



Florida's "Red-flag" Law Taking Guns Without Due Process

After the Marjory Stoneman Douglas High School shooting, it didn't take long for Florida's "red-flag" law to be implemented. The Florida legislature enacted the law on March 9, apparently deciding that the ends justified the means, i.e., that judicial processes in place since the founding of the Republic were just too cumbersome and took too long. So they did an end run around the Fourth Amendment, and the law now allows a family member or a member of law enforcement to ask a judge to issue a warrant to seize an owner's firearms, lowering the constitutional bar from "probable cause" to "reasonable cause." The new law also prevents the intended victim from knowing his accusers, or from confronting them in a court of law. If he is later deemed innocent, he must petition the court to regain possession of his confiscated firearms.



In simple terms, under Florida's "red flag" law — presently in place or being considered in more than two dozen other states — a person is guilty until proven innocent, and he must bear the costs of proving his innocence.

Consider, for example, [the case of Broward County Sheriff's bailiff Franklin Joseph Pinter](#), age 60, who allegedly made some verbal threats toward other bailiffs and, again allegedly, was seen on the fifth floor of the county courthouse leaning over the railing and pretending to hold a long gun and shooting at people below.

This was all that the judge needed. On Friday, May 25, the sheriff's office sought the RPO — risk-protection order — which the judge granted that same afternoon. No trial. No defense. No witnesses. No one representing Pinter. In fact, Pinter had no way of knowing about the court order and the warrant to seize his 67 firearms until deputies showed up at his door.

Broward County is the most aggressive of any Florida county in its use of its new freedom to violate its citizens' rights and protections granted under the Fourth Amendment. Within six weeks of passage of the law, Broward County had successfully obtained 34 such RPOs.

According to Florida's *Sun-Sentinel*, half of those court orders were related to bad behavior on social media. One example will suffice: A Pembroke Pines teenage girl was brought into police headquarters and subjected to more than two hours of questioning about her posts on social media. No attorney was present. None was needed. After all, the right to "lawyer up" isn't part of the new law. Said Pembroke



Written by [Bob Adelman](#) on June 6, 2018

Pines Police Captain Al Xiques, the “police department will pursue those Risk Protection Orders in accordance with the new law when we determine that it is necessary in order to protect the public’s safety.”

Which is exactly why the new “red-flag” laws are so dangerous to personal liberty. What restraint is placed on Xiques in his quest “to protect the public’s safety”? Does a crime have to be committed, or planned and plotted? Has he proof of a conspiracy to commit an offense? By what standards does he prosecute the innocent in order to protect the innocent?

Kendra Parris, an Orlando attorney who represents the teenage girl in question, is filing suit to demand that the case against her be dismissed and that Florida’s red-flag laws be declared unconstitutional. “This constitutes state action against protected speech — online in public forums.... the legislature needs to ... respect individual’s due process rights,” Parris said.

Although red-flag laws vary from state to state, in general they allow law enforcement or a family member to petition a judge for a “gun-violence restraining order” or “extreme risk-protection order” (ERPO) that prohibits the freshly minted victim from possessing firearms. The judge issues an emergency order, without the victim being present or even knowing such a petition is being made, to “prevent immediate danger.” The law often requires a hearing later, where the victim is advised of the rights that were just forfeited and is given a chance to defend him or herself.

Funny thing: The slight difference between “reasonable cause” and “probable cause” is just enough to emasculate the Fourth Amendment. It lowers the bar enough, and removes enough other protections, that every citizen who expresses a view or behavior not in keeping with the standards set by police officials such as Xiques could eventually find law enforcement at his or her door with orders to remove their firearms and related items from their possession, by force if necessary.

Image: matejmo via iStock / Getty Images Plus

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