



Written by [Bob Adelman](#) on August 13, 2019

A Closer Look at the Dangers of Red Flag Laws

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As the hysterical cries continue, demanding that government “do something” about gun violence, more thoughtful advisors and commentators are digging more deeply into the dangers of “doing something.” Especially concerning is the rush to implement major infringements of gun rights, with many politicians using the flawed argument that “If even one life is saved, infringements on the rights of many are justified.”

This is the siren song of tyranny.

Former Milwaukee County Sheriff David Clarke [said](#) everyone should take a deep breath and step back from the ledge: “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.”

One especially grievous black mark in America’s recent history is the rush to judgment about Japanese Americans in the months after Pearl Harbor. President Franklin Roosevelt issued an executive order forcibly removing more than 110,000 of them from their homes and into “internment” (read: concentration) camps. They were guilty of nothing more than being Japanese. As Colonel Karl Bendetsen (the architect of the program) put it, anyone with “one drop of Japanese blood” would be taken from their homes by force and placed in concentration camps.

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The Supreme Court never ruled on the constitutionality of the incarceration of these American citizens, although their Fourth Amendment rights were clearly violated. Modest financial reparations were belatedly made by the federal government to those survivors in 1988, along with an apology.

Tony Lovasco (R-Mo.) exposed the danger of thinking that red flag laws could never apply to law-abiding citizens. After all, most people would never dream of shooting up a Walmart store. Wrote Lovasco, “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*.”

Every American citizen, gun owner or not, has unalienable rights, wrote Lovasco: “The right to face your accuser. The right to due process. The right to protection against unreasonable searches and seizures. Every one of these rights is explicitly violated under red flag laws.”



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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 your right to defend yourself.

Representative Thomas Massie (R-Ky.) joined with John Lott, president of the Crime Prevention Research Center, to expose Colorado’s recently enacted red flag law. Under that 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 have nothing to do with mental health. Only one of the 17 states now imposing red flag laws on their citizens even uses the term. Wrote Massie and Lott: “It’s about figuring out who is going to commit a crime (or suicide). This is the realm of science fiction.”

It’s also the theme of Steven Spielberg’s 2002 film *Minority Report* wherein three “precogs” predict the future criminal behaviors of suspects. As viewers will remember, it did not end well.

The Fourth Amendment requirement demanding “probable cause” has been almost completely ignored. As Massie and Lott noted, “Little certainty is needed. Initial confiscations often require just a ‘reasonable suspicion’ which is little more than a guess or a hunch.” In addition, red flag laws typically make no provisions to cover the legal costs incurred by the victim (not suspect) and so many charged will not be able to have an attorney assist them.

Finally, wrote Massie and Lott, “It has always been possible to take away someone’s guns but all 50 states have required testimony by a mental-health expert before a judge. Under red flag laws, however, expert testimony will no longer be used.” In addition, “Gun-control advocates argue that it’s essential not even to alert the person that his guns may be taken away. Hence, the 5 A.M. police raids.”

Red flag laws don’t work. That’s the conclusion Lott came to in a study he and a professor at the College of William and Mary published last December. After reviewing data from 1970 through 2017, they concluded that “Red flag laws had no significant effect on murder, suicide, the number of people killed in mass public shootings, robbery, aggravated assault, or burglary.... These laws apparently do not save lives.”

Perhaps most impressive are the questions raised and insights offered by Alan Dershowitz, retired Harvard professor and no friend of either the Second Amendment or President Trump. But he has not let either personal opinion sway his view of the Constitution’s protection of precious God-given rights. Although he voted against Trump in 2016, he defended the president in his book *The Case Against Impeaching Trump*. He also argued against the Democrats’ investigations into the president, including the Special Counsel investigation by Robert Mueller.

Dershowitz asked, “How many law-abiding people are we prepared to deprive of guns to prevent even



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one mass shooting?” He asked, “Can the government deprive a citizen of a constitutional right based on a prediction?” He asked, “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?”

These are not “far-fetched” concerns. He noted that the federal government, under a presidential executive order, “detained more than 100,000 Japanese-Americans during World War II based on wildly exaggerated predictions of sabotage.”

Therefore, wrote Dershowitz, “We should be careful about denying individual rights based on questionable predictions.... When government starts taking away some rights in the interest of safety, all rights are at risk.”

Once a red flag law is put in place, it is permanent. As Thomas Jefferson said, “It is in the natural course of events that liberty recedes and government grows.” It is far better to rein in government beforehand than to try to retrieve precious rights afterwards.

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