

This critically thoughtful essay is a hard No analysis and testimony against patently unconstitutional, “pre-crime” red flag laws in the name of the canard of “perceived safety.”

Dubbed “red flag laws,” they provide for “extreme risk protective orders” that direct police to confiscate all firearms and ammunition from any person who is targeted by such an order. At first glance, that might seem reasonable – nobody wants an unhinged psychopath who poses an “extreme risk” to others to possess a gun. But the laws must be written so loosely that law enforcement can also seize the guns of ordinary citizens who have never broken the law.

These gun confiscation measures grossly violate the due process and Second Amendment rights of lawful gun owners. The constitutional problems are as follows:

1. The seizure of guns without any hearing at all. The laws all contain an “*ex parte*” provision that allows the state to temporarily seize a person’s guns without even notifying the gun owner or giving him a chance to be heard. **This is the quintessential denial of due process.** The Fourth Amendment makes clear that a person cannot be denied of liberty (to exercise one’s constitutional right to bear arms) without due process of law. This confiscation is “temporary,” but it can easily lead to long-term or permanent confiscation. It is guilt before innocence. No.
2. Based on the testimony of one unrelated person. The confiscation order can be based on the testimony of only one person claiming that the gun owner poses a risk to the safety of himself or others. The laws deceptively say that it has to be the testimony of a “family member.” But “family member” can include “former dating partners” and anyone who has *ever* lived with the defendant. So a jilted former boyfriend or girlfriend, or even a roommate from years ago, could easily set in motion the disarming of a lawful gun owner. It’s worse if the law allows unrelated person’s to sign a complaint against gun owners. It’s becomes a form of “SWATting.”
3. Using a very low standard of proof. The standard for obtaining an *ex parte* order against a gun owner is absurdly low – one need only show “reasonable cause” to believe that the person may pose a risk. That’s even lower than the “probable cause” standard for obtaining a search warrant to take a basic Constitutional right which require strict scrutiny.

In addition, the judge is forced to rush his decision and issue the confiscation order on the same day or within a few days of the *ex parte* hearing. Within two weeks of the *ex parte* hearing, a hearing with the gun owner present must occur; the purpose is to put in place a long-term confiscation order. But even at that hearing, the standard of proof is far below the “beyond a reasonable doubt” standard used in criminal trials – again for a Basic Constitutional Right – the second one listed the Bill of Rights.

Indeed, it need only be shown by “a preponderance of evidence” that the person poses a risk of injury to self or others. What kind of evidence? Things like the “reckless storage” of firearms and drinking habits can be considered. If you keep a handgun in the bedside table and drink beer regularly, you may in trouble.

4. Shifting the burden of proof to the gun owner. The long-term confiscation order lasts up to a year, but may be renewed indefinitely. Once it is in place, it becomes very difficult to remove. To have the confiscation order lifted, the gun owner must prove he does *not* pose a threat to himself or others. **Proving a negative is nearly impossible. This is an intentional feature of these laws.** Adding insult to injury, some laws even authorize local law enforcement to *charge the gun owner a storage fee* for confiscating and storing his guns.

The 5th & 14th Amendments of the U.S. Constitution mandate that no one shall be “deprived of life, liberty or property without due process of law.” This is clear to anyone with a basic comprehension of English. This includes judges and politicians. Depriving people of a constitutional right before a trial and without charges tramples on the notion of innocent until proven guilty and severely erodes the core values of American Constitutional jurisprudence.

Proponents of red flag laws argue due process is respected by allowing the deprived to appeal to the courts to reinstate their rights. However, this backward process implies that the Second Amendment is a privilege, not a right. **And that is their intention to misconstrue.**

The Second Amendment is a (basic human) Right. Period. The Constitution enumerates this Right and nine others in the Bill of Rights.

Abuse of basic rights happens. It’s a thing as [Michelle Malkin](#) points out:

I first reported on the VA’s secretive database on “disgruntled” and “disruptive” vets five years ago. Under the VA policy on “patient record flags,” federal bureaucrats can classify vets as “threats” based on assessments of their “difficult,” “annoying” and “noncompliant” behavior. The VA manual says the flags “are used to alert Veterans Health Administration medical staff and employees of patients whose behavior and characteristics may pose a threat either to their safety, the safety of other patients, or compromise the delivery of quality health care.”

In 2013, the VA inspector general concluded that the bureaucracy “does not have a comprehensive definition of what constitutes disruptive behavior.” In January 2018, a VA Office of Inspector General report found that large numbers of flagged veterans were being left in the dark about being placed on dangerous patient lists — with no recourse to remove phony flags or appeal in any meaningful way.

Despite rules requiring the “Disruptive Behavior Committee” to notify flagged patients of their status and informing them of their right to amend their reports, the OIG found no evidence in 49% of electronic health records that the panels had provided such notice and disclosure.

In 25% of medical records reviewed, the OIG “found no evidence that patients were informed they had the right to request to amend or appeal” special orders restricting care of flagged patients.

Thomas Vician

Moreover, in the most leftist states with red flag laws, there is little to know punishment/penalty for liars and perjurers intentionally signing false accusations to bully law abiding gun owners under color of law. This is done intentionally by the other side. And we all know why.

Lastly, I leave a link to an hour-long YouTube talk from Larry Mudgett – two-time Medal of Valor recipient at the Los Angeles Police Department and recipient of the Army Commendation Medal for Heroism in Vietnam. Please read his impeccable pedigree and biography below. He is a Subject Matter Expert on guns, gun safety, marksmanship, policing and the use and scaling of force in defense of life. This hero's Youtube refutation of Red Flag Laws is at the following two links:

<https://www.facebook.com/URWLC/videos/88213295552571/> and here
https://www.youtube.com/watch?time_continue=256&v=YSdr0bag208&feature=emb_title

Larry Mudgett Bio

Larry has been training with firearms as a martial art since the age of 17. “The father of modern weapon craft,” Jeff Cooper, was Larry’s friend and mentor for 36 years. Larry also trained and instructed with World Champion Combat Shooter Ray Chapman for several years. Larry had the privilege of training with, or competing with all five of the original “Combat Pistol Masters” as designated by Jeff Cooper.

Larry was an Infantry Light Weapons Sergeant in the First Air Cavalry Division in Vietnam in 1967/1968. He participated in numerous fights including the battle of Tam Quan which historians describe as one of the 10 bloodiest battles of the Vietnam War. His military decorations include the Bronze Star, the Purple Heart, the Air Medal, the Army Commendation Medal for Heroism and the Combat Infantryman’s Badge.

Larry joined the LAPD in 1969 and served for nearly 35 years. He was a member of the world famous LAPD SWAT team for 14 years where his duties included Entry Team, Sniper, Hostage Rescue Instructor, Tactics Instructor and Chief Firearms Instructor. He was also assigned to guard three U.S. Presidents and numerous foreign heads of state.

Larry was the Chief Firearms Instructor for the LAPD’s elite Metropolitan Division for more than a decade. In 1990 Larry was unanimously selected as the Metropolitan Division Officer of the Year.

In 1991 Larry transferred to the Police Academy where he served for 13 years as the Training Division Chief Firearms Instructor. He was responsible for the training of 10,000 LAPD Officers. He was awarded the LAPD Meritorious Service Medal for his commitment and achievement in providing the finest firearms instruction in LAPD history.

Since 1878, 49,000 Men and Women have worn the badge of the LAPD. Larry was the 7th Officer in the history of the LAPD to be awarded the medal of valor twice. He was also one of only 39 Officers to ever shoot a perfect score on the LAPD Advanced Combat Pistol Course (Bonus Course) which he accomplished not once but three times. During his LAPD career Larry received 9 major awards and more than 100 commendations.

During his 47 years of teaching firearms he has trained the USMC Recon, the USMC Special Operations Training Group, Department of Energy SWAT Teams, the LAPD SIS, the California Highway Patrol Special Response Team and SWAT Officers from numerous agencies. He has taught for the U.S. State Department and has also trained SWAT teams from several foreign countries.

Larry is an accomplished competitive shooter, a six time Gunsite Academy Graduate, an NRA instructor, a Utah CFP Instructor, a Law Enforcement Instructor and was a Gunsite Academy Range Master for 9 years. He has written and published numerous articles on firearms, competitive shooting and firearms training. Larry has qualified in Superior Court as an expert witness on firearms and firearms training. He has also qualified as an expert witness on Firearms and Tactics for LAPD administrative hearings.

Larry and his wife Stacey are the owners of and instructors for “Marksmanship Matters” in Utah, where they teach Defensive Pistol, Rifle, Shotgun, Predator Defense and other related classes