



Written by [Steve Byas](#) on October 7, 2019

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## Presumed Dangerous, No Guns

The latest scheme to confiscate firearms from American citizens who have not been found guilty of any crime — or even charged with a crime — is popularly known as a “red flag” law. Red flag laws, which would take guns from people reported to authorities as being likely to shoot someone, are justified by recent mass shootings. Desperate to appear to “do something” about the sporadic, but tragic, mass shootings across America, politicians from the White House to Congress to state legislatures are considering some form of these benign-sounding red flag laws.



But red flag laws are not benign. They are a serious threat to every American’s right to keep and bear arms.

In California, a woman and her husband experienced the tyranny of a red flag law in their state. In an enlightening video produced by Reason.TV, which can be viewed on YouTube, the effect of an actual red flag law — California’s Armed Prohibited Persons System — demonstrates the danger to our Second Amendment rights. This law aims to confiscate guns from persons found in three groups: (1) those with a history of violence; (2) wanted criminals; and (3) anyone who the state believes has a severe mental illness. But as we shall see, the law’s effects go beyond that in practice.

Lynette Phillips told Reason.TV, “Because one nurse wrote false information, now I’m on a prohibited persons list,” but, she added, “I’ve never done anything to hurt anybody.” Phillips explained what happened. “I was diagnosed about 13 years ago with anxiety disorder.”

She noticed she was crying easily, so she went to check herself into a local hospital. It was full, so they referred her to Aurora Charter Oak. “That was where my nightmare started,” she recalled. Someone wrote down that she might drive herself off a cliff, but it is unknown who wrote that down.

Even more serious, despite admitting herself, it was written down in the paperwork that she was admitted “involuntarily,” and would have to stay in the facility for 72 hours. But once the hospital psychiatrist actually had a chance to visit with her, he told Lynette that there should be better policies and procedure in effect, so this doesn’t happen again. He then released her before the 72 hours was up.

Because of the “involuntary” commitment, however, she was placed on the armed prohibited persons list. Even a letter from her personal psychiatrist that she had sought treatment voluntarily, not involuntarily, did not get her off the list. Nine California Department of Justice officers showed up at the couple’s house, without any warrant, and took every gun in the house, including the gun that she had bought her husband for Christmas.

Very obviously, more people have their rights removed by red flag laws than simply “dangerous” people.



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More than 11,000 guns have been confiscated in California under this program.

## What Is a Red Flag Law?

This story of the nightmare faced by Lynette Phillips and her husband is illustrative of how a red flag law could work in your state. Let us look at what a red flag law is, why such laws are spreading across the country on a state-by-state basis, and why they are a real threat to become *federal* law.

In short, red flag laws are simply the latest in the long-standing effort to make the Second Amendment guarantee of an individual's right to keep and bear arms meaningless — one step at a time. Red flag laws, also known as Extreme Risk Protection Orders (ERPOs), allow a judge to revoke a person's right, or at least suspend his right, to own or possess a firearm, directing law-enforcement officers to take a person's guns if family members or other people believe him to be a danger to himself or others. Seventeen states and the District of Columbia have passed some form of this restriction of the Second Amendment.

Senator Chuck Schumer (D-N.Y.) is quite open about the fact that red flag laws are merely one step on the road to confiscating firearms. "We Democrats are not going to settle for half-measures so Republicans can feel better and try to push the issue of gun violence off to the side. Democrats in the Senate will seek to require any ERPO bill that comes to the floor is accompanied by a vote in the House-passed universal background checks legislation."

Even if it were true that the ERPOs would only take guns from people deemed by their acquaintances to be imminent threats (and that's not true), Schumer's remarks make it very clear that were a federal red flag law to pass, it would *not* be the final gun-control measure pushed by anti-gun-rights activists.

Why? When a mass shooting happens anyway, the argument will be that these laws have failed, leading to a proposal to include more individuals in the group to be disarmed. When all "dangerous" people have already been disarmed via measures such as red flag laws and universal background checks, and they have failed to stop mass shootings (and they will fail), firearms will have to be confiscated from everyone — except the government.

## Trump and Republicans Wavering on Red Flag Laws

Indeed, as mass shootings have continued over the years — from Columbine to Newtown to Las Vegas, and finally, El Paso and Dayton — even Republican politicians, many of whom were elected on promises to protect the Second Amendment, are getting weak-kneed, and more are joining the anti-Second Amendment crowd in favoring the policy of "doing something."

Even President Trump is wavering. Trump has delivered an inconsistent message when it comes to the Second Amendment. In February 2018, Trump said that due process was not as important for the mentally ill as making sure that they do not have access to firearms. "I don't want mentally ill people to be having guns," Trump said. "Take the guns first, go through due process second."

Since then, Trump has swung from support to opposition to support and back to opposition when it comes to ERPOs, usually arguing that he is confining his desire for confiscation to the mentally ill. "We don't want people who are mentally ill, people that are sick — we don't want them having guns," Trump said recently. Since then, Trump has warned that such laws present a potential risk of a "slippery slope."



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Not only are Republicans wavering on protecting the rights of all gun owners, Trump's daughter, Ivanka, takes the liberal position on gun control. According to *Conservative Review*, Ivanka Trump is working "behind the scenes," lobbying members of Congress to support more gun-control legislation, including red flag laws and universal background checks. One Democrat senator with whom she has reportedly spoken is Joe Manchin of West Virginia. Manchin ran as a pro-Second Amendment Democrat, but is now cosponsoring enhanced background-check legislation with Senator Pat Toomey (R-Pa.). Evidently, Ms. Trump believes that since Manchin abandoned his support for gun rights with that bill, he will be a person who could potentially support red flag laws. Trump's son, Don, Jr., however, reportedly fears that red flag laws and expanded background checks could infringe on the civil liberties of gun owners. He has also reportedly told his father that if he supported such measures, it could wind up costing him votes in next year's presidential election.

Of course, it is largely fear of losing votes because of the public outcry over mass shootings that is probably causing Trump, some Republicans, and even the National Rifle Association (NRA) to give the appearance that they are "doing something" about the continued scourge of mass shootings. In other words, these laws are "feel good laws" intended to make the voting public believe that something has been done. But laws made in such an atmosphere of hysteria are almost never good.

Former Milwaukee County Sheriff David Clarke made this very point recently: "I like to remind people that we should never make sweeping policy changes in a state of hysteria. A wiser course of action would be for elected officials to talk people in off the ledge so we can have a reasonable conversation about the horrific incident after things settle down. Emotion-based policy always turns out to be a lousy policy loaded with unintended consequences."

Along these lines, in the 1980s, President Ronald Reagan's attorney general, Edwin Meese, was a strong supporter of civil asset forfeiture laws — laws in which a person's property can be seized without due process because law enforcement simply "believes" the person is a criminal, even if he is never charged with any criminal action. These laws were intended to fight big drug kingpins and the like. Since then, Meese has publicly expressed his deep regret for his role in pushing through these laws. Such laws have been used to seize property of thousands of people across the country, most of whom are never charged with a crime. In many cases, their property is never returned. It has been claimed that government takes more in a year from Americans than thieves steal. Regardless of the accuracy of that statement, it is definitely true that under civil asset forfeiture the innocent get caught up with the guilty, which is simply un-American.

Despite Meese's present position, his past support for these laws is a large reason why we are dealing with civil asset forfeiture laws today. Politicians voting for red flag laws today may very well regret doing so in a few years, but by then, it will be too late.

## **Putting Liberty Up for a Vote?**

With the public apparently in the mood for politicians to "do something," many politicians who do not hold to principles are prepared to give the public what they want — or at least what the politician thinks the public wants. An APM Research Lab/Guns & America/Call to Mind Survey, conducted in July, found that 41 percent of those surveyed strongly support allowing police to confiscate privately owned firearms, on their own, while 44.6 percent would strongly support allowing a judge to issue a court order to take away a person's guns, if a family member is able to persuade a judge to issue such an



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order.

Only 14.4 percent strongly oppose allowing the police to take a citizen's guns, on their own volition, while only a mere 12.6 percent oppose it being done with a court order, following the desires of a family member.

Fortunately, as Harry Wilson, director of the Institute for Policy and Opinion Research at Roanoke College, said, "We do not live in a direct democracy. We don't live in a nation where issues are simply put to a vote and the majority rules."

If the United States were a direct democracy, then the Bill of Rights — indeed the Constitution itself — would be superfluous. There is nothing in the wording of the Second Amendment or in the Bill of Rights or the Constitution indicating that any of these liberties protected therein can be taken away simply because the majority does not favor this or that right.

Should free speech be up to a vote? What about religious liberty? Should we just take a vote and decide that every person has to attend a certain religious institution, rather than the one they wish to attend? If the majority desired to reinstitute slavery, should the 13th Amendment have to give way?

Even Alan Dershowitz, a retired liberal law professor, expressed concern about where this is all headed. "How many law-abiding people are we prepared to deprive of guns to prevent even one mass shooting? Can the government deprive a citizen of a constitutional right based on a prediction? If the government can take your guns based on a prediction today, what will stop it from taking your liberty based on a prediction tomorrow?"

Many Americans are largely unconcerned about the right to keep and bear arms, but before they support more laws to restrict that right for citizens who have never used a gun to commit any crime, much less mass murder, they should understand why the Second Amendment is part of the Bill of Rights. It should be understood that James Madison, the principal author of the Bill of Rights, initially did not want a Bill of Rights in the U.S. Constitution, arguing that some people might later claim that the rights contained therein would be the only rights Americans had.

Before crafting the Second Amendment, Madison had already written on the importance of citizens possessing weapons to preserve liberty. In *The Federalist*, No. 46, written before the Constitution was ratified and before the Second Amendment was adopted, Madison said that Americans have "the advantage of being armed," noting that the rulers of other nations "are afraid to trust the people with arms." It is here that Madison succinctly explains *why* individual citizens have a natural right to keep and bear arms — as a last line of defense against tyrannical government. It is not to protect the right of citizens to simply hunt, or to engage in sport shooting.

Many Americans are willing to surrender this right because they are convinced that these laws would never be used against them. But state Representative Tony Lovasco (R-Mo.) recently challenged this thinking: "Proponents of gun control (and make no mistake, red flag laws are gun control) want you to think, 'I'm not like them. This isn't about me.' But you are like them, and it is about you. It's about *everyone*." After all, if government can deny the liberties of anyone without due process of law, then the rights of all of us are endangered. Protections against the abuse of our freedoms by government are intended not to protect the guilty (who can be found guilty in a court of law) but the innocent.

Not only is the Second Amendment under assault with red flag laws, so are several other rights one



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presumes that Americans treasure. Lovasco explained that every American citizen, even one who owns no guns at all, stands to lose rights in this effort. “The right to face your accuser. The right to due process. The right to protection against unreasonable searches and seizures. Every one one of these rights is explicitly violated under red flag laws.”

Added Lovasco:

Such laws often allow a judge to issue an order of confiscation “ex parte,” meaning without you [being] present. Because it’s a civil process, you aren’t entitled to a public defender, or even afforded the opportunity to defend yourself.

Once a protective order is issued, law enforcement [officers] are dispatched to search your property and seize your weapons — without criminal charges ever being filed, or even probable cause that an actual crime has been committed.

To make matters worse, red flag hearings can be adjudicated based on uncorroborated claims made by a single individual. Perhaps it’s an angry spouse, jealous co-worker, or disgruntled neighbor. All it takes is for someone to make a convincing argument that you are a danger to yourself or others, and your property is taken from you and you lose the right to defend yourself.

Representative Thomas Massie (R-Ky.) recently joined with John Lott, president of the Crime Prevention Research Center, to challenge the red flag law enacted in Colorado. They noted that, under Colorado’s law, “anyone at all can make a phone call to the police. They don’t even have to be living in the state. There is no hearing. All the judge has before him is the statement of concern.”

## **Red Flag Laws and the Mentally Ill**

Many make assumptions about red flag laws, such as the proposition that all mass shootings are the work of mentally ill people, and that mentally ill individuals are more likely to commit acts of violence than the average person. Then, once that underlying assumption is accepted, the next step is to target the mentally ill when deciding whose Second Amendment rights should be forfeited.

Such assurances — that only the mentally ill would be affected by red flag laws, and that the mentally ill are more likely to commit acts of violence — are not borne out by the facts. But anti-gun-rights advocates within the federal government certainly use this false narrative (that the mentally ill are more likely than the general population to commit acts of mass violence) to soften the public’s resistance to mass confiscation of firearms — all in the name of public safety.

Based on this faulty premise (that mentally ill people are more likely than others to go on shooting rampages), the U.S. Preventative Services Task Force released two recommendations in 2016 that primary care physicians screen all persons 12 years of age and older for depression. Many Americans have seen these forms in a doctor’s office — asking questions about their emotional and mental health.

Writing for the National Alliance on Mental Illness, Elena Schatell said that this is only a suggestion — so far. “Depression screenings are typically short ten-question surveys that can be incorporated into wellness programs,” Schatell wrote.

No doubt these forms can also be used to include more individuals in the pool of citizens who will lose





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their right to keep and bear arms — and when this fails to stop acts of mass violence with firearms, the enemies of the right to keep and bear arms can agitate to expand that pool.

As Arash Javanbakht, assistant professor of psychiatry at Wayne State University, wrote in *The Conversation*, “Every time the country is shaken by a tragic mass shooting and the loss of innocent lives, the same debates are repeated.” Javanbakht said it is predictable that we will be “discussing warning signs of mental illness, and its role in the actions of the murderer.”

This suggestion — that those who commit such shootings are mentally ill — raises some practical questions, Javanbakht wrote, such as, “Who will decide whether a patient with mental illness should not have access to firearms — a psychiatrist, an independent forensic psychiatrist, a committee of psychiatrists or a judge? How about those who do not seek psychiatric evaluation and treatment?”

Other questions that Javanbakht raised included, “Should a psychiatric examination be integrated into the background check process for each person who wants to purchase a gun? As severe mental illness can start at any point in life, will gun owners need periodic psychiatric assessment (like a vision exam for renewing a driver’s license)?”

It should also be noted that it was a common practice in the old Soviet Union under Joseph Stalin to use the assessment that a person who was opposed to communism was “mentally ill,” and to send the person off to a mental health “hospital” for “treatment.”

Besides that, as Javanbakht noted, “There are more than 200 diagnoses listed in the most recent version of *Diagnostic Statistical Manual of Mental Disorders*, which is released by the American Psychiatric Association. This includes conditions such as anxiety disorders like spider phobia, social phobia, social anxiety disorder, post-traumatic stress disorder, hair-picking, pathological gambling,” and several others.

With this in mind, Javanbakht asks, “Now, when one suggests that gun access should be restricted for people with mental illness, do they mean all of these conditions?”

What many would consider the most serious mental health disorder — schizophrenia, which affects about one percent of the U.S. population, is actually not commonly associated with people who are at risk of harming others, or even at a risk to act violently. “Despite the widespread belief that a person with a serious mental illness like bipolar disorder or schizophrenia can be dangerous,” Javanbakht notes, “only three to four percent of all violent crimes committed in a given year in the U.S. are committed by people who have been diagnosed with a commonly cited mental illness of schizophrenia, bipolar disorder or depression.” (It’s noteworthy that by 2014, one in eight Americans over age 12 reported recent use of an antidepressant, according to the CDC.)

Understandably, Javanbakht expressed concern that “when ‘mental illness’ is so vaguely addressed in gun debates, those with a mental illness without an increased risk of violence or impairment in judgment (such as anxiety or phobia) may avoid seeking treatment.”

## **The Threat of Red Flag Laws to the Rights of Family Members**

The recent Reason.TV episode involving Lynette Phillips and her husband illustrates vividly Javanbakht’s concern.

Some could pass the Phillips’ story off as, “Well, that is California,” but the truth is that such abuses are



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common throughout the country. In Connecticut, Brandon Wagshol was known to write some racist tweets, posting bigoted remarks on social media. While many would find this disgusting, it is not yet a criminal act. As *Guns in the News* noted, “The First Amendment protects his right to voice his hate in the same way [that some argue] it protects flag burning. No one has to like it, but it’s *not* a criminal act.”

Someone told the authorities that Wagshol had shared a scary meme on Facebook, and the FBI received another tip that Wagshol had tried to buy high capacity magazines from out of state. This led police to confiscate all the weapons in the house where 22-year-old Wagshol lived — all of which were legally owned and registered to his father. Investigators seized a .40-caliber handgun and a .22-caliber rifle, along with ammunition; a camouflage shirt, pants, and belt; a camouflage bag; and body armor with a titanium plate. They also took some flashlights.

According to the *Hartford Courant*, Norwalk police Lt. Terry Blake said Wagshol had posted on Facebook that he “was into planning mass murder,” but in the end the police failed to produce any actual Facebook posts to that effect.

Make no mistake — Wagshol is hardly a model citizen. But his rights — and the rights of his father — were clearly violated. And if Congress were to enact a national red flag law, what else could be considered grounds for taking away a person’s right to keep and bear arms? Hillary Clinton considers half of those who voted for Donald Trump “a basketful of deplorables.” She is not alone in this assessment. More than one leftist commentator has asserted all those who support Trump are racist. Would that be enough to strip them of their Second Amendment-guaranteed rights?

## **How Red Flag Laws Can Affect You**

As the Mises Institute explained, quoting *Gunpowder Magazine*, “Anti-gun family members, friends, or acquaintances can levy dubious accusations to justify the confiscation of law-abiding gun owners’ guns. They can take these accusations to a court of law, even if the individual in question was not charged or convicted of a crime. In turn, due process rights are turned upside down, as gun owners are presumed to be guilty and must then prove their innocence.”

Sadly, even if red flag laws were fully implemented nationwide, along with more extensive background checks, mass shootings would still occur. As President Warren Harding opined in 1920, “All human ills are not curable by legislation.” Despite this fact, there will be calls for ever-stricter gun control laws and the expansion of red flag laws to more people, probably millions of people. Anti-gun zealots will never be satisfied until all firearms are completely outlawed.

Even then firearms will continue to exist, in the hands of the government and in the hands of criminals. The only persons who will be stripped of their Second Amendment rights will be those least likely to commit mass shootings.

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*Photo: AP Images*



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