



Written by [Steve Byas](#) on December 14, 2018

Bipartisan Congressional Effort to Usurp Constitutional Rights on Guns Coming?

Americans who value the right to keep and bear arms are largely complacent about that right, content that the Second Amendment rather clearly protects a citizen's right. After all, they smugly tell themselves, did not the Supreme Court specifically, a few years ago in the *Heller* decision, confirm that the Second Amendment protects the right as an *individual* right?



That is all true, yet the words of Congressman John Randolph, a cousin of Thomas Jefferson, are quite applicable to today, when he said the Constitution of the United States is “just parchment” — just words — unless we are prepared to make sure government officials follow that document.

Resting right now in the House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations is [a very dangerous bill](#), — H.R. 5717, the Jake Laird Act of 2018 — that threatens every American's right to keep and bear arms, despite the clear wording of the Second Amendment. It is a bipartisan bill. [It even has a Republican sponsor, Susan Brooks of Indiana](#), lest one think that the threat to the Second Amendment rests only with Democrats. In fact, the bill has 15 co-sponsors, and only six are Democrats. Nine co-sponsors are Republicans.

The Brooks bill proposes to authorize the attorney general of the United States “to make grants to States that have in place laws that authorize the seizure of firearms from dangerous individuals, and for other purposes.”

This is a method that has been used frequently to get states to bend the knee to the federal government, basically bribing them with “federal” money. Several decades ago, when the federal government decreed the states should lower their speed limits to 55 miles an hour or face the loss of federal highway funds, all 50 states meekly complied. Brooks' bill provides for \$50 million to implement the bill.

So, don't smugly think that your state would not comply. And don't look to the White House for a presidential veto, were this bill to pass Congress. President Donald Trump has already indicated that he would be open to a law that takes guns away from “dangerous” Americans, and worry about “due process” later.

But exactly who is a “dangerous” individual? Is it someone who has been convicted of a crime, or even arrested and charged with a crime? Not under Brooks' bill.

Under the Brooks bill, a “dangerous” person is defined as an individual who presents an imminent risk of injuring himself or herself, or another individual; or one who may present a risk of injuring himself or herself, or another individual, and has a mental illness that may be controlled by medication, but has demonstrated a pattern of not voluntarily and consistently taking such medication, except under supervision; or is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct; or poses a significant



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danger of personal injury to himself or herself, or another individual, by possessing a firearm.

All of this is very subjective. Who could make the decision that this wording applies to a particular individual? A court of competent jurisdiction may issue a warrant authorizing a law-enforcement officer to seize a firearm from a person that the court determines there is probable cause to believe is dangerous and in possession of a firearm.

The affidavit to obtain such a warrant must be submitted with facts supporting the law-enforcement officer's probable cause to believe that the individual is dangerous and in possession of a firearm, including a description of the law-enforcement officer's interaction with the individual, or with another individual who provided information relating to the individual against whom the warrant is sought, and whom the law-enforcement officer determines is credible and reliable.

In blunt language, a judge may issue a warrant to take away the firearm of a law-abiding citizen even though that person has committed no crime. If a law-enforcement officer believes that individual is dangerous — maybe when merely relying on the word of an enemy of the individual — it's enough. While there is a subsequent hearing before a court, in which the burden of proof is supposedly upon the government, a person can be deprived of his property without having committed any crime.

Not only that, the name of a person so judged to be "dangerous" will then be entered into the National Instant Criminal Background Check System. Despite not having been convicted, or even charged with any crime at all, he is now considered a criminal!

In addition to the person losing his firearm, or firearms, he also is stripped of any license to carry a firearm, if he has one, and the judge can order the person not obtain a firearm in the future.

While this bill obviously does violence to the Second Amendment, it also violates the Fourth and Fifth Amendments to the Constitution. The Fourth Amendment protects the right of the people "to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment stipulates that no person shall be "deprived of life, liberty, or property without due process of law." With the Brooks bill, government can take your property, despite your not having ever been charged, much less convicted of a crime.

This is yet another reason not to hold a convention, under Article V of the Constitution, to consider amendments to our Constitution. The very fact that such a bill could even be contemplated should cause us to ask this sobering question: Do we want such a convention made up of delegates elected by the same electorate that elected Congressman Brooks and her co-sponsors? Would it not be better to just stick to the Constitution crafted in 1787 by James Madison and his fellow delegates?



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