

Wisconsin GrandSons of Liberty

Issue Analysis & Position Statement- #035

RED FLAG LAWS

Overview

Most American laws are derived from recent events with the best of intentions. These include passing Prohibition laws in the 1920's that led to the 18th Constitutional Amendment, or the National Firearms Act of 1934 that resulted from gangsters outgunning law enforcement. Even guidelines from government agencies have the effect of a law, such as First Lady Michelle Obama's healthy school lunch initiative. Reacting to mass shootings with four or more dead, state legislation has resulted in Red Flag Laws (RFLs) and laws rebranded as Extreme Risk Protective Orders (ERPOs). They are aimed at identifying people at risk of causing harm to others or themselves, and by removing firearm access from their possession.

There are currently 17 states and the District of Columbia that have developed and enacted RFLs and ERPOs for their citizen's use and protection. Essentially these laws enable a family member, household member, coworker, employer, teacher, and law enforcement entities to report a questionable person having firearms to any law enforcement entity. That report is a petition to the court to conduct a hearing with the questionable person attending. If the court deems necessary, it issues a warrant to collect and remove all firearms owned by that person.

Most states with these laws are *ex parte* states, and the questionable person is unknowingly bypassed by the court which directly issues a warrant to collect and remove all firearms owned by that person without their knowledge. These actions are done to prevent harm to oneself or anyone else. Identifying people exhibiting violent acts or speech, concerned family members, friends, health professionals, and law enforcement can proactively act to lessen chances for harm and tragedy during a court assigned period.

However, these RFLs and ERPOs are an effort to prevent firearm violence that singularly specifies firearms as the only dangerous weapon to be violently used. Further, we must be clear in mind WHO is the victim here; the individual being harmed is the innocent firearm(s) owner, as they have done nothing wrong.

Liberal View

- RFLs are documented and active extensions of the “see something, say something” concept to protect people from dangerous others.
- Informers are able to advise law enforcement about dangerous people having weapons without the fear of recognition and possible reprisal against them.

- First, we use RFLs to get guns separated from dangerous people, and then we pursue the next increment for people that are inclined to use guns in violent situations. After that, we see what is available to pursue for a safer city.
- Anyone with guns and the wrong attitude can easily become a home-grown terrorist to actively attack unliked people, or worse, groups at an event.

Conservative View

- Ex parte is an un-American practice with courts issuing warrants on innocent people without their knowledge. Serving these warrants can put law enforcement in danger when the innocent firearm owner is confronted and exhibits a defensive attitude, as exhibited in actual cases.
- Most states are community property entities, and thus removing a husband's firearms renders the wife's inability to defend herself, him, and any property.
- Professor Alan Dershowitz wrote that government agencies have exhibited very poor results in predicting who will commit violent acts. Then what is the gain with RFLs?
- Empowering the thought-police establishes the slippery-slope doctrine for all the other issues, situations, and conditions to protect the public. Because of vehicle accidents are at random, should that cause involved vehicles to be confiscated and access removed?
- Judge Napolitano professes that governments are animated that by doing something will show that they are in control...but doing something for the sake of appearance can be dangerous to personal liberty.
- Judge Napolitano also declares "that the RFL concept violates both the presumption of innocence and the due process requirement for proof of criminal behavior before liberty can be infringed."

Pro Red Flag Laws

- Police cannot monitor everyone all the time, so informers are beneficial in knowing a person's capabilities, attitudes, and personal interactions.
- What else can people do on their own?
- If a RFL saves a life, isn't it worth the inconvenience for a gun owner?

Con Red Flag Laws

- Logically the rights of one outweigh the wants of the many.
- Current RFLs directly infringe on several of The Bill of Rights.
- WHO is the victim? And where are their rights to be heard and enforced?
- A false accusation on a person's character and attitude can never be removed, just ask an assumed pedophile.
- How does a judge lawfully suspend a few of the Bill of Rights on an innocent victim?
- Any RFL is based on an individual's opinion. Are they a psychiatrist?

Chronology

Connecticut was the first state to develop a RFL in 1999 because of the Connecticut Lottery shooting. It was slowly followed by Indiana in 2005, California in 2014, Washington in 2016, and Oregon in 2017.

After the Florida Stoneman Douglas High School shooting in 2018, the states passing similar RFL and now ERPO laws almost doubled, and in order were Florida, Vermont, Maryland, Rhode Island, New Jersey, Delaware, Massachusetts, Illinois, and District of Columbia.

Existing State Laws

- California; 2014, family, household members, coworkers, employer, and law enforcement.
- Colorado; 2019, family, household members, and law enforcement.
- Connecticut; 1999, one state attorney, or any two police officers.
- Delaware; 2018, family, household members, and law enforcement.
- District of Columbia; 2018, family, household members, mental health officials, and law enforcement.
- Florida; 2018, law enforcement.
- Hawaii; 2019, family, household members, teachers, medical professionals, and law enforcement.
- Illinois; 2018, family, household members, and law enforcement.
- Indiana; 2005, law enforcement.
- Maryland; 2018, family, household members, certain health professionals, and law enforcement.
- Massachusetts; 2018, family, household members, and law enforcement.
- Nevada; 2019, family, household members, and law enforcement.
- New Jersey; 2018, family, household members, and law enforcement.
- New York; 2019, family, household members, school administrators, and law enforcement.
- Oregon; 2017, family, household members, and law enforcement.
- Rhode Island; 2018, law enforcement.
- Vermont; 2018, state attorneys or state attorney general.
- Washington; 2016, family, household members, and law enforcement.

Evidence on RFLs Reduce Firearm Violence

Since the various states have enacted RFLs and ERPOs, the social scientists and engineers have had two decades to analyze their effectiveness. Yet, there has been little results published. The New York Times reported that “the evidence for whether extreme risk protection orders to prevent gun violence is inconclusive, according to a study by the RAND Corporation on the effectiveness of gun safety measures.”

The Washington Post reported “California’s red flag went basically unused for two years after passage in 2016. Washington, DC’s law has gone entirely unused. Other states, such as Florida and Maryland, have gone the other direction, seizing hundreds of firearms from gun owners. Yet it’s unclear if these actions stopped a shooting.”

RFL and EPRO Deadly Consequences

In recent years the “swatting hoax” is a prank from friends to unrelated people, and even from other countries, has resulted in several American deaths. Typically, a prankster makes a 911 call as an RFL that he is threatening family members with a firearm at a given address, then abruptly hangs-up. SWAT teams immediately surround the residence and determine the best response. Often communication is established with a very surprised family inside, especially the named person knowing nothing of the incident. Terse words are exchanged ending with a demand to drop the weapon, open the door, and come outside with hands-up. Any suggestive move after opening the door and shots are fired, killing the unknowing victim and anguishing the family present. Reportedly there have been six such killings and numerous very tense and enduring confrontations that were eventually resolved.

A Ferndale, Maryland man was awakened about 5:15 AM in 2018 and took along his firearm to the front door expecting some unknown intruder action. He found the county police there with a warrant for his firearms. Obviously he became irate about them wanting his firearms without his knowledge and soon a scuffle resulted and a stray shot was fired. The other officer then shot the man dead. Later, it was revealed to the family that an aunt requested the protective order. A niece then stated “he likes to speak his mind but wouldn’t hurt anybody. I am just dumbfounded right now. They didn’t have to do what they did.”

There have been a few other cases basically the same since, but without complete details available because of the family, law enforcement, or the media.

Because of this type of “come and take my guns” attitude instilled in Americans believing there is no 5:00 AM authority to collect them, these reactions can be equally deadly to any law enforcement person and the families. Reporting firearms is one thing, disarming and collecting them is wholly a different ambition.

When good people are not allowed to exercise their Constitutional Rights, how many more wrongful deaths will happen to any family before this practice is corrected?

Recent Legislation

In recent years there have been several proposals by representatives and senators, and more timely, by democratic presidential candidates, for RFLs and ERPOs to become federal laws. Being so wide-ranging in applicable scope and usage, none have been supported enough to be considered viable. The President has declared his willingness to support legislation for RFLs and EPROs that meet all considerations and concerns. Most Americans do not know that the President cannot make laws; that is for Congress. He is only able to refine existing laws with executive orders.

The clamor for new firearm law(s) after a mass shooting very soon subsides into recognizing there is no improvement over existing laws with Constitutional Rights to consider.

Recent States Actions

A few states are considering RFL and ERPO variants from the laws already in effect in other states. The subject appears to be a “stop and go” topic most likely awaiting improvements by any other states.

Both Wisconsin legislative bodies have exhibited solid rejection of RFL and any firearm confiscation bills, not only in regular session, but also in governor directed special session for each that were opened and closed within minutes.

To date, Wisconsin has not had a mass shooting event since the defined concept has appeared. Further, there are generally over 1 million deer, fowl, and small game hunters in the state that apparently have very effective firearm training and respect for what firearms can do. Surely the legislators have sensed that and direct talks with hunting groups periodically to assess their positions. Nothing has occurred lately to convince them otherwise.

Court Rulings

RFL AND EPRO laws have been upheld against 2nd Amendment challenges in all 3 cases presented. In *Redington v. State* (2013) Indiana Court of Appeals ruled that the state’s statute did not violate the right to keep and bear arms, was not an unconstitutional taking, and was not unconstitutionally vague.

Then in *Hope v. State* (2016) Connecticut Appellate Court determined that the state’s law did not violate the 2nd Amendment because it does not restrict the right for law abiding and responsible citizens using arms in defense of their homes. The court considered the law an example of the longstanding “presumptively lawful regulatory measures permissible under the SCOTUS decision in *Heller v. DC*.”

Finally, in *Davis v. Gilchrist County Sheriff’s Office* (2019) Florida First District of Appeal rejected the challenge to the state’s law holding that it is constitutional and does not violate the right to due process.

Constitutional Affects

The Bill of Rights is for your protection from government involvement and cannot be taken away, unless declared guilty of crime by jury and judge. These are the Rights that directly impact your protection while being an innocent victim:

- 1st Amendment: your right to speak freely about anything, including intents and firearms. People use threatening talk all the time to vent frustrations all the way to actual kidding. Also, it is only speech, not committing an action.
- 2nd Amendment: your right to keep and bear your arms with related items and to properly use them. Your weapons for defense, hunting, sport, and whatever legally else are your property, and you have the right that they are never to be taken by anyone.

- 4th Amendment: your right to be securely holding your property against any unwarranted searches and seizures, and not to be left defenseless. Your home is your castle and all the property held within it.
- 5th Amendment: your right not to self-incrimination and have due process upon yourself. If there is a claim against you or your family, they have to prove their claims with established procedures.
- 6th Amendment: your right to a speedy trial by an impartial jury with assistance of counsel for your defense. If there is a claim against you, you are to participate in the trial procedure, and it must be done as soon as possible and with advising of council to help in your defense. Some current Red Flag Laws are *ex parte* in which the proceedings are conducted without your knowledge, presence, and defense attorney; thus, bypassing your Right for defense.
- 7th Amendment: your right to trial by jury shall be preserved. If property is being taken from you for whatever reason, you have the established choice in having a judge or jury making the resulting decision. This is your Right not to be circumvented by any means.

Further, few people are aware that regulating firearms is NOT among the powers listed in the Constitution, such as coin money, regulate commerce, declare war, raise and maintain armed forces, and establish a post office. The only mentioning of arms in the Constitution is clearly and specifically in the 2nd Amendment.

Alternatives to Red Flag Laws

Writer David French openly proposed in his article about RFLs that an alternative to them can be simply modifying the Restraining Order (RO) already enacted in all states that provides due process to the victim.

The issue that surfaces with an RO is that there is already a history between the involved parties to be separated. And both parties can still retain their weapons with an operating RO. Not so with an RO modification to become a RFL with victim having weapons and random interaction with the general public.

Wisconsin already has numerous weapons laws available to law enforcement and courts. Our recent investigation has found that Milwaukee County has established a Gun Court specifically for all firearm-involved cases. In over 95% of those cases the firearm charge is dropped to get a favorable guilty plea for the court and a much shorter sentence, or even none at all for the perpetrator. By dropping the firearm charge, a firearm-involved crime does not appear on the perpetrator's record, thus not found on any background check. That completely defeats the whole purpose for the firearm background checking system that the citizens believe is working.

WGOL Approach to Red Flag Laws

With 17 states and the District of Columbia now having RFLs and ESPOs since 1999, any logical person would readily assume sufficient data has been collected to determine RFL effectiveness. And if not, keep mining data to achieve a sufficient amount to support and justify having RFLs and ESPOs. The sample size being 36% of the nation is more than sufficient for a test case before burdening the remaining 64% with questionably effective RFLs and ESPOs.

For a smaller scale sample needing the greatest national attention, we suggest Chicago. For years Chicago has exhibited the highest fatality rate to Americans, including those overseas experiencing warfare. Have the local citizens and even gang members advise law enforcement on questionable individuals having too many weapons, poor attitudes, and complaints about others and business practices?

WGOL Red Flag Law Position

Based on above information presented, we can determine these conclusions:

- 36% of the country has not presented sufficient data and information after 20 years of RFL and ESPO experiences, effectiveness, and success to implore the remaining 64% of the country to accept having their own versions.
- Law enforcement exercising a warrant to collect and secure firearms from an innocent person, based on unprofessional opinion that they are dangerous to others or themselves, can be equally dangerous to the victim or securing officer.
- When applying a RFL or ESPO on an innocent person, again based on unprofessional opinion to be dangerous to others or themselves, that person's Bill of Rights for the 1st, 2nd, 4th, 5th, 6th, and 7th Amendments are ignored.
- Conducting a RFL or ESPO from investigation to issuing a warrant to collect and secure firearms from an innocent person is denying that person the Due Process as guaranteed in the Constitution.

Where is the gain for Wisconsin citizens to become burdened with any RFL or ESPO version? The results cited above are so negative to the state's people that Wisconsin GrandSons of Liberty cannot, in good conscience, support or accept a RFL or ESPO becoming a statute.