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Testimony in Support of HB20-1271

Members of the Committee, thank you. My name is Duane Thompson and I reside in Centennial, Colorado. I am here today to speak in support of HB20-1271.

I do not want to re-debate the problems, issues, and constitutionality of the existing anti-gun ERPO (or Red Flag) law. Suffice it to say that it was very poorly thought out and just as poorly written. For the short time it has been in effect, we have already seen its resulting use and misuse.

The existing law deals ONLY with the removal of firearms from an individual, and does nothing to secure any other deadly devices or materials, nor does it protect or provide any necessary intervention and assistance to an individual respondent that may truly be in need.

This should be seen by everyone as a very serious problem. After all, we are dealing with a right that is *supposed* to be guaranteed by the U.S. and Colorado Constitutions. Shouldn't potential infringements to any of these rights, even when necessary, be subject to the highest possible scrutiny to protect all that may be concerned?

The legislation (HB20-1271) you are presently considering (while not totally perfect) will correct the ambiguities and ineffectiveness of the existing statute by protecting any Petitioner (or others) as well as any Respondent by removing him/her from ANY deadly devices or materials, while still accomplishing ALL of the goals and objectives that we were erroneously told would be addressed by the existing, but flawed, ERPO law.

(Duane Thompson
Centennial, CO
(303) 459-4060)

Red Flag Law: Colorado Sheriff and Legislators Violate their Oath

Here is a commentary in response to Colorado's illegal Red Flag Law. I that the biased local media will publish it; the goal is to plant some seeds in the minds of whoever might screen these submissions.

Commentary: Red Flag Laws

Douglas County Sheriff Tony Spurlock (who lied and pushed for Colorado's ERPO "Red Flag" Law) should be stripped of his law enforcement certification and criminally charged under 18 U.S. Code §241. Conspiracy against rights. Since he made a point of ensuring we knew he spoke as a law enforcement officer (appearing in uniform numerous times), criminal charges under 18 U.S. Code §242. Deprivation of rights under color of law may also be in order for his advocacy of a clearly unconstitutional "red flag" law.

Indeed, Colorado Attorney General Phil Weiser, Colorado State 37th district Representative Tom Sullivan, as well as all of the Democrats in the Colorado State Legislature, should be liable and charged under the same Federal Statutes.

What these officials failed to mention is that everything "red flag" proponents claim to want — to get guns away from those who are a danger to self or others — can already be done under existing laws. Someone who has made an actual threat can be arrested. A judge can make the surrender of firearms a condition of bail, and that can made a part of an ordinary protective order.

This what what Colorado's "red flag" proposal really does:

1. Unconstitutionally eliminates due process before the taking; a judge issues the order before the subject has a hearing. As far back as 1921, the Supreme Court has held that "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears BEFORE it condemns" (*Truax v. Corrigan*).
2. Reduces the standard of evidence of danger to unsubstantiated feelings. Real threats are a crime. Real displays of danger to self support action under Colorado's existing involuntary hold regulations.

"Red flag" orders take property without giving the target a hearing first, without evidence, and then leave the allegedly dangerous person free to obtain any other dangerous implements.

As we have seen, "Red flag" laws are ripe for abuse. States that have passed them have already seen firearms taken not just from the subject of the order, but also innocent third parties, some not even in the same household.

In Florida, firearms were taken from an innocent man who happened to have a name similar to the order subject. In Colorado, a woman used the “red flag” law to harass a police officer in a dispute, and an inmate in the Weld County jail filed a petition against the County Sheriff. Maryland officers killed a man who was foolish enough to insist that he was supposed to get a hearing before they took his property.

“Red flag” laws also don’t work. In the wake of the Parkland shooting, Florida passed its law and it has been used thousands of times. The result? Both homicide and suicide rates went up.

Sheriff Spurlock, et al., have violated their oath “to uphold the constitution of the United States and of the State of Colorado” to push an unnecessary and abusive act.

I might add that ex parte (the subject doesn’t get a hearing first) “red flag” orders do not technically meet the 18 U.S. Code §922 prohibited person criteria, meaning the order cannot be entered into the FBI’s NICS background check system. A person who is subject to a “red flag” order is not a [Federal] prohibited person and can still go out and buy another gun. A conventional protective order — with a hearing — does do this.

Feel free to share these talking points with other “red flag” advocates.

18 U.S. Code § 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90–284, title I, §?103(a), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100–690, title VII, §?7018(a), (b)(1), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title VI, §?60006(a), title XXXII, §§?320103(a), 320201(a), title XXXIII, §?330016(1)(L), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104–294, title VI, §§?604(b)(14)(A), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)

18 U.S. Code §242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90–284, title I, §103(b), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100–690, title VII, §7019, Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103–322, title VI, §60006(b), title XXXII, §§320103(b), 320201(b), title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104–294, title VI, §§604(b)(14)(B), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)