

Townhall

Gun Rights Activist Warns About Red Flag Laws: 'Abuse of Power That Could Very Easily Be Taken Advantage of'

Rebecca Downs

Apr 10, 2021

As Katie and Matt have covered, President Joe Biden's executive orders on guns have arrived, one of them to do with red flag laws. According to the White House, "The Justice Department, within 60 days, will publish model "red flag" legislation for states."

Katie has referred to how red flag laws "often violate civil liberties." Specifically, there's "due process" concerns, as Thomas Bingham, a gun rights activist who formerly worked for the NRA, shared with Townhall.

Bingham was quite candid about his own personal experience with guns. When living in southern California with his family, Bingham used a firearm in self-defense during a home invasion. The police had taken an hour to show up. Those who stalked the Bingham family then, "in trying to cause chaos," argued the family shouldn't have guns, and claimed the family was using illegal guns, which created confusion with law enforcement.

What followed was those people taking each Bingham family member to court in order to get a temporary restraining order (TRO). When a TRO is granted against a person, he or she loses the right to a firearm and must surrender guns to the police, or otherwise faces a felony. Bingham spoke of the hard decisions his family members knew they would have to make, should the expensive lawsuits get extended. All this was ongoing while the Bingham family had to repeatedly call the police over being stalked.

The Bingham family had a good lawyer, though. Ultimately, the TRO was not granted, which the judge regarded as a waste of time. Nevertheless, the plight the Bingham family experienced was quite palpable.

When it comes to the due process concerns, Bingham offered that red flag laws involve even less due process than his family's situation. He offered a hypothetical of someone having their guns taken away over social media posts.

"If you lower the threshold," Bingham explained, "there are consequences which can be abused, even if the intentions are good." Bingham offered it's not that hard to get a warrant, and also suggested that police just take into custody those who are posing such a danger. He warned against an "abuse of power that could very easily be taken advantage of."

The "consequences" can't be underscored enough, as they can come into conflict with Fourth Amendment rights. The U.S. Supreme Court recently heard oral arguments in *Caniglia v. Strom* to do with warrantless searches. As [SCOTUSblog](#) lays out:

The case stems from a 2015 incident in Cranston, Rhode Island, in which police performed a "wellness check" on Edward Caniglia after his wife reported that he might be suicidal. After arranging for Caniglia to be taken for a psychiatric evaluation, officers entered his home and confiscated his two handguns. Their justification for the warrantless search and seizure was that they believed Caniglia posed a danger to himself and others. Caniglia sued for violations of his constitutional rights, and the U.S. Court of Appeals for the 1st Circuit sided with the officers. The 1st Circuit applied the community caretaking exception (which originated in *Cady v. Dombrowski* in the context of the search of a car) and extended that exception to the home.

Damon Root with Reason reported on March 25 that "[Sonia Sotomayor Questions Warrantless Gun Seizure in Big Fourth Amendment Case.](#)" Root wrote that "Justice Sonia Sotomayor, one of the Court's biggest Fourth Amendment hawks, raised a few objections to giving the cops that much leeway to enter the home without a warrant."

Bingham referenced numerous examples of constitutional concerns with these red flag laws, which are not merely to do with the Second Amendment, but a whole host of others.

Perhaps the most thorough explanation comes from Charles C.W. Cooke's "[Why NRA Is Raising A Red Flag Over "Red Flag" Laws,](#)" published with the NRA's America's 1st Freedom on May 23, 2019:

And make no mistake: The number of constitutional violations that the existing "red flag" laws rack up is nothing short of astonishing. To be comfortable with "red flag" regimes as they currently exist is to accept that there is no legal problem with Americans being temporarily deprived of their constitutional rights when they have not been convicted, arrested or even charged with a crime; to accept that forcing citizens actively to prove their innocence—against authorities that may well be hostile to them—is compatible with the presumption of innocence; to accept that the state can deprive a person of his liberty and notify him after the fact; and to accept that, when convenient, a simple "reasonableness" standard may be substituted for more rigorous evidentiary standards consistent with the deprivation of an enumerated right.

Or, put another way, to be comfortable with "red flag" laws as they currently exist is to be comfortable with creating a de facto Second Amendment veto that can be wielded at will by one's fellow citizens, and then enforced by agents of the state. It may be possible to create a "red flag" law that does not undermine half of the Bill of Rights and the 14th Amendment. Indeed, such a provision might even be desirable—once again, we all desire to limit criminal behavior. But, as of yet, we have seen neither the appetite nor the expertise that would be necessary to pull it off. Instead, we have watched as every attempt has been swiftly hijacked by political actors who, at best, do not care about the right that they are placing in jeopardy, and who, at worst, are actively opposed to its protection.

An August 31, 2019 [piece for RedState from Bonchie](#) points to a disturbing example of not only red flags laws, but media malpractice:

A man's son called the police on him, citing he thought his father might be suicidal. Without any due process at all, the police showed up, confiscated his entire firearms collection, and

hospitalized him (likely for evaluation). NBC News ran with the story, painting with their headlines the idea that he was a mass shooter in waiting. There's absolutely no evidence of that nor does their appear to even be any evidence he was actually suicidal.

A single phone call and a man's entire collection is confiscated? There was no hearing, no judge, no due process at all. The police got one call and took it upon themselves to seize everything. Now the police have the right to "deem" weapons unsafe and not return them. This seems like a pretty big violation of the 4th amendment.

In a piece published by the Hill, Matthew Larosiere, of the Cato Institute's Center for Constitutional Studies, explains:

This type of framework, while it may enable people close to a troubled person some opportunity to diffuse a potentially dangerous situation, sets up a system of perverse incentives. The term "red flag" is something of a misnomer, too, as the "suspicious" activity that can be the basis of a petition includes the simple act of buying a gun, or just being interested in weapons. This turns constitutionally protected First and Second Amendment activity into the basis of a seizure of property. Where the orders are granted with relaxed evidentiary burdens, and the petitions can be brought by an ex-boyfriend or girlfriend, GVROs can become an instrument for malicious individuals to harass and endanger. This concern is far from baseless, as the forensic psychology journal "Behavioral Science & the Law" observed that about a third of GVROs were issued against innocent people.

In addition to his previous work with the NRA, Bingham expertise in firearm policy also comes from his educational background in undergraduate and graduate school. He has spoken to Virginia public officials, including about gun control laws in the commonwealth which have passed and failed, and currently runs a Facebook group for those in Northern Virginia, from both the left and the right, concerned about gun control.