



Written by [Joe Wolverton, II, J.D.](#) on February 26, 2018

Trump Calls for Bump Fire Stock Regs, Mulls Confiscating Guns From the “Dangerous”

In the aftermath of the atrocities committed at a Parkland, Florida, high school on February 14, President Donald Trump has proposed a pair of “solutions” to the problem of armed violence.

First, on February 20, the president issued an official memorandum instructing the Department of Justice to “to dedicate all available resources to complete the review of the comments received, and, as expeditiously as possible, to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns [sic].”



The device in question is identified in the letter as “bump fire stocks and similar devices.”

The memo begins by rehearsing the fact that the Obama administration “repeatedly concluded that particular bump stock type devices were lawful to purchase and possess.”

Under Donald Trump, however, the memo claims that there will be “clarification of the law restricting fully automatic machineguns [sic].”

President Trump demands that “the resulting regulation is workable and effective and leaves no loopholes for criminals to exploit.”

In other words, let’s create a regulation, call it a “law,” and make it so airtight that there is no way a criminal could find a way to violate it.

The next step taken by the president in his quest to infringe on the right of Americans to keep and bear arms is even more egregious than the first.

An article published in *Time* magazine describes the despotism:

The White House is considering the idea of using restraining orders to take firearms away from people considered dangerous as part of its response to last week’s massacre at a Florida high school, two people familiar with the matter said.

Under extreme risk protection orders, which are also known as red flag laws or gun violence restraining orders, firearms can be confiscated from people found to be at risk.

The White House is studying an Indiana version of the law, and is considering other measures as well, according to the people, who requested anonymity to discuss policy deliberations. Four other states also have such laws.

To restate it, “red-flag” laws are laws designed to use restraining orders to confiscate weapons owned by “dangerous” or “at-risk” gun owners.



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The restraining order disarmament scheme is not the only gun grabbing tactic being considered by the Trump administration according to the Time story.

“It is one of a range of proposals, including mental health initiatives, that are under consideration by the White House,” the article reports.

In order to force states to enforce the proposed federal restrictions on firearm purchase and ownership, the Trump administration is considering withholding federal grant funds from any state that refuses to seize the weapons as the White House demands.

Before examining the obvious constitutional violations in this pair of proposals, I would remind readers of the reaction Republicans had to a similar presidential fiat issued by Donald Trump’s predecessor.

As I reported in January 2014:

“In an executive ‘Fact Sheet’ issued January 3 by the White House, the president purports to establish new guidelines for “keep[ing] Guns out of Potentially Dangerous Hands.”

The next paragraph of that story can now be applied to both President Obama and President Trump:

“What President Obama — a former part-time law professor — seems not to understand is that every time he issues some executive order, presidential finding, or ‘fact sheet,’ he is exceeding the constitutional limits on his power and thereby violating his oath of office.”

All you need to do is change the last name of the president and change the words “fact sheet” to “memorandum” and the story is no different.

Now for the several constitutional violations in the president’s proposals.

First, Article I, Section 1 of the Constitution grants federal lawmaking power exclusively to the Congress. Regardless of the word he uses to describe it, any time the president “tweaks” a law or issues an executive order covering something other than the narrow limits allowed to such directives, he is making law. He is uniting in his hands all the power of the executive and the legislative branches, thus becoming our Founders’ very definition of a tyrant.

No matter how many people are clamoring for protection, the president is not constitutionally authorized to take “executive actions” that encroach upon rights protected by the Constitution — in this case, the right of the people to keep and bear arms.

The Second Amendment could not be clearer as to the limit on the power of any branch or agency of the federal government when it comes to reducing the scope of that most fundamental right. The Second Amendment reads in relevant part: “the right of the people to keep and bear arms, shall not be infringed.”

“Shall not be infringed.” Not “should not be infringed” or “shall not be infringed except...” The mandate is clear: The right to possess and use firearms is a right whose enjoyment may not be restricted by the federal government.

The next unconstitutional aspect of President Trump’s tyrannical tack is demonstrated by reading the executive oath of office as set forth in Article II, Section 1:

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Preserve, protect, and defend, not restrict, rethink, and repeal.



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Next up, Article IV, Section 4.

“The United States shall guarantee to every State in this Union a Republican Form of Government....”

What is a republican form of government? Let’s let James Madison answer that.

A couple of quotes from *The Federalist*, No. 10:

“A republic, by which I mean a government in which the scheme of representation takes place.”

“The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.”

The people of the United States do not elect the president of the United States; the electoral college does this. Because the president is not the representative of the people, his edicts, if afforded the color of law, are not republican. Therefore, if the Congress doesn’t intervene in the violation, then there is no republican form of government and Article IV, Section 4 is violated.

Why do we care if the president assume legislative power?

One more from Madison, also from *The Federalist* (Number 47):

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

In other words, any act of the president that should be the exclusive prerogative of the legislative branch is an act of tyranny, no matter how much the people support the usurpation.

For your reference, here is a list of the constitutional powers of the president:

Art. I, Sec. 7:

Power to approve or veto Bills and Resolutions passed by Congress.

Art. I, Sec. 9:

Power to write checks pursuant to Appropriations made by law.

Art. II, Sec. 1:

President has the “executive power.”

Art. II, Sec. 2:

President is the Commander in Chief of the armed forces.

President may require the principal Officers in the executive agencies to provide written opinions upon the duties of their offices.

President may grant reprieves and pardons for offenses against the United States, with the exception of impeachment.

President may make Treaties — with the advice and consent of the Senate.

President may nominate ambassadors, other public ministers and consuls, federal judges, and various other officers — with the advice and consent of the Senate.

President may make recess appointment which expire at the end of the next congressional session.



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Art. II, Sec. 3:

President must periodically advise Congress on the State of the Union, and authorizes the President to recommend to Congress such measures as he deems wise.

President may, on extraordinary occasions, convene one or both houses of Congress and if both houses can not agree on when to adjourn, he is authorized to adjourn them to such time as he deems proper.

President must receive Ambassadors and other public ministers.

President must take care that the laws be faithfully executed.

President must commission all the officers of the United States.

That is an exhaustive list. No president may constitutionally set any agenda outside of this very narrow range of powers. Likewise, Congress may not permit the president to act outside the constitutional sphere of his authority.

There remain two powerful checks on the executive branch's absolutist aim:

First, strengthening the states. Madison and most of his fellow founders considered the states the "bulwark of liberty." The states possessed of the lion's share of power under the Constitution.

Second, the Constitution creates an executive branch that is relatively weak compared to Congress, and members of the legislative branch should stop surrendering power to the president.

As the ultimate sovereigns, the people may deploy these two weapons in the war against despotism by electing congressmen dedicated to adhering strictly to the Constitution's separation of powers and by electing fearless state legislators committed to stopping all federal overreaches at their state borders through bills nullifying these acts.

There is more to say on the subject, but as the days progress and the despotism increases, we will continue our mission to support the Constitution by holding officeholders to their oaths of office, whether that office is in the White House or the Capitol Building.

Photo of bump stock attached to semi-automatic rifle: AP Images



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