



Written by [Bob Adelman](#) on May 25, 2023

Pushback Against Red Flag Laws Continues to Grow

Michigan Governor Gretchen Whitmer defied local constitutional sheriffs on Monday [by signing into law red flag legislation](#). When it becomes effective, it will allow family members, law enforcement officials, mental health “professionals,” roommates, and even former dating partners to petition a court to have firearms removed from the targeted victim — all without a trial, a conviction, or even advance notice.

As AP News noted, the “flagged person would have to prove they do not pose a significant risk” to themselves or to others in order to get their guns back. In other words, under Whitmer’s red flag law, targets are deemed guilty until they can prove their innocence.



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This turns the Fourth Amendment to the U.S. Constitution on its head, and pushback against such laws continues to grow. Constitutional sheriffs in Michigan have already publicly declared they won’t enforce the law once it goes into force.

A rush to pass a red flag law in Tennessee is also generating resistance, this time from Republican lawmakers opposing the push for a special session by the state’s Republican governor, Bill Lee. State Representative Bryan Richey sent [a letter](#) to Lee:

Governor, on behalf of myself and my colleagues listed below, we urge you to abandon the special session you have proposed for August 21, in response to The Covenant School tragedy, because the General Assembly can further consider and discuss legitimate measures to improve public safety when the legislature reconvenes in January 2024....

We can strengthen our criminal penalties and protect our people at any time. It does not require a special session—a session that will be a political event to put pressure on conservative Republicans to grow government and ignore the will of their constituents in service to the national woke mob that will descend on the Capitol.

In New York, the rush to target innocents who might be a danger to themselves or others has reached a fever pitch, most likely because two state courts have already ruled the state’s red flag law unconstitutional.

That rush has been extraordinary. In 2021 there were 538 ERPOs (extreme risk protection orders) issued. In 2022 there were almost eight times as many ERPOs issued — 4,257.

And so far in 2023, ERPOs are being issued at an annual rate of more than 10,000. The governor appears to want to inflict as much damage as possible before the law is tossed by a higher state or federal court. Governor Kathy Hochul [admitted](#) that the law isn’t designed to prosecute criminals, but



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only those who might possibly someday become criminals: “Red flag allows us to not solve a crime after the fact but to prevent the crime.”

Happily, two judges have already ruled her law unconstitutional: Thomas Moran in Monroe County and Craig Stephen Brown in Orange County.

Judge Brown [made it crystal clear](#) why:

Absent from New York’s Red Flag Law is any provision whatsoever requiring even a single medical or mental health expert opinion providing a basis for the order to be issued.

New York’s Red Flag Law ... lacks sufficient statutory guardrails to protect a citizen’s Second Amendment Constitutional right to bear arms.

To say nothing about infringing on that citizen’s Fourth Amendment right to due process!

Nevertheless, the canard that ERPOs/red flag laws actually reduce gun violence continues. As anti-gun Everytown for Gun Safety [claims](#) on its website: “In many instances of gun violence, there are clear warning signs that the shooter posed a serious threat before the shooting. Extreme Risk laws give key community members a way to intervene before warning signs become tragedies.”

Even if that were true, the end (reducing gun violence) doesn’t justify the means (violating citizens’ rights guaranteed under the Constitution’s Bill of Rights). Instead, such laws could — and likely would — be expanded to include anyone opposed to the political party presently in power. As the NRA’s Institute for Legislative Action [said](#):

Aside from allowing run-of-the-mill malicious actors to indulge personal grudges against law-abiding gun owners, in the current politically-charged environment these laws enable the government to target those with First Amendment-protected political views the government disfavors.

As this writer has suggested, such expansions could eventually include all law-abiding gun owners, who will be deemed “a danger to themselves and to others” simply because they own a firearm.

The pushback against such egregious assaults on precious liberties is welcome. It needs to grow to the point where laws in the 20 states allowing such infringements are declared unequivocally unconstitutional at the highest level.



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