



Written by [Steve Byas](#) on May 18, 2020

## Anti-Red Flag Law Passes Oklahoma Legislature

In the dying hours of the 2020 Oklahoma legislative session, Senate Bill 1081 — enacting an “anti-red flag law” law authored by Senator Nathan Dahm, a (R-Broken Arrow) and Representative Jay Steagall (R-Yukon) — passed and was sent to Governor Kevin Stitt. Due to a clerical error, local media incorrectly reported that Stitt had signed the bill. Stitt has said in the past that he opposes “red flag laws,” so he is *expected* to sign the bill into law. Under Oklahoma law, the governor has until Thursday to either sign or veto the bill.



Extreme Risk Protection Orders (ERPOs), commonly known as red flag laws, allow a judge, law enforcement, or family members of a person to request that said person’s firearms be taken away temporarily if the person is considered a danger to himself or others. ERPOs have been enacted in more than a dozen states and in the District of Columbia.

Dahm’s bill prevents cities and towns in Oklahoma from passing an ordinance that would, in effect, put a red flag law into effect in that municipality. Steagall said that the bill is the first of its kind that any state in the country has enacted. Dahm has a 99-percent conservative rating from the *Oklahoma Constitution* newspaper, while Steagall has an 80-percent score.

The bill was necessary, according to Steagall and Dahm, because some agency of the federal government might offer a grant to a local government to implement some sort of red flag law. The bill summary provided by the Oklahoma Legislature states, “The measure provides that the Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way extreme risk protection orders against or upon a citizen of this state to the complete exclusion of any order, ordinance or regulation by any municipality or other political subdivision of this state.”

According to the bill, “Any agency [of the state government] or any political subdivision [such as a county, town, or city]” is “prohibited from accepting any grants or funding to implement any statute, rule or executive order, judicial order, or judicial findings that would have the effect of forcing an extreme risk protection order against or upon a citizen of this state.”

Dahm explained on Facebook why he believed such a bill was necessary: “Too often we’re on the defensive with a lot of our rights trying to protect our rights. I’m trying to push back preemptively to say that if that happens at the federal level, we will not implement it here at the state level.”

Interestingly, in the *Oklahoman* newspaper account, reporter Carmen Forman inserted this opinion into what was supposedly a straight news story: “The U.S. Constitution prevents states from nullifying federal laws.” Forman failed to provide either the place in the Constitution where it states that, nor did she quote or cite anyone in making such a claim.

This trend of supposed straight news stories interjecting the reporters’ personal opinion into the report as fact is rampant. Practically every Associated Press article does this now, as a matter of course. And



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the opinions are almost uniformly liberal. At one time, opinions were left to the editorial page of the daily newspaper, but it is now standard practice to insert such opinions right into news stories. *The Oklahoman* was, at one time, recognized as a conservative-leaning newspaper when it was under the ownership of either E.K. Gaylord, or his son, Edward L. Gaylord. But the family sold the newspaper a few years ago, and young reporters such as Forman are now allowed to put their liberal political opinions right into the news story.

But, is she right? Does the U.S. Constitution prevent states from nullifying federal laws? Certainly, the Constitution nowhere states, "States shall not nullify federal laws." One can only speculate that she thinks the "supremacy clause" found in Article VI of the U.S. Constitution states that. But the "supremacy clause" only states that the Constitution itself is the "Supreme Law of the Land." Federal laws that are enacted "in pursuance" of the Constitution are also supreme, but obviously any federal law passed that did not conform to the Constitution would not be a law at all, and states would be under no obligation to enforce it.

This is the thinking behind "nullification" of federal laws that are not authorized by the Constitution. In the 10<sup>th</sup> Amendment, the powers not given to the U.S. government by the Constitution are reserved to the states. There is nothing in the Constitution of the United States that empowers Congress to enact a red flag law, so states such as Oklahoma are well within their constitutional authority to refuse to enforce one, if they like.

Steagall argued on Friday that red flag laws violate the Second Amendment to the Constitution, as well as an individual's right to due process. "I find it impossible for any red-flag law to respect due process or the presumption of innocence until proven guilty. I have taken an oath to protect our Constitution seven times throughout my 22 years of service and nine deployments in the military, an oath that I take very seriously. I will not stand by and let this freedom be stripped from us."

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