



January 26, 2023

Chairman Todd Porter  
House Energy and Natural Resources  
North Dakota Legislative Assembly  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505

Re: Testimony in support of House Bill 1401 relating to a state prohibition on extreme risk protection provisions

Dear Chairman Porter,

On behalf of our members, I am submitting to you today my written testimony in support of House Bill 1401 and to ask that the members of this committee vote favorably on this bill.

Simply put, the purpose of House Bill 1401 is to prohibit a state agency or political subdivision from adopting extreme risk protection provisions, or what are commonly known as “red-flag” laws.

Red-flag laws have been described, and promoted, as a “gap filler” option, the purpose of which is to disarm individuals who are deemed “dangers to themselves or to the public,” but who are otherwise not prohibited from possessing a firearm. The specific provisions of red-flag laws are different in each state, but generally these laws authorize courts and executive agencies to issue orders prohibiting individuals from owning, purchasing, and possessing firearms, upon the premise that the individual is at risk of committing a crime, or hurting themselves at some unknown point in the future.

It is plainly evident that such laws are meant to strip an individual of their God-given right to keep and bear arms without first being adjudicated prohibited from possessing firearms. Indeed, such governmental action are clearly unconstitutional and fundamentally shatters the long held American principle that is articulated in the commonly known colloquialism “innocent until proven guilty.” Unfortunately, there are many with the aforementioned erroneous view that so long as there are sufficient “due process” protections, red-flag laws do not unconstitutionally infringe on an individual’s right to keep and bear arms. This can be seen with the recent passage of the federal *Bipartisan Safer Communities Act (2022)*, which provides grant money to states that pass red-flag laws, so long as those laws include sufficient “due process” protections.

While it is true that red-flag laws raise important “due process” concerns, what must not be overlooked is that red-flag laws are also blatant violation of the Second Amendment to the United States Constitution, and no amount of “due process” can make the infringement less of

one. The Second Amendment protects “the right of the people to keep and bear arms” -- regardless of whether the government thinks it is a good idea that a particular individual possesses a firearm.

We have life as a gift from our Creator. Our rights are not only self-evidently true, but also, they are endowments to all humanity, equally. The right to life means that individuals have the right to take the necessary actions for the support, development, and well-being of their own life. Moreover, it means that one has the right to self-ownership, self-sustenance, self-government, self-preservation, and self-defence. These inherently interwoven principles also intrinsically imply that the right serves as legal fence protecting individuals from the initiation of coercion by others. That timeless truth is such regardless of whether the infringing misconduct is instigated by a lawless individual or by the actions of an unjust government. The correlative rule forbids individuals from initiating force against the life of another person, unless acting in defence of life, liberty, and property.

As obvious gifts from the Creator, these individual rights are therefore inalienable — a term that means “not capable of being taken away or denied” as well as “not transferable to any other.” Given that our liberties are inherent to our humanity, a government cannot strip away the right to keep and bear arms simply because, in doing so, it has complied with due process rights.

Current state and federal law makes firearms possession illegal by an individual convicted of a felony, under certain domestic violence orders, or when adjudicated mentally ill, but there is absolutely no historical or legal precedent for taking Second Amendment protected rights away from individuals whom the government declares may commit a crime, or injure themselves in the future. This is an important fact because under the recent holding of the Supreme Court of the United States in *New York State Rifle and Pistol Assoc., Inc. v. Bruen*, any law the government cannot demonstrate as being consistent with this country’s “historical tradition of firearm regulation” is not “justified” and is unconstitutional. **Thus, red-flag laws are not justified and are unconstitutional!**

We must fail to remember that the Bill of Rights, including the Second Amendment, protects the liberties of *all* Americans; and in a truly free society, individuals will, at times, conduct themselves in an unfortunate manner. Hence, Thomas Jefferson’s preference for the “tempestuous seas of liberty” over the “calm of despotism.” The proper role of government, therefore, is to secure our rights, as well as to punish criminality, regardless of the source, and provide justice to victims—*after* the commission of an illegal act, not before.

That is why, on behalf of our members, Gun Owners of America supports House Bill 1401, prohibiting red-flag laws in North Dakota, and I urge the committee to vote favorably on this bill.

Sincerely,

Iain Graeme  
Rocky Mountain & Great Plains Region Director  
Gun Owners of America