is a much harder thing to identify. And many of the questions that came up in the first argument had to do with that complicated factual record. And so it's, I think, easier to come away from the NRA argument having a more firm...

feel or a more firm conclusion on what the court might do as opposed to the first argument.

Stephen Gutowski (25:39.717)

Yeah, especially because Vulu was pretty, and of the other New York officials you mentioned, the governor Cuomo was pretty straightforward about why she didn't like the NRA, right? You know, she didn't like them because they're a gun promotion group, as she called them, and she talked about this in her letters about why people shouldn't work with them. And I mean, um, uh,

Bob Corn-Revere (25:49.23)

Yeah, there wasn't much ambiguity here.

Bob Corn-Revere (26:00.436)

Exactly. And the governor is saying that working with the NRA sends the wrong message. Well, if your justification as a member of government is that you want to prevent someone from sending a message, you might have a First Amendment problem.

Stephen Gutowski (26:05.957)

Right.

Stephen Gutowski (26:16.485)

Yeah, but there were still, of course, in oral arguments, a couple of interesting points brought up by some of the justices

on these actions. I think it was, I mean, Brown Jackson was clearly the most skeptical, I think, of the NRA case, or at least her questions were the most skeptical in probing in that regard. And I think Justice Kagan had a couple of really solid...

Bob Corn-Revere (26:42.67)
you do.

Stephen Gutowski (26:45.221)
as well that we're on the skeptical side. The first one is, you know, this NRA case is intertwined with a regulatory action taken by Valu against what it seems like everyone agrees were illegal provisions of some of these insurance policies, at least under New York law. They don't seem to be illegal everywhere in most places in the United States, but I guess New York law.

is perhaps a bit different. And so the question here is this carry guard insurance program that got them in trouble, they had these insurers in trouble, that perhaps that it was illegal and therefore the actions were justified on that basis that they actually had done something wrong and that using this first amendment.

defense, there was some concern that basically any advocacy group that faces some sort of regulatory action or some sort of consequences for things they've done wrong, laws that they've broken, the fact that they could use this kind of defense might just undo regulation of any advocacy group was kind of one of the points at the extreme end, I guess.

Bob Corn-Revere (28:04.302)
Right, and that was one of the points that Justice Jackson tried to probe with some of her questions. I think many of her questions are directed toward getting a handle on some basic First Amendment concepts. But also there was that question. And this isn't a question of whether or not you can use the First Amendment as a get out of jail free card, right? I mean, the NRA was not arguing that.

New York State cannot regulate its insurance programs or impose, say, a sanction for its insurance programs if it crossed the line. And I have no opinion on that. I don't know the first thing about insurance law. So let me be clear about that. But that wasn't their argument, though. Their argument wasn't, you shouldn't investigate us or you shouldn't.

Stephen Gutowski (28:47.077)
Sure, fair.

Bob Corn-Revere (28:54.548)
regulate our insurance programs, our affinity programs with other insurance companies, their argument was you can't use the regulatory authority that you have for an improper purpose to silence our speech, which was what the direct and really express aims of the New York State regulators were. I mean, think of it if the infraction had been someone gets a parking ticket and...

then you say, well, people who get parking tickets shouldn't be able to go to a political rally. The two are unconnected. And you're not saying that because I'm going to a political rally, you can't give me a parking ticket, right? The argument is you can't leverage that exercise of government power, whether or not it's legitimate, for an improper purpose. And that's what was at issue here.

Stephen Gutowski (29:43.909)
And I guess the other point on that front that I heard in arguments from I believe from the ACLU lawyer was that they didn't just punish, they didn't just punish them for the provisions that they were alleged to have violated in these insurance agreements. They kept them from working with the NRA at all in any potential future. No, that was also noted by the justices as well.

Bob Corn-Revere (30:06.51)
That's right, there were provisions and consent decrees with some of the insurance companies saying that they couldn't do business with, or they would refuse to do business with the NRA, not just in New York, but anywhere in the country.

Stephen Gutowski (30:17.829)

Right. Okay. And then as part of that Jackson also brought up, uh, she was, she had questions about, I guess, the limits of the Banton books case that we discussed.

saying that she had concerns about extending this to third party entities that aren't directly involved in speech, because Banton Books, the third party were booksellers, and so sort of more obvious straightforward connection between how it's censoring speech in that regard or affecting speech. Whereas here it's insurers working on insurance programs.

And so the sort of direct line to speech is a little bit murkier. That was something she brought up. What did you make of that exchange?

Bob Corn-Revere (31:02.862)

Yeah, I think that that was, and again, I think this is directed toward getting a better handle on some basic First Amendment concepts. The Banton Book's principle applies not just to direct pressure placed on the speaker. What's important here is the government's objective. The government's objective is to restrict someone's speech.

And the question is, can they get there by indirect means? Here, what they were doing was putting pressure on business affiliates and saying, if the business affiliates do business with someone whose speech we disapprove of, then we can censor that speech using that mechanism. It is an indirect method of censorship. It's similar to what happened in a case that I argued about eight years ago.

Backpage .com versus Dart, which was a case decided by the Seventh Circuit. Judge Posner wrote the opinion in that case. And in that case, you had the sheriff of Cook County threatening the credit card companies, saying, I don't want you to do business with this website because I disapprove of the website. And there the Seventh Circuit was really quite clear, even though the credit card companies have nothing to do with speech themselves.

Stephen Gutowski (31:59.013)

And this was brought up in the oral arguments as well.

Bob Corn-Revere (32:24.782)

they are the pressure point that the government uses to try and censor the speech that it does want to restrict.

Stephen Gutowski (32:32.901)

And so, you know, those were some of the examples of the more skeptical aspects. There's also, of course, talk about the distinction between DOJ's position and the NRA's position on this, which, you know, DOJ was mostly focused on the meeting, the alleged meeting where Vula was said to have pressured, I think you said it was Lloyds of London in that case.

into dropping the NRA in exchange for more lenient treatment on other potential infractions that the company had racked up. And the DOJ or the government's position was that that's clearly crossing the line, but maybe the other actions aren't, especially the guidance letter, or at least they had this thing about like,

Bob Corn-Revere (33:04.93)

Yes.

Stephen Gutowski (33:25.989)

four paragraphs of the guidance letter were okay speech and then maybe the last paragraph slips into.

Bob Corn-Revere (33:31.246)

It was kind of the other way around. It was like four paragraphs stating a manifesto on guns and gun advocacy and why it needs to be restricted, and then a paragraph of how this could be reputational risk. And so, again, it was essentially restating the state's political position and then using this hook to...

Stephen Gutowski (33:44.483)
Right.

Bob Corn-Revere (33:54.894)
connection to the area of regulation and saying we're going to use this to persuade you not to do business.

Stephen Gutowski (34:06.853)
I mean, I don't do you think there's any practical like with how the court might rule on this. Do you think there's much of a practical difference between the government's position and your position or the NRA's position?

Bob Corn-Revere (34:17.708)
Not in the not in the overall outcome in that if the Solicitor General's position prevails, it will essentially still send the case back for trial on the merits. What they're trying to do is carve out sort of a narrower way to get there. Can they uphold this First Amendment rule, the Vanton Books rule, but do so by focusing on a narrower range of

government action and this is action where you actually have a regulatory action taking place.

Our position is the broader one and the position that similar to what the NRA was arguing and that is it isn't just limited to actual regulatory actions where you're writing these things into consent decrees. It can also include threats of action even where the government may not have full authority to do a particular thing. They can certainly make your life difficult in a number of ways. And so threats of government action and not just government action itself.

should still qualify for this kind of informal violation of the First Amendment or violation of the First Amendment by informal means. And so that's why I think the broader approach makes more sense and we'll see if the court wants to carve a narrower path or whether it wants to have a broader path. And as I say, this is interrelated with the arguments that were presented to the court in *Murthy v. Missouri*.

because that was all about trying to locate the line where the government has gone too far or what actions by the government would be permissible.

Stephen Gutowski (36:03.525)
Right. And the other interesting thing on that point to me when listening to oral arguments were that I guess all the parties seem to agree, including Willow's lawyer, that the standard should be the same. They all wanted the same standard. There's this second circuit test that is four parts. And I guess the disagreement is just over whether...

volvo viola, whether this whether she actually meets any of these standards and then the further disagreement between the government and the NRA is which of her actions meet the standard. Is that

Bob Corn-Revere (36:33.07)
Thank you.

Bob Corn-Revere (36:43.182)
Well yeah, and then that's actually fairly rare for a Supreme Court argument like that where people agree on the basic controlling principle and then the question is whether it was applied correctly. You know what was interesting here was that the Second Circuit in rejecting the NRA's claim did articulate, as you say, a four -part test that looks at the words that were used and the tone in which they were delivered, whether it was reasonably perceived as a threat.

whether or not there was some regulatory authority backing the government's claims and then whether or not it was threatening some sort of adverse result. And so those were the elements, non -exclusive elements, but the ones that you should look for. And it's interesting that everyone agreed that those were the, or at least relevant factors that should be considered. And then the question is really how to apply them.

to the facts that were alleged in this complaint. What was interesting is at one point Justice Kavanaugh just asked David Cole of the ACLU, are you good with those four elements and that being the test? And before David Cole could even

say yes, Kavanaugh said, well, that's enough for me. That's all I need to know. And so, yeah.

Stephen Gutowski (38:07.141)

Right. Yeah, he said it's fine. There was a pretty good joke in there too. I think Neil Cattell, who's representing Vullo, said that, I think he was asked by one of the justices whether, in a brief he said this was an easy case to decide in favor of Vullo. And he was asked if he stood by that and he said yes. And then when they got to the rebuttal from Cole, the ACLU lawyer representing the NRA,

Bob Corn-Revere (38:19.758)

Yeah.

Bob Corn-Revere (38:35.626)

There's one point on which we can agree. This is an easy case. Yeah, it did.

Stephen Gutowski (38:35.685)

he said the same thing. He was like, I think it's an easy case too. Yeah. Which got a laugh from the justices. So, you know, I guess after a full day of oral arguments on the same basic topic, they were in a, yeah. So, uh, yeah, it'd be really interesting to see where they come down, but that was, I think, a pretty fascinating aspect of this, this particular case is that everybody seemed to agree on the standard. It's just whether or not, um,

Bob Corn-Revere (38:49.55)

at that point in the day you can use a good laugh.

Stephen Gutowski (39:04.517)

It was applied right by the second, because the second circuit basically said, you know, some of these factors were hit, but base, but she was using persuasive language instead of threatening language. And so that, you know, that was kind of the crux. Yeah, that's where the disagreement comes.

Bob Corn-Revere (39:15.406)

Well persuasive language, if what you're saying is something on the order of you got a nice business here, it'd be a shame if something were to happen to it. And that's essentially the message in these sort of job owning cases where you have governments trying to tiptoe up to the line and hint very broadly that bad things will happen if you don't go along. And that's what I think what's so dangerous about these cases because where you do have

clear First Amendment standards, as you do in a matter like this. You can't pass a regulation or adopt a law that says that an advocacy organization can't take positions we don't like as a state. If you're permitted to hint broadly and rattle the saber of using state regulation to achieve the same result, then you've just undermined the rule of law.

David, yeah.

Bob Corn-Revere (40:20.71)

Look forward to it.

Stephen Gutowski (40:26.149)

Another case makes the intersection between sort of First Amendment and guns like this one did. I'm sure it won't pay, but yes, for people who want to follow fire, find out more about it or your work, how can they do that?

Bob Corn-Revere (40:32.206)

I doubt this will be the last one.

Bob Corn-Revere (40:44.046)

You can go to our website www.thefire.org and there you can find out about our cases and about everything else that we do.

Stephen Gutowski (40:54.629)

All right, wonderful. Well, thank you so much. We're gonna head on over to our news update now.

Bob Corn-Revere (40:59.47)

Thanks. Good talking to you.

Jake Fogleman (00:05.612)

Alright ladies and gentlemen, welcome to the news update. I'm contributing writer, Jake Fogleman, joined as always by Reload founder, Stephen Gutowski. How we doing this week, Steve?

Stephen Gutowski (00:14.22)

I'm doing pretty good. How you doing, Jake?

Jake Fogleman (00:16.236)

I'm doing pretty good down here in sunny Southwest Florida. Uh, recording from a new location today. Uh, viewers might see a new background, but that's where I'm at.

Stephen Gutowski (00:19.788)

Oh.

Stephen Gutowski (00:26.572)

Yeah, a little vacation. We'll talk about that at the end of the show. But yeah, what do we got going on Newswatch?

Jake Fogleman (00:29.388)

Sure.

Jake Fogleman (00:32.844)

Sure, so some of the newsletter links. One thing that happened this week from the AP, we have a new verdict in the sort of Crumbly saga. This time, Ethan Crumbly's father was just found guilty of manslaughter. This of course was the case of the Michigan high school shooting. Now we have both parents being convicted of negligence and manslaughter in this case, contributing to that terrible tragedy. So kind of a big deal that both parents now have been found guilty.

Stephen Gutowski (00:44.332)

you

Stephen Gutowski (01:01.868)

Yeah, absolutely. I think that's the takeaway for me is that it wasn't the first conviction wasn't a fluke, right? This is a separate jury, separate defense, and you had the same outcome. So, you know, obviously the facts of this particular case are fairly unique, mainly to me because of the meeting they had immediately before the shooting, which I guess the parents didn't take seriously enough, certainly the, what the jury found, but.

Um, you know, I would, I would imagine that everyone involved in that meeting would, should be, is at least somewhat responsible. Like, uh, you know, why was he allowed to go back into class after that? Obviously the parents hold responsibility, but, but, uh, you would think the school administrators do as well. Um, and then, you know, it's obviously also pretty interesting. There's, I think there was a reason, a piece in reason magazine, um, from, uh, Billy Binion who wrote about.

Basically, one of the points he made was, you know, they, the state charged the shooter himself as an adult so that they could get the greatest possible punishment, you know, life without parole, which I don't think anyone was opposed to that. But then they went and charged the parents for being negligent, um, with their child, which is, there's definitely a bit of a contradiction there. Uh, you know, the sort of having it both ways.

as the state in this case. And, you know, beyond that, I would also think my biggest takeaway from it, especially now having both of the parents being convicted in separate trials, is that this will probably embolden prosecutors to try more of these cases. You know, we'll see how successful they'll be. You know, again, it might just be the particular circumstances of this shooting, but I doubt that's going to keep.

Jake Fogleman (02:42.814)

you

Jake Fogleman (02:48.83)

you

Stephen Gutowski (02:58.252)

prosecutors, other prosecutors from trying similar cases, especially because the parents of mass shooters or the parents of of miners who go out and kill somebody are generally not sympathetic figures. You know, the crumbly ones are particularly unsympathetic given all the stuff.

Stephen Gutowski (03:29.484)

seem like.

parents.

Stephen Gutowski (03:36.812)

clear on that point, but you know, how far will this reach? How much are we going to see change in the way that prosecutors approach these sort of cases where a minor kills somebody or attacks somebody or uses their parent's gun in some criminal way? Yeah, I think things will change, at least on the, as far as what prosecutors are willing to try and charge.

Yeah, maybe I'm skeptical of the the latter point that it's gonna change how people handle their firearms or something like that because

Jake Fogleman (04:07.936)

Yeah, I think that's certainly still the open question and obviously raises some interesting implications on both side of the argument because you see some people that worry that it'll be abused and in cases where you know parents didn't really have much culpability and you have folks on the other side that say this is a good tool to help stop, you negligent actions resulting in shooting so be interesting to watch going forward for sure.

Stephen Gutowski (04:36.94)

I mean, if you're, maybe it will, right? I don't know, maybe the publicity of it all will get through to some people. But to me, like if you have a child and you have a gun and you're not securing it properly already, you know, you're already ignoring like the biggest possible downside, which is that your child hurts themselves or someone else with your gun. And I don't, you know.

Stephen Gutowski (05:05.324)

you more than that plane.

Stephen Gutowski (05:13.452)

to me that that would be the case for anyone but who knows.

Jake Fogleman (05:18.156)

Certainly. And the next story comes to us from the Colorado Sun. So out of big news out of my home state for the first time in the state's history, an assault weapon ban has passed a legislative committee. So the House committee gave it an official approval. It's going to go to the House floor. It's probably going to pass the House floor. So it'll be another milestone. It'll clear one chamber of Colorado's legislature. But beyond that, the future is a little bit murky for the bill. Viewers may recall last year, the assault weapon ban died in committee because there was some opposition from

both from the governor and some folks in the Senate that didn't want to take a tough vote on a gun ban. And there's still some more uncertainty over this one. Obviously got more progress than last year, but we don't know how far that progress is going to extend this far.

Stephen Gutowski (06:01.364)

Yeah, I mean, what are you hearing in Colorado? How do you think this will play out? The governor seems to be not

enamored with new gun bans per se. You know, obviously there was a lot of backlash in Colorado after they passed the magazine ban years ago, although, you know, hasn't stopped the political trend in the state, obviously, and they still have that ban in place. So I don't know. But Paulus maybe is...

trying to carve out a more moderate stake in the Democratic Party, especially maybe with eyes to the next presidential election cycle. How do you think it's going to?

Jake Fogleman (06:40.108)

Yeah. So when, when, when he was a Congressman, he was, went on the record saying he thinks that an assault on ban is unconstitutional. That was obviously several years ago, political winds have kind of changed on this point. Since then he's been intentionally, I think it's safe to say coy about where he stands on this bill. He won't, uh, you know, put his foot down one way or the other where he stands on the, on the effort. People close to him are saying that he's privately against this. Um, and I think that's probably true.

Whether that translates to him being willing to stick his neck out and veto it if it reaches his desk desk. I'm not so sure because like you said, I think the. The general sense is he has presidential aspirations going forward. And I don't know if you survive a democratic primary as a democratic candidate that vetoed an assault open ban, just with how popular it's become among the broader public, you know, in a general, it might help him with like swing States, but.

Stephen Gutowski (07:25.916)

Well, I don't think it's become very popular among Like political polling shows it becoming less popular. It's become Certainly a lot more of a dogma inside the Democratic Party than it was 10 or 15 years ago Is that what you mean? Like in the Democratic primary? It would be pretty hard. Oh

Jake Fogleman (07:45.324)

Right. A primary. Yeah. Right. Right. Yeah. It would be an easy thing for someone to run to his left and kneecap his chances of becoming the candidate. Um, so, you know. Yeah. And I think that's what he's trying to triangulate. He's hoping it doesn't get to his desk. So he doesn't have that attached to him when he does try to run and appeal.

Stephen Gutowski (07:53.524)

But I think if you're trying to run as the more moderate sort of option, it might make sense.

Jake Fogleman (08:10.028)

that he's cultivated over the last couple of years. So.

Stephen Gutowski (08:12.264)

Yeah, if he doesn't have to decide one way or the other, he could take whatever position he wants in the primary, I guess, but that's still four years away in theory, if that is his goal. So I don't know, and Colorado is getting increasingly blue. So I'd imagine this is gonna be an issue every single legislative session going forward.

Jake Fogleman (08:26.444)

I think that's what it seems to be. The legislature is becoming more and more progressive and I think they're kind of playing chicken with Governor Polis. Like, we don't care. We have all the power that we want. Now we have a huge progressive caucus in the legislature, so we're going to pass our priorities and see what you're going to do with it, Governor. So I think it'll be a story to watch for sure moving forward. It's definitely not a certainty that it'll pass, but it's also not.

Stephen Gutowski (08:45.876)

Yeah. Well, if it does pass one interesting thing that could happen is, uh, you know, Colorado is in a more conservative circuit as far as the federal court system goes.

Jake Fogleman (08:56.46)

unlikely that it is just gonna die, you know, there's definitely a chance.

Stephen Gutowski (09:10.22)

And if they pass an assault weapons ban, you're much more likely to see a circuit split develop. It's something we've talked about a lot on the show, right? With these hardware ban cases and something you've written about for members is like the one big problem with them right now, if you're a gun rights advocate or activist who's trying to get a definitive ruling against an assault weapons ban or a magazine ban, most of those laws are in very liberal circuits because...

liberal states tend to be the ones that pass them. And the Supreme Court is less likely to take up a case if there's no circuit split that develops in the lower courts. Now they can, it still happens, but it's much more likely that it'll happen if there's a split. And the only way you're gonna get a split to develop it seems on this topic in the lower courts is if a more, a state in a more conservative circuit passes one of these laws and that's where Colorado.

Stephen Gutowski (10:16.812)

If you're a gun owner in Colorado, it has an AR -15.

Jake Fogleman (10:31.66)

track down some data.

Jake Fogleman (10:37.228)

noted an 80 % increase in applicants for ownership permits because New York City requires you to get a permit just.

Jake Fogleman (10:53.804)

Obviously, in terms of a relative jump, that's a huge.

Jake Fogleman (11:00.492)

prior to recording, that's still fairly small numbers for how big of a city that is. And especially in comparison to other states, you dug through some of the numbers before we jumped on here.

Stephen Gutowski (11:10.696)

Right, yeah, I mean, I kind of got the feeling from the Gothamist piece that they felt that that was a huge increase and percentage rise it sure is, but 6,700 applications in a city of, I believe it's 6.4 million residents is, that is basically nothing, especially compare it to states of a similar size. So if you look at Alabama, which is actually smaller population than New York City, or you look at Indiana,

Stephen Gutowski (11:44.044)

both those states have over a million concealed carry permits according to the crime research center which which is a conservative nonprofit that looks at these or program nonprofit that looks at these these numbers does estimates of how many concealed carry permits are in each state every year and i think those are the 2022 numbers but still like gives you an idea of a couple thousand applications in a city that big.

I think gives you a lot of insight into how people in that city like one you would expect there's less appetite for something like like concealed carry in among New York City residents than there are among Alabama residents. There's probably a cultural Huge cultural difference there and I think Alabama is the largest In terms of the percent of people who have a concealed carry permit so even you know and in Indiana as well would be a pretty big

difference in culture as when it comes to carrying a gun. Because New York for generations now, the only people carrying guns are cops and criminals, basically. And so there's a very negative stereotype around.

compared to Alabama or Indiana.

Stephen Gutowski (13:11.916)

So that's part of it. But I think the other big part of it, to me, it implies like people understand that even if they get this permit, which is which they should be able to do now, New York City has tried to make they've tried to add several additional barriers to getting one. But I think the reason you see such a low number, my best guess is just.

probably because the state has made it so that the permits don't do much of anything.

carry most places. You can't carry on the subway. You can't carry anywhere that doesn't allow explicitly post a sign that says you can carry any business. You hit the like whole six sections of the city are off limits.

Stephen Gutowski (14:03.18)

are blocked off. So, you know, the list of prohibited places is so long now that the governor herself, at the time that they passed the law, said that the only places that you can realistically carry are like some sidewalks. And so while it is easier to get a permit or it's realistic to get one, you used to basically not be able to get one unless you were rich or connected inside.

Stephen Gutowski (14:30.956)

now that you can get them, they're not really useful yet because these, and there's obviously court cases that we've covered along the way where a number of these restrictions have been found unconstitutional, but they're all still in place for the most part because they are still pending legal challenges. They're still making their way through the federal courts at this point. And so if you get a permit today, you're not going to be able to do very much with it. And I would, that's my guess as to why you're not seeing a much larger.

Plus you can't get one if you're not from the state too, is another big thing.

Jake Fogleman (15:07.148)

Right. Yeah, no, that's a good point. Yeah, it's the relative jump is.

Jake Fogleman (15:16.172)

low number compared to the population.

Jake Fogleman (15:21.1)

and several months of your life, or if not longer, worth of hoops to get a permit that, like you said, is probably not worth much anyway when you do get it. All right. Then getting into some of the stories we wrote this week, we actually published an interesting, so dual analyses about a court case that we covered last week, where a federal judge ruled that the federal gun ban for illegal immigrants was unconstitutional as applied to one particular illegal immigrant. And so we brought on to...

Stephen Gutowski (15:23.612)

Yeah, not super useful.

Jake Fogleman (15:51.012)

gun rights scholars, gun rights lawyers that had dueling interpretations of how that works under Second Amendment jurisprudence. So on the one hand, we had one, Matt LaRosier. I know we struggle with saying his last name.

Stephen Gutowski (16:03.748)

Fuddbusters would be another way, another name people know.

Jake Fogleman (16:06.188)

Same essentially.

folks may know him as.

Jake Fogleman (16:17.662)

Maros, who's been a guest on the show before and he's written guest posts for us before saying how he doesn't think that the current Supreme Court and their current understanding of second amendment jurisprudence would come to the same conclusion. So dueling outcomes, both fascinating pieces and both well written, I think.

Stephen Gutowski (16:22.772)

Yeah, I think they're great pieces and, and, uh, to be fair, I've had troubles pronouncing coasts his name when he was first on the show too. So there's these mats and good company there, but, um, yeah, I was really impressed with both.

especially, you know, you're dealing with lawyers who are usually writing legal briefs, so it was nice that they were able to translate that into a more of a news publication style for us so that the readers can kind of comprehend it a little bit easier, because obviously legal briefs are pretty dense and hard to understand for most people. So I thought they did a great job of articulating their viewpoints with evidence, with quotes and links.

to back it up in a way that's very manageable for, that's going to be accessible for a lot of people. And I thought they both had really good

Jake Fogleman (17:16.172)
you

Stephen Gutowski (17:29.068)
I'm interested in your point of view. I would say that I think Matt is right on the merits personally. And, you know, part of this is informed by your view of, of rights, I guess, you know, and how they're the construction of the government and what the constitution does and so forth, you know, guaranteeing rights versus establishing them. And,

Jake Fogleman (17:50.892)
you

Stephen Gutowski (17:57.516)
and your view of the history of citizenship and immigration in the United States and what that looked like in the founding era compared to today. And keep in mind, of course, that this case is about somebody who has no violent criminal record and that overstaying your visa or entering the country illegally is a misdemeanor crime. And so it's one of the few that we...

Jake Fogleman (18:00.812)
you

Stephen Gutowski (18:26.476)
bar from gun ownership or gun possession at all in the United States. That and basically domestic violence would be the other one. But obviously domestic violence involves violence, whereas illegal immigration doesn't necessarily, it doesn't have to obviously. And so, but at the same time, I think that Kostas probably is right about the Supreme Court.

Jake Fogleman (18:42.526)
you

Jake Fogleman (18:48.556)
you

Stephen Gutowski (18:54.7)
like this. I just I'm just skeptical of the court and its willingness to go by the letter of what it's written in Bruin all the time and you know they tend to be a more pragmatic group at points especially on gun related stuff. It's just like when we listen to the the bump stock case the oral arguments in that you know does

Jake Fogleman (19:12.702)
you

Jake Fogleman (19:19.532)
you

Stephen Gutowski (19:24.3)

leave you with the impression that they're going to be undoing the National Firearms Act of 1934 and the machine gun ban. They just don't seem up for something like that, even if there wasn't a similar regulation at the, or it's arguable whether a similar analog existed at the founding or not. So I don't know if that makes any sense, but I think Matt maybe has a better merits argument and Kostas has a better practical argument.

I guess is how it would sum them. Hmm.

Jake Fogleman (19:55.244)

Yeah, no, that's, that was exactly my takeaway as well. It's like under natural rights reading, uh, it's sort of like a normative versus empirical thing where it's like, yeah, this ought to be the way it's construed. If you look at how this Bruin test is laid out, it makes sense that it, illegal immigrants wouldn't be excluded from the people that are covered by the second amendment. But I think Costas is right on the money where it's, I don't foresee a Supreme court ruling saying that illegal immigrants now have gun rights under the second amendment. I just couldn't, it's hard to imagine that.

Stephen Gutowski (20:02.54)

Yeah.

Stephen Gutowski (20:13.79)

you

you

Stephen Gutowski (20:22.956)

Yeah, I would be surprised if they did.

I don't know, but Matt makes a pretty persuasive argument as to why it should fit under the Bruin standard and what the history was of these regulations. And of course, as Kostas notes, we wrote about one case. There have been other cases since Bruin that found the opposite way. But I don't know. It'll be interesting because if.

Jake Fogleman (20:29.004)

you

Jake Fogleman (20:45.414)

Right.

Stephen Gutowski (20:54.7)

see what the court does with range, because that's a nonviolent felon case right now. That's an American citizen in that case, but their crime was nonviolent and was treated as a felony under federal law. And so I don't know if they go for undoing the felon in possession ban. That's a pretty monumental thing to do. But maybe they would go for something like this as well. It'd be...

Obviously that raises a lot of practical questions if you do, because like how do you know what the criminal history is of somebody who's here illegally, for instance. So, you know, that creates all kinds of new issues, but I guess that's downstream of what we're, the basic principle that we're talking about here. Anyway, I think people should go and read, don't rely on, you know, what Jake and I think. Go and read the pieces yourself and see.

Jake Fogleman (21:27.874)

Right.

Jake Fogleman (21:37.676)

you

Stephen Gutowski (21:53.196)

where you come down, because I thought they were both really well argued. So I'm glad that we were able to publish

them.

Jake Fogleman (21:55.71)

you

Yeah, absolutely. Yeah. Listen, I should definitely go read those pieces. Um, and another story we covered this week, a big splashy report out of Maine. So there was an independent commission tasked by governor Janet Mills last year with reviewing the events that led up to the Lewiston shooting, which was the deadliest in that state's history. And then come up with after those hearings that they held to try to craft some recommendations for law enforcement to follow. So that something like that doesn't happen again. And so they just released their interim report.

So it's the first public report that they've done after they've held these hearings and they found that local law enforcement could and should have used Maine's yellow flag law that based on all the evidence they had, all the reports they were getting from other law enforcement agencies that had been dealing with the shooter and his sort of his descent into more erratic and violent behavior, as well as his fellow national guard members that were reporting things about his behavior. All of that was grounds.

according to this commission for them to invoke the state's yellow flag law. So that's a pretty big finding, especially because that law came under a lot of scrutiny after the shooting, obviously. People were saying, oh, there's too many hurdles. It's not a workable law. Clearly, they couldn't have used it here. So what good is it? And it's interesting that an independent commission came out and said, well, the law was fine. It just wasn't employed when it should have been.

Stephen Gutowski (23:18.412)

Yeah. And I mean, there was that recording of the police officer, the law enforcement officer who basically said he was not going by the book and how he handled this because he didn't want to create issues with a prominent family that the guy was the shooter was from. And so it sure seemed like there were a lot of points along the way where, where.

Jake Fogleman (23:28.692)

you

Jake Fogleman (23:38.366)

you

Stephen Gutowski (23:44.428)

not just that one officer, but a lot of people could have done things differently, I think. This report focuses on the local main law enforcement, but I think the hospital in New York where he was committed briefly, I'm interested in.

what they could have done more of. You know, this is, we talk a lot about, you know, how do we stop mass shootings? How do we prevent these things from happening? Well, this is certainly one of the cases where it's pretty clear to see how this one could have been prevented without any sort of need for drastic changes in policy or new laws or anything. Like this is something where we should have been able to catch this and stop this particular guy. Now it's not easy, obviously.

Jake Fogleman (24:20.638)

you

Stephen Gutowski (24:32.62)

in practice in real life. But this is one where there were so many warning signs and there were a lot of people who actually tried to speak up and make it known. You know, the military unit that he was with, several people from that unit tried to, you know, reach out to the local law enforcement to have him committed briefly. And, you know, and unfortunately, one of the problems you face in these situations is that if..

Jake Fogleman (24:38.924)

you

Jake Fogleman (24:48.492)

you

Stephen Gutowski (25:03.02)

you could have people do the right thing all along the way and somebody falls down on their obligation at some point, then something terrible like this can still happen. So yeah, I mean, I thought it was fairly clear from the reporting that we got shortly after that they probably could have done a lot more. And the path that especially local law enforcement chose,

Jake Fogleman (25:21.58)

you

Stephen Gutowski (25:32.62)

to try and use family to enforce the sort of gun restrictions that they were trying to, you know, they were trying to take his guns away from him. And instead they tried to rely on family, but they didn't even do a good job of that. They didn't follow up to see if anyone did anything or what have you, but it's terrible. It's a terrible outcome, right? Because it's especially because it was so preventable.

Jake Fogleman (25:58.54)

Right, no, that is I think that and they made that very clear in the in the report where this should have been prevented. They had all the tools they directly criticized going, you know the informal route relying on family to seize his weapons and make sure he didn't have weapons. They said that essentially is an outsourcing of law enforcement duty to private citizens. So yeah, definitely a frustrating outcome. They're still gonna be holding hearings and

They're planning to issue a final report later this year with some more concrete recommendations. So we'll be staying on top of that, obviously, to see what they come up with. But like we said, I think the general gist is this should have been prevented. The tools were all there. And it's just unfortunate that the follow through wasn't. And then the final story I want to get to today is one you wrote about sort of the state of fundraising among the gun groups heading into this election season and some rough news for the country's largest.

Stephen Gutowski (26:40.428)

Absolutely.

Jake Fogleman (26:52.786)

the NRA's fundraising is slumping, heading into what's normally a big time year for them, if you want to tell us a little bit about the numbers.

Stephen Gutowski (27:02.796)

Yeah, so they've fallen behind now the major gun control groups in terms of fundraising through February. The NRA brought in a bit under half a million dollars to its political victory fund, which is its PAC, its major political fundraiser. And whereas if you look at...

you know, it's, well, there's the PAC and then there's also the Super PAC. The Super PAC didn't raise much of all, much of anything on its own. Usually you see the Super PAC is funded by transfers from the NRA into the, from the PAC to the Super PAC. So that's not unusual, but overall they brought in less than half a million dollars. And if you look at the major gun control groups that they're competing against essentially, and have been for years now, every town,

Giffords and Brady together raised almost three quarters of a million dollars. In fact, Giffords itself, the Giffords pack, which is sort of the biggest player in the gun control side when it comes to political spending, they raised almost as much as the NRA itself. They were about \$17,000 behind in February. And so,

You know, this gap that used to exist between the NRA, the NRA has traditionally well out raised and out spent the gun control groups. The only year that that hasn't happened, the only election cycle where we haven't seen that happen for

the last 20, 30 years really, is it was 2018. And then in 2020, the NRA actually rebounded and out spent the.

The gun control groups, they outspent them again in 2022. This is, you even with everything else going on at the NRA, but by that point, the scandal had come out, but they'd still managed to outspend them. And so, out raise and outspend, right? And that's where this news is, you know, especially problematic for the NRA because they're not on pace to do that right now. It doesn't seem, you know, they're behind in fundraising from...

Stephen Gutowski (29:16.62)

through February, they're only ahead slightly in cash on hand right now. And that's only because they haven't spent anything really this year so far. They spent about \$75 ,000 from the political victory fund. And whereas you've seen some of the gun control groups have been spending half a million or more in the year so far. And the cash on hand gap is not that big. The Gennery has around 12 million.

And the gun control groups have, you know, a little bit less than that. Somewhere in the 11, between 11 and 12 million cash on hand. That means money they have in the bank at the end of February that they could spend for the rest of this election cycle. Um, and you know, it's not just compared to the gun control groups that you're seeing bad numbers for the NRA. It's also compared to their previous fundraising themselves, right? In 2020.

They had raised significantly more in February than they did this year. They had raised \$900 ,000. So it's almost double what they raised this year in February. And then in 2016, right, which was the year that they'd spent over \$50 million in the election to help boost Donald Trump to victory, they had actually raised \$1 .3 million.

in February alone. So about \$900 ,000 more than what they've raised so far or what they raised in February alone.

Stephen Gutowski (31:36.012)

the legal action, which is where you really have seen the other gun rights groups be much more involved these days. Gun Owners of America, Second Mental Foundation.

Stephen Gutowski (31:49.738)

NAGR, National Association of Gun Rights, those groups have really done a lot more in the legal realm than they have in the political spending realm. But just to give you an idea of where things are at right now, GOA raised \$500 in February. That's not 500 ,000, that's 500, 538 to be exact. They have \$17 ,000 cash on hand and they spent...

about \$850 in February. So that technically they spend a little bit more than they brought in, but you can look at, and to be fair, they're one of the only other gun rights groups that's even reporting on a monthly basis. Usually the larger groups will report on a monthly basis, but some will still do it on a quarterly basis. And that's, if you look at NSSF, which is the National Shooting Sports Foundation, the gun industry's trade group.

They do shot show, right? They do lobbying on the Hill. I think they're even spending more in lobbying today than the NRA does on the Hill. But, you know, they have a new pack, the Protect Liberty pack, and we don't know what they've raised so far this year, but as the end of 2023, they had raised just under \$100 ,000 and had \$2 cash on hand. It's entirely possible and very likely that they've raised more than that.

in the first two months of 2024, but we won't know because they don't report their numbers on a monthly basis like the NRA and the gun control groups do. USSCA has a pack as well. Similar situation in SSF though, in that they don't do monthly reporting, so we don't know what they raised or what they've spent through 2024. We only have their end of 2023 numbers and in 2023 they had raised \$1 .1 million and they had about \$171 ,000.

dollars cash on hand. So, you know, these other groups are not at all making up the slack for what the NRA has lost. And to be fair, the NRA, they still, like I said earlier, they still have a slight advantage in cash on hand over the gun control groups. So they have a little bit more of a war chest. I mean, it's not much more, maybe a couple hundred thousand dollars at most.

Stephen Gutowski (34:08.492)

But yeah, they're losing pace in this political spending race, which is an area that they had traditionally dominated. And I think it's a significant problem, not just for gun rights advocates, but I think for Republicans and specifically Donald Trump in particular, because Donald Trump has many of the same issues. The NRA is...

having to spend most of its total income, not necessarily this political money, but its total income on legal fees to fight these battles that they've been losing. They lost that New York civil trial, at least the jury section of it. We're still waiting on the second part, where it's more like the sentencing aspect. They haven't made any reforms whatsoever since losing. In that jury section of the trial,

current leadership is moving on as though nothing has happened. And that may be part of the reason why they're not raising as much money now. But if you look at Donald Trump's campaigning, he has basically the same issue where he's spending a lot of his money on legal fees and he's not raising as much as he did previously, compared to his opponent. You look at his numbers from February and Biden's numbers, President Biden's numbers and...

President Biden has a three to one cash advantage right now. He's got \$150 million cash on hand. Trump has about 50 million. Trump raised about 20 million in February, whereas Biden raised about 50 million. So Trump is going to, now he was way behind in the spending last time around, not three to one, but maybe two to one. And he was way behind in 2016 as well, the race that he won.

Um, and so money is not everything to be clear, but, uh, that 2016 race, uh, where he was, I think also about two to one behind Hillary Clinton. Uh, he did have the NRA as, as one of the major outside groups spending on his behalf, or certainly at least mostly against Hillary Clinton, but, uh, but, you know, spending big in the race. And that's just not going to be a, it doesn't look like it's going to be an option this time around for sure.

Stephen Gutowski (36:34.06)

So this all pretty important relevant stuff if you care about where the selection is headed at least.

Jake Fogleman (36:42.86)

Yeah, certainly. And it's sort of a, not only is it just a bad sign for the NRA, you know, in light of all their legal problems and the internal scandals, but it sort of underscores our broader point that we've been making about the continued relevancy of the NRA despite all that. Because as you pointed out, when you ran down some of the finances for the other ground groups, not all, you know, you left some of the groups aren't even on this list of, they don't even do political work.

Stephen Gutowski (36:57.14)

Mm -hmm.

Jake Fogleman (37:05.868)

And the ones that are, aren't anywhere close to the NRA's political operation. So it still matters what happens to the NRA. It still has relevancy for the state of gun politics and whether guns can even play a role in elections. Just, you know, despite the NRA's shrinking size and stature, it's still far, you know, far greater reach than all the other groups. So it's a big deal.

Stephen Gutowski (37:26.252)

Yeah, basically. I mean, it's just, you see these other groups coming up in, and if you're looking at what they do practically, you know, there's obviously a lot of stuff they do in media or the things they talk about, or they advocate that way. And that's maybe a more intangible sort of benefit. If you just appreciate the, their approach or their vision, um, and you like the way that they advocate for it in public, you know, that, that could certainly be.

perfectly legitimate reason to support a group, but if we're looking at, you know, hard dollars where they put their money and things that have a tangible outcome to them, you know, the most of that work that those groups do is in the legal field, which to be fair to them, right, is where a lot of action is. I mean, there's a lot of opportunity there at the moment, so it's understandable. But nobody is really picking up the slack in any sort of way that is going to offset the

the decline of the NRA in this political spending realm, which is also important, you know, because even beyond obviously the Donald Trump presidential race situation, like the NRA uses a lot of this money in down ballot races too, which are sure look like they're gonna be increasingly hamstrung, especially with Trump's takeover of the RNC and the potential for him to use even the RNC's money for his...

legal fees, we don't know if that's going to happen or not. They've said won't, but it's not entirely clear. And, you know, so these other candidates down about, even if you don't like Donald Trump, for instance, but you want your pro -gun Republican congressman to win. Well, that's another place where the NRA has traditionally played a major role and will not be able to do, it doesn't appear the same thing going forward. I mean, they're...

And I don't know any reason why we would expect their numbers to rebound at this point. This is a group that just lost their corruption trial in New York, has made no effort to reform themselves whatsoever from as current leadership is going now and is still basically in legal limbo until July when the second half of this case comes.

Stephen Gutowski (39:50.668)

And so it's hard to imagine that if you're not already giving money to the NRA through all of that, that you would start doing it now while they're going through all of this. It just doesn't, it seems unlikely. It could happen. Maybe they have some plan they haven't articulated yet, but I would expect that it's just gonna be, you're gonna see numbers like this going forward where it's gonna be.

they're not going to match their 2020 totals, most likely. But we'll, you know, we will keep on top of it, of course. And if it does improve, we will report on that as well. Like, I know a lot of our reporting is negative. But, you know, when positive things happen like this, honestly, I think the what the main part of this podcast was about, you know, their first amendment case at the Supreme Court is a positive development for the NRA. And

So we report on it as it comes, whether it's positive or negative. We just try to be honest with how things appear to be going from what we can verify and report.

Jake Fogleman (41:00.172)

Yeah, absolutely. Like you said, we'll keep on top of the trends as we head closer to the election. But yeah, they're getting their wins at the Supreme Court or looking like they're going to get their wins at the Supreme Court. But at least on the financial side, it's not looking so great.

Stephen Gutowski (41:08.748)

Looks like it.

But yeah, what I imagine is looking great is the view from Florida here is like a spring break thing for you. Is that what's going on?

Jake Fogleman (41:18.848)

Yeah, nice segue there. That was pretty good. Yeah, not quite a spring break. It's a vacation. We, you know, it just happened to line up where my girlfriend had some downtime at work and we're looking to get out and do something on our own. We've a lot of our vacations lately have been.

Going to other people's weddings and that sort of a thing. So we wanted to finally get a chance to do something for ourselves. So we came down to Florida and yeah, yeah, I gotta say the views are looking good down here. The weather's beautiful. It's sunny. It's a lot better than Colorado where we just got like a foot of snow. So I'm enjoying myself.

Stephen Gutowski (41:40.396)

Mm.

Stephen Gutowski (41:50.476)

Yeah, yeah, for sure. It's nice to get away for a while whenever you can. My girlfriend's really into the cherry blossoms

here in DC. So we've been doing a lot of that while they're in peak bloom, which is like a, you know, only only happens for like a week or two. So you have to go out and walk around the trees and take pictures and stuff. And she loves that. So it's fun. We get to do it. It'd be a good time. That's what we're.

Jake Fogleman (42:02.348)
So nice.

Stephen Gutowski (42:20.044)
That's what I'm going to be up to this weekend.

Jake Fogleman (42:22.604)
Very nice. Yeah, the cherry blossom season in DC is awesome. I got a chance to do that a few years ago, so that should be fun.

Stephen Gutowski (42:27.916)
Yeah, it is really nice. It's genuinely beautiful. So especially around, you know, the go to the title base and you see all the monuments, you see Jefferson Memorial. It's it's quite beautiful. So that's one of the one of the nicer aspects of Washington, D .C. for sure. So I'm looking forward to doing that with her this weekend. And again, because we kind of already did it. She really likes the J .S. stuff. So.

Jake Fogleman (42:52.492)
Hehehehe

Stephen Gutowski (42:55.468)
But, you know, she'll come and do stuff with me that I enjoy. We go to flyers and Phillies and, uh, you know, whatever sporting events I want to go to her concerts. So try to make sure that I do go with her to the things she wants to do too. Uh, it's a good balance, right?

Jake Fogleman (43:12.908)
Sure.

Stephen Gutowski (43:14.378)
All right, well, that's all we've got for this week. If you like what we do here at the reload, you can head over to the reload .com and sign up for our free newsletter. If you want to get in your inbox once a week, the biggest stories of guns in America so you can keep up to date. We don't flood your inbox with a million emails. I know people don't like that, or at least I don't like it. So we try to keep it simple and try to keep you well informed. You can also, of course, always go to the reload .com and check our stories as they publish throughout the week.

to just to remind everybody that we're publishing these things as they happen. And the newsletter on Friday is just a way to keep yourself informed without having to be constantly in the flow of news. And then of course, if you wanna support our work, you can buy a membership. That is how we fund our operations here in large part. We need our members to be able to do.

any of this stuff, it would not exist otherwise. And of course, if you buy a membership, you will get real value for it as well. You'll get exclusive access to hundreds of pieces of news and analysis that you won't find anywhere else. And you'll get this podcast a day early and you'll get an opportunity to appear on the show in a member segment if you want. We just had one last week, right? A great one. And we'll hope to have more of those in the future as well. And they're always one of my favorite bits to do. So yeah, go ahead and.

buy a membership today and you'll get access to all that and as well as the ability to comment on the website and you'll get access to our members newsletter that goes out on Sunday mornings. So yeah, that's all we've got for this week. We will see you guys again real soon.