

Liberty Briefs

Wisconsin GrandSons of Liberty

Red Flag Laws

5/7/2019

Most American laws are derived with the best of intentions. These include a majority of states passing Prohibition laws in the 1920's that led to a constitutional amendment, or the National Firearms Act of 1934 that resulted from gangsters outgunning law enforcement. Even guidelines from government agencies can have the effect of law, look at the EPA policies regarding global warming or First Lady Michelle Obama's healthy school lunch initiative. Lately, we are having reactionary legislation on the heels of gun violence in an effort to prevent the next senseless tragedy. These Red Flag laws aim to identify a person at risk of causing harm to others or themselves then removing firearms from their possession.

Overview:

There are 14 states that have developed variants to RED FLAG initiatives into standing laws and other states are considering them. RED FLAG LAWS permit any person...relative, neighbor, fellow worker, anyone...to petition law enforcement, through court action, to collect and remove all firearms in that person's possession if the court deems they may present a danger to others or themselves. By identifying the people exhibiting red flags regarding violent acts, concerned friends, family, and health professionals can act proactively to lessen the likelihood of that person acting out tragically. A RED FLAG LAW is an effort to prevent gun violence, however, these laws specifically target guns as the only dangerous weapon and no others.

Constitutional Implications:

First Amendment: The way you act, speak, believe, create, and the like is your Right to Free Speech and wholesale limiting this is censorship. Add to that, people take comments out of context all the time, and now they can be used in court to circumvent your constitutional rights.

This opens the door for a new kind of profiling that can incorrectly create assumed associations and even guilt based on a profile.

Second Amendment: The right of the people to keep and bear arms shall not be infringed. As a society, we have accepted that felons are a group that can have this right infringed. But, Red Flag Laws have no requirement for a felony conviction. With Red Flag Laws, your property can be taken away from you on assumptions, supposition in thought, and not an unlawful act.

Fourth Amendment: Protection from unreasonable searches and seizure. Red Flag Laws do not need a crime being committed. Red Flag Laws circumvent the Fourth Amendment to allow seizure of firearms before a crime occurs or may never occur.

Fifth Amendment: Red Flag Laws circumvent constitutional due process protections to shield your property from anyone trying to access and confiscate it, even temporarily. Equally important, Red Flag Laws admit that no crime has been committed, but allow seizures under the presumption a person could harm themselves or others.

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Sixth Amendment: Under Red Flag Laws, you do not get a chance to confront your accuser in court. Red Flag Law confiscations are often initiated *Ex Parte ex parte*, in which this whole court process happens without your knowledge with a judgement rendered, a seizure warrant issued, and you have no recourse. You were not allowed to defend your property.

Practical Implications:

The mere accusation that anyone could be capable of doing harm is enough to trigger action via Red Flag Laws. This is a very negative accusation. How does one defend against a negative, then get their character and respect back from this destructive process?

Red Flag Law proceedings are often done without the person's knowledge! Imagine opening the door and facing an armed officer with a warrant sent to get all your firearms at that instant. Your guns are gone before the first attorney called can answer their phone.

We are seeing a rise in "Swatting" calls where police are falsely informed of a situation requiring SWAT team response. The outcome can be very tragic as recently evidenced in Houston, TX when an innocent couple thought their home was being invaded and shot 5 law enforcement members that broke down the door to their home. The result was two innocent home owner's dead, their dog dead, five officers shot, and no drugs or evidence of drug dealing found in the home. There has already been one case in Maryland of a person getting shot by police trying to serve a confiscation warrant. When good people are not afforded their constitutional rights, we may well have more Maryland type tragedies. How many Amendments need to be circumvented before you realize the Red Flag Law concept is unconstitutional?

Wisconsin GrandSons of Liberty Position:

Wisconsin GrandSons of Liberty is dedicated to preserving and promoting Constitutional Rights and has actively pursued legislative actions for individual's betterment. We are against current Red Flag Laws exhibited in other states and believe them not to be the cure for the intended result.

There should be a better way, and a way that acknowledges the mental health issues some people endure. If someone is exhibiting signs of harming themselves or others; shouldn't the person be taken for treatment instead of removing property from them but leaving them without an option for potentially needed healthcare.