BIDEN’S GUN CONTROL ORDERS

In the wake of mass shooting tragedies, Democrats and gun control activists often call for reactive federal policies that target legal gun ownership and fail to address the underlying causes of such homicides.

In April 2021, President Biden announced six executive actions on gun control, which included: 1) classifying pistol-stabilizing braces as short-barreled rifles; 2) directing the Department of Justice (DOJ) to review state red flag laws and develop model legislation; and 3) cracking down on “ghost guns.”

Stabilizing Braces Are Accessories, Not Rifles
- The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issued a proposed rule to reclassify firearms with stabilizing braces, also known as pistol braces, as short-barreled rifles. Short-barreled rifles are rifles with a barrel length under 16 inches and are subject to taxation, identification, and registration requirements under federal law. Under ATF’s rule, nearly all firearms with a stabilizing brace accessory would be subject to these same requirements, as if they were a rifle.
- Stabilizing braces are often used to assist disabled gun owners, including combat veterans. An estimated 10 to 40 million Americans own stabilizing braces. Under ATF’s proposed rule, most owners of these accessories would be subject to a $200 tax per weapon.
- Even under the Obama administration, ATF affirmed stabilizing braces did not convert a firearm into a short-barreled rifle. To date, 48 Senate Republicans and 141 House Republicans oppose ATF’s proposed rule.

“Red Flag” Laws Raise Due Process Concerns
- Red flag laws, also known as Extreme Risk Protection Orders (ERPO) or Gun Violence Restraining Orders, allow certain persons – generally, family members or law enforcement officers – to petition a court to order the removal of firearms from an individual alleged to pose a risk to himself or others. These orders are issued ex parte, which is done without the individual’s knowledge or opportunity to respond. Such confiscation orders can often be issued regardless of whether that person has committed any crimes or been diagnosed with mental illness. 19 states and D.C. have red flag laws.
- An April 2020 report by the RAND Corporation found the effects of state red flag laws inconclusive to the outcomes of shootings. In fact, the report “found no qualifying studies” showing that state red flag laws decreased mass shootings, violent crime, officer-involved shootings, and other outcomes, based on their criteria.
- Violations of the Second Amendment and the Fifth and Fourteenth Amendment rights to due process suggest red flag laws are unconstitutional and subject to abuse. Advocates claim these laws do not violate due process, as noncriminal individuals can appeal to courts to reclaim their seized firearms. However, as economist Raheem Williams notes, this argument implies “the Second Amendment is a privilege, not a right.”
- The American Civil Liberties Union (ACLU) has opposed red flag laws and legislation as an overbroad violation of civil rights that require little to no “proof of dangerousness,” are founded in speculation rather than evidence-based measures, and reinforce negative stereotypes and privacy violations.
- Red flag laws can pose a danger to law enforcement and the individual, who is often unaware that confiscation orders have been issued or petitioned. In 2018, two Maryland police officers shot and killed a 61-year-old man in his home after tensions escalated during a 5:17 a.m. firearm seizure.
As one state attorney in Windsor County, Vermont, stated, “…I believe the mention of red flag laws in response to what happened in El Paso and in Dayton is a bit disingenuous. It’s intended to be a distraction…To say that red flag laws would solve the problem of mass shootings would be to suggest that all you need to do surgery is a scalpel.”

Tracing “Ghost Guns”

Ghost guns broadly refer to privately made firearms by an unlicensed manufacturer without a traceable serial number. Private individuals can order kits online to assemble these homemade guns with simple tools. DOJ issued a proposed rule to crack down on “ghost guns” in May 2021, which would target gun kits as if they were the same as fully functional firearms, and “80% receivers” as if they were finished receivers.

California implemented a ban on “ghost guns” in 2018. Within two years of the ban, however, a special agent with the ATF Los Angeles division claimed that 41% of the guns they encountered were the guns that were banned, further proving that criminals do not care about laws or bans.

Baltimore is ground zero for gun control failure. It is one of many cities that experience high levels of violence despite having the strongest gun control laws across the country.

Baltimore, Maryland was counted among the highest murder rates of all major reporting populated cities in the U.S. in 2019, according to Statista.

The Baltimore Sun found that 2019 was the state’s second-deadliest record in its history, with a total of 348 homicides. Baltimore has consistently experienced more than 300 homicides per year over the past six years.

Gun control advocates claim that high violence rates in states and cities with strict gun laws occur because of surrounding areas with lax gun laws and restrictions. Thus, they call for federal gun control. However, this argument fails to address that violence occurs due to the actions of law-breaking criminals – not law-abiding citizens who own firearms – who defy the law regardless of whether it is enforced on a federal, state, or local level.

Federalism and civil liberties, including the right to keep and bear arms, are founding principles of the United States. The Republican Policy Committee has released a companion brief, entitled The Gun Control Glossary, to further define and provide more background on these issues.


Louise American Civil Liberties Union [hereinafter ACLU], “The ACLU’s Position on Gun Control,” March 26, 2018, at https://www.aclu.org/blog/civil-liberties/mobilization/aclu-position-gun-control and ACLU of Rhode Island, An Analysis of 18-H 7688 and 18-S 2492, Relating to Extreme Risk Protective Orders (Mar. 2018) at https://riaclu.org/sites/default/files/180302_analysis RedFlagsLegislation.pdf. Red flag laws are subject to abuse. A University of Central Florida student, for example, was threatened with a year-long risk protection order under red flag laws for saying “stupid” things on Reddit after a mass shooting, even though the student did not have a criminal history or own a firearm. See FEE, supra at 10.


CRS, supra at 4.


