



Written by [Bob Adelman](#) on March 8, 2018

New Florida Gun-control Bill Contains “Red Flag” Provision

In their haste to “do something ... anything” in response to the Parkland, Florida, high-school shooting, Florida Republicans [gave up any pretense](#) of supporting the Bill of Rights. They passed on to Governor Rick Scott’s desk a bill that violates the Second Amendment, the Fourth Amendment, and common sense. In a word, it’s the “complete package.”



Here’s how one Republican, Senate President Joe Negron, explained how he justified his support for it:

We can never replace the 17 lives that were lost at Marjory Stoneman Douglas High School, and we can never erase the traumatic experience that lives on in the memories of those who survived this horrific attack. However, we will do everything we can to address the failure of government to effectively address the numerous warning signs that should have identified the perpetrator as a danger to others. We can and we will increase the resources available to identify and treat those suffering from mental illness, improve the safety and security of our schools, and ensure those suffering from mental illness do not have access to firearms.

The bill bans bump stocks (not used in the Parkland attack), raises the age to buy rifles and shotguns from 18 to 21 (as if that would have deterred the Parkland shooter), mandates a three-day wait on most gun transfers (the shooter would likely have waited for the three-day wait to expire), spends \$400 million of Floridians’ monies to increase school security, establishes a commission (of course) to investigate the shooting, and creates a \$67 million “guardian” program to pay for law-enforcement-trained armed volunteers to secure those schools (teachers and administrators would still be prohibited from carrying firearms on campus to protect themselves and their students).

Most insidious and dangerous of all, however, is the bill’s “red flag” provision that would also violate Floridians’ Fourth Amendment rights that protect them from unreasonable searches and seizures.

Simply put, someone who thinks someone else might be a danger to himself or others can present his arguments to a judge who then, based upon those arguments, is free to decide whether the state (police armed with guns and badges) can forcibly remove privately and legally owned firearms from that person’s possession. The “red flag” provisions do not allow the person charged to defend himself or even to know who his accuser might be. Further, he must prove his innocence in order to get his confiscated firearms returned to him. He is “guilty until he proves himself innocent.”

All in violation of the Fourth Amendment, which states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”



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These so-called laws are also referred to as Extreme Risk Protection Orders (ERPOs) or Gun Violence Restraining Orders (GVROs) and permit a family member or a law-enforcement officer to ask a judge to issue the order. The victim doesn't have to have been charged with a crime and isn't allowed to challenge his accuser in a court of law.

Arguments from those supporting both the Second and Fourth Amendments fell on deaf ears. The National Rifle Association (NRA) has long held that ERPOs "strip the accused of their Second Amendment rights [and] would be issued by a judge based on the brief statement of the petitioner."

Oregon is one of five states with red-flag laws already on the books. During arguments before the Oregon legislature passed its ERPO, the NRA described their danger to liberty: "[A red flag law] would allow people who are not mental health professionals, who may be mistaken, and who may only have minimal contact with the respondent [the victim], to file a petition with the court and testify on the respondent's [the victim's] state of mind."

Not unexpectedly, Bloomberg's Everytown for Gun Safety supports ERPOs. Everytown's deputy "legal director," William Rosen, told ABC News that "Mass shooters often display warning signs before they carry out their attacks, and [an] ERPO provides an opportunity for family members or law enforcement to intervene before a tragedy occurs."

The opportunity for abuse is evident which is why the Founders put the Fourth Amendment in place in addition to the Second. But Florida lawmakers were in no mood for such constitutional niceties. Said Republican George Moraitis on the House floor before Wednesday's vote, "We're voting for school safety. We're voting to protect children." Even if he has to violate every Floridian's precious rights in the process.

The bill now sits on Florida Governor Rick Scott's desk. Governor Scott said that before he signs the noxious and dangerous bill into law, "I'm going to review [it] line by line."

Image: matejmo via iStock / Getty Images Plus

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