NAME _____

What does the Second Amendment mean?

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By Jeremy Quattlebaum, Student Voices staff writer

The school shooting in Newton, Conn., has renewed debate over gun laws in this country. At the heart of the issue is the Second Amendment, one of the most contentious parts of the U.S. Constitution. The shortest of the amendments at 27 words, it addresses the right to carry firearms

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

That one sentence, filled with vague language, has led to the evolution of two views on how to interpret laws.

The first viewpoint argues that the right to bear arms is restricted to members of militias, which were common during the time of the revolution and instrumental in maintaining law and order in many towns and villages. The argument follows that militias, not individual citizens, have the constitutionally granted freedom to carry firearms. This viewpoint puts emphasis on the "well regulated Militia" clause of the sentence, stating that the founders believed that militias, not the individual, were responsible for protecting citizens from threats to their freedom from the government

Writing the dissent in the 2008 Supreme Court case District of Columbia v. Heller, Justice John Paul Stevens wrote, "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia... Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

The second viewpoint is much broader, and argues that the Second Amendment gives individuals, regardless of their membership in militias, the right to carry firearms. This argument puts greater emphasis on the second half of the mendment, emphasizing the clause "the right of the people to keep and bear Arms." The reference to the militia is onsidered a setup to the rationale for allowing every individual the right to carry weapons – that as individuals, operating independently or in a militia, are fundamental in keeping the nation free.

In the majority opinion in Heller, Justice Antonin Scalia wrote, "The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, 'Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

Second Amendment - The Text

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Second Amendment - The Meaning

Right to Bear Arms: The principal debate surrounding the Second Amendment concerns whether the right to use and buy guns belongs to individuals or only to a militia. Although the courts generally have held that the right applies to individuals, they have permitted the government to limit some rights of gun manufacturers, owners and sellers. Today, questions about the Second Amendment center around bans on assault weapons, mandatory background checks, waiting periods, and other restrictions on gun sales or use.

With the passage of the Fourteenth Amendment and subsequent Supreme Court rulings, states were prohibited from making or enforcing laws that infringe on most of the rights set out in the Bill of Rights.

owever, this prohibition does not extend to the Second Amendment. This means that the Second Amendment applies only to actions by the federal government. It does not protect people from state actions that interfere with their right to bear arms. As a result, gun control legislation varies widely among the fifty states.

CONSTITUTIONAL CONVERSATIONS

HOW TO THINK AND TALK LIKE A CONSTITUTIONAL SCHOLAR

As you read, interpret, and cite the documents in the *Interactive Constitution*, it is important to think about how the Constitution expands or limits the power of government. This is how Constitutional Scholars read, interpret, and cite the Constitution. But how can you do this? Here are some tips to help:

1. As you read the essays pay close attention to how the scholars express their ideas. Look for common words and terms they use when writing about the Constitution.
2. Try to separate your political views (what *should* be done—a question of policy) from constitutional views (what *can* be done—a question about the Constitution).
   a. Policy question: Should the public school principal search a student's locker?
   b. Constitutional question: Does the Fourth Amendment restrict the power of a government employee from searching a student's locker?
3. Ways to interpret the Constitution:
   (Adapted from StreetLaw, landmarkcases.org/en/Page/430/Interpreting_the_Constitution)

When the courts must decide a case, the meaning of the laws in question is not always clear. The Fourteenth Amendment, which guarantees equal protection of the laws, has been particularly difficult to interpret over the years because of the ambiguous nature of the concept of equality. Does treating people equally mean treating them exactly the same? Or are there circumstances when equal treatment sometimes requires different treatment? The courts have come to different conclusions at different points in history and in different cases.

Judges use their reasoning skills to decide what particular laws mean when they rule on cases. Different judges sometimes use different reasoning skills to interpret the Constitution, meaning that judges do not always agree on the meaning of the Constitution. There are six widely accepted methods of interpretation that shed some light on the meaning of the Constitution.

Historical Interpretation	A judge looks to the historical context of when a given provision was drafted and ratified to shed light on its meaning.
Textual Interpretation	A judge looks to the meaning of the words in the Constitution, relying on common understandings of what the words meant at the time the provision was added.
Structural Interpretation	A judge infers structural rules (power relationships between institutions, for instance) from the relationships specifically outlined in the Constitution.
Doctrinal Interpretation	A judge applies rules established by precedents.
Ethical Interpretation	A judge looks to the American ethos (constitutional traditions, laws, and practices).
Prudential Interpretation	A judge seeks to balance the costs and benefits of a particular ruling, including its consequences and any concerns about the limits of judicial power and competence.

4. As you read the essays, try to determine the type of reasoning and interpretation the constitutional scholars use in their writings.

THE SECOND AMENDMENT Common Interpretation

By Nelson Lund and Adam Winkler

Modern debates about the Second Amendment have focused on whether it protects a private right of individuals to keep and bear arms, or a right that can be exercised only through militia organizations like the National Guard. This question, however, was not even raised until long after the Bill of Rights was adopted.

Many in the Founding generation believed that governments are prone to use soldiers to oppress the people. English history suggested that this risk could be controlled by permitting the government to raise armies (consisting of full-time paid troops) only when needed to fight foreign adversaries. For other purposes, such as responding to sudden invasions or other emergencies, the government could rely on a militia that consisted of ordinary civilians who supplied their own weapons and received some part-time, unpaid military training.

The onset of war does not always allow time to raise and train an army, and the Revolutionary War showed that militia forces could not be relied on for national defense. The Constitutional Convention therefore decided that the federal government should have almost unfettered authority to establish peacetime standing armies and to regulate the militia.

This massive shift of power from the states to the federal government generated one of the chief objections to the proposed Constitution. Anti-Federalists argued that the proposed Constitution would take from the states their principal means of defense against federal usurpation. The Federalists responded that fears of federal oppression were overblown, in part because the American people were armed and would be almost impossible to subdue through military force.

Implicit in the debate between Federalists and Anti-Federalists were two shared assumptions. First, that the proposed new Constitution gave the federal government almost total legal authority over the army and militia. Second, that the federal government should not have any authority at all to disarm the citizenry. They disagreed only about whether an armed populace could adequately deter federal oppression.

The Second Amendment conceded nothing to the Anti-Federalists' desire to sharply curtail the military power of the federal government, which would have required substantial changes in the original Constitution. Yet the Amendment was easily accepted because of widespread agreement that the federal government should not have the power to infringe the right of the people to keep and bear arms, any more than it should have the power to abridge the freedom of speech or prohibit the free exercise of religion.

Much has changed since 1791. The traditional militia fell into desuetude, and state-based militia organizations were eventually incorporated into the federal military structure. The nation's military establishment has become enormously more powerful than eighteenth century armies. We still hear political rhetoric about federal tyranny, but most Americans do not fear the nation's armed forces and virtually no one thinks that an armed populace could defeat those forces in battle. Furthermore, eighteenth century civilians routinely kept at home the very same weapons they would need if called to serve in the militia, while modern soldiers are equipped with weapons that differ significantly from those generally thought appropriate for civilian uses. Civilians no longer expect to use their household weapons for militia duty, although they still keep and bear arms to defend against common criminals (as well as for hunting and other forms of recreation).

The law has also changed. While states in the Founding era regulated guns—blacks were often prohibited from possessing firearms and militia weapons were frequently registered on government rolls—gun laws today are more extensive and controversial. Another important legal development was the adoption of the Fourteenth Amendment. The Second Amendment originally applied only to the federal government, leaving the states to regulate weapons as they saw fit. Although there is substantial evidence that the Privileges or Immunities Clause of the Fourteenth Amendment was meant to protect the right of individuals to keep and bear arms from infringement by the states, the Supreme Court rejected this interpretation in *United States v. Cruikshank* (1876).

Until recently, the judiciary treated the Second Amendment almost as a dead letter. In *District of Columbia v. Heller* (2008), however, the Supreme Court invalidated a federal law that forbade nearly all civilians from possessing handguns in the nation's capital. A 5–4 majority ruled that the language and history of the Second Amendment showed that it protects a private right of individuals to have arms for their own defense, not a right of the states to maintain a militia.

The dissenters disagreed. They concluded that the Second Amendment protects a nominally individual right, though one that protects only "the right of the people of each of the several States to maintain a well-regulated militia." They also argued that even if the Second Amendment did protect an individual right to have arms for self-defense, it should be interpreted to allow the government to ban handguns in high-crime urban areas.

Two years later, in *McDonald v. City of Chicago* (2010), the Court struck down a similar handgun ban at the state level, again by a 5–4 vote. Four Justices relied on judicial precedents under the Fourteenth Amendment's Due Process Clause. Justice Thomas rejected those precedents in favor of reliance on the Privileges or Immunities Clause, but all five members of the majority concluded that the Fourteenth Amendment protects against state infringement of the same individual right that is protected from federal infringement by the Second Amendment.

Notwithstanding the lengthy opinions in *Heller* and *McDonald*, they technically ruled only that government may not ban the possession of handguns by civilians in their homes. *Heller* tentatively suggested a list of "presumptively lawful" regulations, including bans on the possession of firearms by felons and the mentally ill, bans on carrying firearms in "sensitive places" such as schools and government buildings, laws restricting the commercial sale of arms, bans on the concealed carry of firearms, and bans on weapons "not typically possessed by law-abiding citizens for lawful purposes." Many issues remain open, and the lower courts have disagreed with one another about some of them, including important questions involving restrictions on carrying weapons in public.

NOT A SECOND CLASS RIGHT: THE SECOND AMENDMENT TODAY

By Nelson Lund

The right to keep and bear arms is a lot like the right to freedom of speech. In each case, the Constitution expressly protects a liberty that needs to be insulated from the ordinary political process. Neither right, however, is absolute. The First Amendment, for example, has never protected perjury, fraud, or countless other crimes that are committed through the use of speech. Similarly, no reasonable person could believe that violent criminals should have unrestricted access to guns, or that any individual should possess a nuclear weapon.

Inevitably, courts must draw lines, allowing government to carry out its duty to preserve an orderly society, without unduly infringing the legitimate interests of individuals in expressing their thoughts and protecting themselves from criminal violence. This is not a precise science or one that will ever be free from controversy.

One judicial approach, however, should be unequivocally rejected. During the nineteenth century, courts routinely refused to invalidate restrictions on free speech that struck the judges as reasonable. This meant that speech got virtually no judicial protection. Government suppression of speech can usually be thought to serve some reasonable purpose, such as reducing social discord or promoting healthy morals. Similarly, most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. If that's enough to justify infringements on individual liberty, neither constitutional guarantee means much of anything.

During the twentieth century, the Supreme Court finally started taking the First Amendment seriously. Today, individual freedom is generally protected unless the government can make a strong case that it has a real need to suppress speech or expressive conduct, and that its regulations are tailored to that need. The legal doctrines have become quite complex, and there is room for disagreement about many of the Court's specific decisions. Taken as a whole, however, this body of case law shows what the Court can do when it appreciates the value of an individual right enshrined in the Constitution.

The Second Amendment also raises issues about which reasonable people can disagree. But if the Supreme Court takes this provision of the Constitution as seriously as it now takes the First Amendment, which it should do, there will be some easy issues as well.

- *District of Columbia v. Heller* (2008) is one example. The "right of the people" protected by the Second Amendment is an individual right, just like the "right[s] of the people" protected by the First and Fourth Amendments. The Constitution does not say that the Second Amendment protects a right of the states or a right of the militia, and nobody offered such an interpretation during the Founding era. Abundant historical evidence indicates that the Second Amendment was meant to leave citizens with the ability to defend themselves against unlawful violence. Such threats might come from usurpers of governmental power, but they might also come from criminals whom the government is unwilling or unable to control.

- *McDonald v. City of Chicago* (2010) was also an easy case under the Court's precedents. Most other provisions of the Bill of Rights had already been applied to the states because they are "deeply rooted in this Nation's history and tradition." The right to keep and bear arms clearly meets this test.

- The text of the Constitution expressly guarantees the right to bear arms, not just the right to keep them. The courts should invalidate regulations that prevent law-abiding citizens from carrying weapons in public, where the vast majority of violent crimes occur. First Amendment rights are not confined to the home, and neither are those protected by the Second Amendment.

- Nor should the government be allowed to create burdensome bureaucratic obstacles designed to frustrate the exercise of Second Amendment rights. The courts are vigilant in preventing government from evading the First Amendment through regulations that indirectly abridge free speech rights by making them difficult to exercise. Courts should exercise the same vigilance in protecting Second Amendment rights.

- Some other regulations that may appear innocuous should be struck down because they are little more than political stunts. Popular bans on so-called "assault rifles," for example, define this class of guns in terms of cosmetic features, leaving functionally identical semi-automatic rifles to circulate freely. This is unconstitutional for the same reason that it would violate the First Amendment to ban words that have a French etymology, or to require that French fries be called "freedom fries."

In most American states, including many with large urban population centers, responsible adults have easy access to ordinary firearms, and they are permitted to carry them in public. Experience has shown that these policies do not lead to increased levels of violence. Criminals pay no more attention to gun control regulations than they do to laws against murder, rape, and robbery. Armed citizens, however, prevent countless crimes and have saved many lives. What's more, the most vulnerable people—including women, the elderly, and those who live in high crime neighborhoods—are among the greatest beneficiaries of the Second Amendment. If the courts require the remaining jurisdictions to stop infringing on the constitutional right to keep and bear arms, their citizens will be more free and probably safer as well.

THE REASONABLE RIGHT TO BEAR ARMS

By Adam Winkler

Gun control is as much a part of the Second Amendment as the right to keep and bear arms. The text of the amendment, which refers to a "well regulated Militia," suggests as much. As the Supreme Court correctly noted in *District of Columbia v. Heller* (2008), the militia of the founding era was the body of ordinary citizens capable of taking up arms to defend the nation. While the Founders sought to protect the citizenry from being disarmed entirely, they did not wish to prevent government from adopting reasonable regulations of guns and gun owners.

Although Americans today often think that gun control is a modern invention, the Founding era had laws regulating the armed citizenry. There were laws designed to ensure an effective militia, such as laws requiring armed citizens to appear at mandatory musters where their guns would be inspected. Governments also compiled registries of civilian-owned guns appropriate for militia service, sometimes conducting door-to-door surveys. The Founders had broad bans on gun possession by people deemed untrustworthy, including slaves and loyalists. The Founders even had laws *requiring* people to have guns appropriate for militia service.

The wide range of Founding-era laws suggests that the Founders understood gun rights quite differently from many people today. The right to keep and bear arms was not a libertarian license for anyone to have any kind of ordinary firearm, anywhere they wanted. Nor did the Second Amendment protect a right to revolt against a tyrannical government. The Second Amendment was about ensuring public safety, and nothing in its language was thought to prevent what would be seen today as quite burdensome forms of regulation.

The Founding-era laws indicate why the First Amendment is not a good analogy to the Second. While there have always been laws restricting perjury and fraud by the spoken word, such speech was not thought to be part of the freedom of speech. The Second Amendment, by contrast, unambiguously recognizes that the armed citizenry must be regulated—and regulated "well." This language most closely aligns with the Fourth Amendment, which protects a right to privacy but also recognizes the authority of the government to conduct reasonable searches and seizures.
The principle that reasonable regulations are consistent with the Second Amendment has been affirmed throughout American history. Ever since the first cases challenging gun controls for violating the Second Amendment or similar provisions in state constitutions, courts have repeatedly held that "reasonable" gun laws—those that don't completely deny access to guns by law-abiding people—are constitutionally permissible. For 150 years, this was the settled law of the land—until *Heller*.

Heller, however, rejected the principle of reasonableness only in name, not in practice. The decision insisted that many types of gun control laws are presumptively lawful, including bans on possession of firearms by felons and the mentally ill, bans on concealed carry, bans on dangerous and unusual weapons, restrictions on guns in sensitive places like schools and government buildings, and commercial sale restrictions. Nearly all gun control laws today fit within these exceptions. Importantly, these exceptions for modern-day gun laws unheard of in the Founding era also show that lawmakers are not limited to the types of gun control in place at the time of the Second Amendment's ratification.

In the years since *Heller*, the federal courts have upheld the overwhelming majority of gun control laws challenged under the Second Amendment. Bans on assault weapons have been consistently upheld, as have restrictions on gun magazines that hold more than a minimum number of rounds of ammunition. Bans on guns in national parks, post offices, bars, and college campuses also survived. These decisions make clear that lawmakers have wide leeway to restrict guns to promote public safety so long as the basic right of law-abiding people to have a gun for self-defense is preserved.

Perhaps the biggest open question after *Heller* is whether the Second Amendment protects a right to carry guns in public. While every state allows public carry, some states restrict that right to people who can show a special reason to have a gun on the street. To the extent these laws give local law enforcement unfettered discretion over who can carry, they are problematic. At the same time, however, many constitutional rights are far more limited in public than in the home. Parades can be required to have a permit, the police have broader powers to search pedestrians and motorists than private homes, and sexual intimacy in public places can be completely prohibited.

The Supreme Court may yet decide that more stringent limits on gun control are required under the Second Amendment. Such a decision, however, would be contrary to the text, history, and tradition of the right to keep and bear arms.

CLOSE UP
WASHINGTON DC
CLOSE UP IN CLASS
CONTROVERSIAL ISSUES IN THE NEWS

RED FLAG GUN LAWS

CENTRAL QUESTION

Should governments enact "red flag" gun laws?

INTRODUCTION

On August 3, 2019, a gunman opened fire at a Walmart in El Paso, Texas, killing 22 people and injuring 24 others. Approximately 13 hours later, another gunman murdered nine people and injured 27 in a crowded district of Dayton, Ohio.[1] As these two tragedies rocked the American people, policymakers reopened the debate about what could be done to reduce gun violence in the future. In this *Close Up in Class Controversial Issue in the News*, we explore the idea of red flag laws, examine some of the gun laws currently in place, and ask you to weigh the pros and cons of the paths forward.

BACKGROUND

The Second Amendment to the Constitution reads, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[2] Although this language is vague and subject to much debate, the Supreme Court has interpreted the Second Amendment as an individual right to own a gun for traditionally lawful purposes, such as self-defense—an interpretation the Court outlined in *District of Columbia v. Heller* (2008). However, the Court also ruled that there can be regulations on the right to bear arms, such as bans on concealed weapons (which vary by state) or limits on gun possession by criminals and the mentally ill.[3]

Federal law—most notably, the Gun Control Act of 1968 (GCA) and its subsequent amendments—allows the federal government to regulate the transfer and possession of guns. As of 2019, the GCA forbids the following people from possessing guns:

- Convicted felons
- Fugitives from justice
- People under restraining orders
- People who have been convicted of domestic violence charges

- Unlawful drug users or addicts
- People who have been committed to mental institutions
- Undocumented immigrants or people who have renounced their U.S. citizenship
- Dishonorably discharged U.S. servicemen[4]

To help ensure that restricted persons do not obtain guns, the Federal Bureau of Investigation (FBI) maintains the National Instant Criminal Background Check System (NICS). Before finalizing a gun sale, licensed gun dealers use NICS to check records from three databases: (1) the National Crime Information Center, which contains information on wanted persons and protection orders; (2) the Interstate Identification Index, which contains criminal history records; and (3) the NICS Index, which contains information submitted by local, state, and federal agencies as well as mental health institutions and other sources.[5] However, private gun sales—transactions between unlicensed collectors or hobbyists and buyers from the same state—do not require a NICS background check.[6]

How have recent mass shooters obtained their guns?

State and local governments also play a significant role in regulating the transfer and possession of guns. As of 2019, 21 states and the District of Columbia have expanded background checks to include at least some private sales.[7] At least nine states and the District of Columbia have laws that ban high-capacity ammunition magazines.[8] States also determine the necessary requirements for carrying a concealed weapon within their jurisdictions. Although every state allows the carrying of a concealed weapon in some form, 35 states generally require a state-issued permit to do so, and nearly every state places restrictions on where a concealed weapon may be carried.[9]

THE CURRENT CONTROVERSY

Should governments enact "red flag" gun laws?

In the aftermath of the El Paso and Dayton tragedies, some policymakers began focusing their attention on the potential of red flag laws. A red flag law—also known as an extreme risk protection order—allows a court to issue an order to temporarily confiscate the guns of an individual who is deemed to be a risk to himself/herself or to others. Depending on the state, a red flag law allows family members, household members, and/or law enforcement officers to request the court order. The petitioner must present evidence of why the individual in question poses a threat to himself/herself or to others.[10]

As of August 2019, red flag laws exist at the state level only, in 17 states and the District of Columbia. Prior to the 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida, five states (California, Connecticut, Indiana, Oregon, and Washington) had red flag laws. After the Parkland shooting, 12 more states (Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and Vermont) and the District of Columbia passed red flag laws.[11]

How do red flag laws work in each state?

Following the El Paso and Dayton shootings, Senator Lindsey Graham, R-S.C., announced that he and Senator Richard Blumenthal, D-Conn., would introduce legislation to create a federal grant program to assist in enforcing existing red flag laws and to "encourage" other states to adopt red flag laws. According to Senator Graham, the grants would be given to law enforcement agencies so they could hire and consult with mental health professionals to better determine which cases require action.[12]

"We must make sure that those judged to pose a grave risk to public safety do not have access to firearms and that if they do, those firearms can be taken through rapid due process," said President Donald Trump, who expressed his support for red flag laws in August 2019.[13] He and other supporters of red flag laws argue that such policies are a commonsense reform that would help law enforcement agencies respond effectively to the warning signs displayed by homicidal or suicidal people. Opponents, however, fear that red flag laws give the government the power to seize citizens' property without due process, thus violating the Constitution and creating a dangerous precedent for the future.

SHOULD GOVERNMENTS ENACT "RED FLAG" GUN LAWS?

YES: Red flag laws help law enforcement respond to the warning signs displayed by dangerous people.

Before he took the lives of nine people in Dayton, Connor Betts had a history of routinely discussing slaughter with friends. He once held a knife near another student's throat, and he was suspended from school for compiling a list of people he wanted to kill.[14]

Before he murdered 17 students in Parkland, Nikolas Cruz was the subject of dozens of 911 calls and at least two separate tips to the FBI, including one regarding a YouTube comment left by a user named "nikolas cruz" that read: "Im [sic] going to be a professional school shooter."[15]

"It was no surprise to anyone who knew him to hear that he was the shooter," said Emma González, a survivor of the Parkland shooting.[16] Added Senator Graham: "He did everything but take out an ad in the paper, [saying] 'I'm going to shoot somebody.' You know, you can't just let that keep going and going. There will be another one tomorrow."[17]

In both of these tragic cases, as well as in the cases of other mass shooters, the warning signs were there. Yet no one stepped in to take away the guns that would eventually be used on innocent people. This is why red flag laws are so important. They empower family members, household members, and/or law enforcement officers to present serious evidence in court in order to temporarily confiscate guns that dangerous individuals could use on themselves or others.

The trouble with current law is that the federal background check system prevents convicted felons or persons who have been committed to a mental institution from purchasing a gun from a licensed dealer—but it does not deny persons who have an undiagnosed mental illness or persons who have served no jail time but have talked with friends about wanting to kill. In fact, of the 114 mass shootings committed in the United States between 1982 and 2019, at least 74 percent involved guns that were purchased legally.[18]

"All these guys bought the gun legally," said Senator Graham of the shooters in Parkland, El Paso, and Dayton. "[But] if you get kicked out of school for threatening your schoolmates, with a rape list and a kill list, maybe you shouldn't buy a gun. That's the heart of the matter here."[19]

Thus, every state must make it a priority to enact a red flag law. These laws require petitioners to present serious evidence of danger, such as threats or acts of violence or a violation of a domestic violence emergency protective order.[20] If such policies go nationwide, they will be invaluable in preventing tragedy in the future.

NO: Red flag laws are an unconstitutional violation of due process guarantees.

The Fifth Amendment to the Constitution guarantees that no person shall "be deprived of life, liberty, or property, without due process of law." The 14th Amendment reiterates the importance of this principle, promising, "Nor shall any state deprive any person of life, liberty, or property, without due process of law."[21]

It is admirable that lawmakers want to eliminate the scourge of gun violence in the United States. But when doing so, they must remember that red flag laws are a dangerous violation of due process—the bedrock principle that requires the government to respect all legal rights that are owed to a person.

In every state that has a red flag law, the court order to confiscate a gun can be issued *ex parte* (without notice to the individual in question). In four states (Colorado, Delaware, Nevada, and Vermont), only a preponderance of the evidence—meaning "more likely than not"—is needed for an *ex parte* order.[22] "Because it's a civil process, you aren't entitled to a public defender, or even afforded the opportunity to defend yourself," wrote Missouri state Representative Tony Lovasco. "Once a protective order is issued, law enforcement are dispatched to search your property and seize your weapons—without criminal charges ever being filed, or even probable cause that an actual crime has been committed."[23]

"To make matters worse, red flag hearings can be adjudicated based on uncorroborated claims made by a single individual," wrote Representative Lovasco. "Perhaps it's an angry spouse, jealous co-worker, or disgruntled neighbor. All it takes is for someone to make a convincing argument that you are a danger to yourself or others, and your property is taken from you and you lose the right to defend yourself."[24]

There are those who say that Second Amendment rights are of little importance to them, as they do not plan to ever own a gun. But this debate is about so much more than guns. It is a question of whether or not the government can seize your constitutionally protected property, ignore constitutional rights in the name of "public safety," and presume you guilty until proven innocent.

"Red flag laws stand for the proposition that people can have their rights and property taken from them on the basis of mere allegations," wrote Matthew Larosiere, director of legal policy at the Firearms Policy Coalition. "And even if you don't believe the right to keep and bear arms exists at all, or it is of little importance to you, do you really want this government to extend a relaxed notion of seizure and inverted due process to other areas of law? Because history shows it will."[25]

State	Who can petition?	How long order lasts	Standard of proof to obtain order	Relinquishment process	Is a court explicitly authorized to issue a search warrant when issuing an order?	Early termination of order	Renewal
Colorado[iii]	Family, household members and law enforcement	Ex Parte: 14 days Final: One year (364 days)	Ex Parte: Preponderance of the evidence that the respondent poses a significant risk in the near future Final: Clear and convincing evidence that respondent poses a significant risk	Respondent must surrender all firearms and concealed carry permit to law enforcement upon service of the order. Respondent can then inform law enforcement of his or her preference for the storage, sale, or transfer of the firearms. If order was not served by law enforcement, respondent must surrender firearms and permit to law enforcement within 24 hours.	No. Showing required that respondent failed to relinquish in order to obtain warrant.	Respondent may petition once during order's duration for early termination The respondent bears burden of proving by clear and convincing evidence that he/she no longer poses a significant risk	Final order can be renewed before termination of initial order Same standard and duration as final order

QUESTIONS TO CONSIDER

1. Do you believe states should pass red flag laws? Explain your reasoning.

2. What do you believe to be the most compelling argument of the opposition? Explain your reasoning.

3. Which principle do you believe to be the most important: protecting public safety or guaranteeing due process? Explain your reasoning.

4. How do you believe the government—at the federal, state, or local level—could best prevent public mass shootings in the future? Explain your answer.

What I said in the discussion today OR what I would have said if I had spoken?

3 classmates and their ideas that I made me rethink my position, articulated my views well, or were particularly impressive in their thoughtfulness. Who presented it and what or why did you like about their argument?

(if not present, what do your parents, peers, coworkers, etc. say about this issue)

1.

2.

3.

Did my group come to a consensus? If so, what did we decide? If not, why? Is there an alternative solution to the policy question?

When I asked my Parents/Guardians/Adult in my life the policy question, they told me....

Parents/Guardians/Adult in my life Initials:

I agree/disagree because... My Final Thoughts on this policy questions includes...