



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.”¹

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,² also known as pistol braces, as short-barreled rifles. Short-barreled rifles are rifles with a barrel length under 16 inches³ and are subject to taxation, identification, and registration requirements under federal law.⁴ 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.⁵ An estimated 10 to 40 million Americans own stabilizing braces.⁶ Under ATF's proposed rule, most owners of these accessories would be subject to a \$200 tax per weapon.⁷
- 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.⁸

“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.⁹
- 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.¹⁰
- 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.”¹¹
- 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.¹²
- 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.¹³

- 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.”¹⁴

Tracing “Ghost Guns”

- Ghost guns broadly refer to privately made firearms by an unlicensed manufacturer without a traceable serial number.¹⁵ Private individuals can order kits online to assemble these homemade guns with simple tools.¹⁶ 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.¹⁷
- 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.¹⁸

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.¹⁹
- The *Baltimore Sun* found that 2019 was the state’s second-deadliest record in its history, with a total of 348 homicides.²⁰ 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.

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¹ The other 3 executive actions included: d) A comprehensive DOJ report on firearms trafficking across the U.S.; e) Directing \$1 billion in taxpayer dollars to “evidence-based community violence intervention programs;” and f) Nomination of David Chipman to serve as ATF Director. The White House Briefing Room, “FACT SHEET: Biden-Harris Administration Announces Initial Actions to Address the Gun Violence Public Health Epidemic,” Apr. 7, 2021, at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/>.

² Stabilizing braces “are devices that can be attached to the rearward portion (breech) of a handgun or other pistol grip firearm’s frame or receiver.” William J. Krouse, Congressional Research Service [hereinafter CRS], IF11763, *Handguns, Stabilizing Braces, and Related Components* (Apr. 19, 2021), at <https://crsreports.congress.gov/product/pdf/IF/IF11763>.

³ Federal law defines short-barreled rifles as “a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.” 18 USC § 921(a)(8).

⁴ Michael A. Foster, CRS, LSB10592, *Ghost Guns, Stabilizing Braces, and Red Flag Laws: Overview of Recent Executive Actions on Firearms* (Apr. 23, 2021), <https://www.crs.gov/Reports/LSB10592?source=search&guid=f4b784c9a22b413db92db23bc216f9bd&index=1>.

⁵ *Id.*

⁶ CRS, *supra* at 2.

⁷ Bureau of Alcohol, Tobacco, Firearms and Explosives [hereinafter ATF], “What is the tax on the transfer of an NFA Firearm?” Feb. 6, 2020, at <https://www.atf.gov/firearms/qa/what-tax-transfer-nfa-firearm> and ATF, ATF2021 R-08, 27 CFR Part 478, 479; Notice of Proposed Rulemaking: Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’” available at <https://www.atf.gov/rules-and->

regulations/docs/undefined/atf-2021r-08-notice-proposed-rulemaking-factoring-criteria and <https://www.atf.gov/rules-and-regulations/docs/undefined/atf-2021r-08-notice-proposed-rulemaking-factoring-criteria/download>.

⁸ Office of U.S. Senator John Kennedy (R-LA), Press Release, “Kennedy, Republican senators oppose Biden administration’s ban on gun braces,” Jun. 24, 2021, at <https://www.kennedy.senate.gov/public/2021/6/kennedy-republican-senators-oppose-biden-administration-s-ban-on-gun-braces>. See also the Office of U.S. Representative Richard Hudson (NC-08), Press Release, “Hudson Leads 140 Members Calling on ATF to Withdraw Stabilizing Brace Rule,” June 15, 2021, at <https://hudson.house.gov/press-releases/hudson-leads-140-members-calling-on-atf-to-withdraw-stabilizing-brace-rule>.

⁹ California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia. Leah Asmelash, CNN, “Indiana’s ‘red flag’ law should have prevented the FedEx shooting. Here’s what else you should know about these laws” Apr. 21, 2021, at <https://www.cnn.com/2021/04/21/us/red-flag-laws-explainer-trnd/index.html> and CRS, *supra* at 4.

¹⁰ RAND Corporation, *The Effects of Extreme Risk Protection Orders* (Apr. 22, 2020), at <https://www.rand.org/research/gun-policy/analysis/extreme-risk-protection-orders.html>. See also Jon Miltimore, Foundation for Economic Education [hereinafter FEE], “7 Reasons to Oppose Red Flag Gun Laws,” Aug. 10, 2019, at <https://fee.org/articles/7-reasons-to-oppose-red-flag-guns-laws/>. See also Michael Barbaro, New York Times, “How a ‘Red Flag’ Law Failed in Indiana,” Apr. 22, 2021, at <https://www.nytimes.com/2021/04/22/podcasts/the-daily/fedex-shooting-gun-laws.html>. See also George F. Parker, National Institutes of Health, National Center for Biotechnology Information, National Library of Medicine, *Circumstances and Outcomes of a Firearm Seizure Law: Marion County, Indiana, 2006 – 2013*, Mar. 31, 2015, at <https://pubmed.ncbi.nlm.nih.gov/25827648/>.

¹¹ Raheem Williams, FEE, “Red Flag Gun Laws Turn Due Process on its Head,” Feb. 11, 2019, at <https://fee.org/articles/red-flag-gun-laws-turn-due-process-on-its-head/> and FEE, *supra* at 10.

¹² 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/aclus-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.

¹³ CBS News, “Maryland officers serving ‘red flag’ gun removal order fatally shoot armed man,” Nov. 6, 2018, at <https://www.cbsnews.com/news/maryland-officers-serving-red-flag-gun-removal-order-fatally-shoot-armed-man/>.

¹⁴ Melissa Block, Nat’l Public Radio, “In Vermont, A Case of One Man Whose Gun Was Seized Under Red Flag Law,” at Aug. 22, 2019, at <https://www.npr.org/2019/08/22/753062116/in-vermont-a-case-of-one-man-whose-gun-was-seized-under-red-flag-law>.

¹⁵ CRS, *Supra* at 4.

¹⁶ Andy Greenberg, WIRED, “I Made an Untraceable AR-15 ‘Ghost Gun’ in My Office – and It Was Easy,” Jun. 3, 2015, at <https://www.wired.com/2015/06/i-made-an-untraceable-ar-15-ghost-gun/>.

¹⁷ “80% receivers” are partially finished frames and receivers, due to being 80% completed. U.S. Dep’t of Justice, Office of Public Affairs, “Justice Department Proposes New Regulation to Update Firearm Definitions,” May 7, 2021, at <https://www.justice.gov/opa/pr/justice-department-proposes-new-regulation-update-firearm-definitions> and ATF Proposed Rule, Federal Register, 86 FR27720, “Definition of ‘Frame or Receiver’ and Identification of Firearms,” May 21, 2021, at <https://www.federalregister.gov/documents/2021/05/21/2021-10058/definition-of-frame-or-receiver-and-identification-of-firearms>. See also The White House Briefing Room, “FACT SHEET: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety,” Jun. 23, 2021, at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>. See also The White House Briefing Room, “Remarks by President Biden and Attorney General Garland on Gun Crime Prevention Strategy,” Jun. 23, 2021, at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/23/remarks-by-president-biden-and-attorney-general-garland-on-gun-crime-prevention-strategy/>. See also Amy Swearer, the Heritage Foundation, *Breaking Down Biden’s Proposed “Ghost Gun” Rules* (May 27, 2021), at <https://www.heritage.org/firearms/commentary/breaking-down-bidens-proposed-ghost-gun-rules>.

¹⁸ Brandi Hitt, ABC7 News Los Angeles, “‘Ghost guns’ investigation: Law enforcement seeing unserialized firearms on daily basis in SoCal,” Jan. 30, 2020, at <https://abc7.com/ghost-guns-california-gun-laws-kits/5893043/>.

¹⁹ Statista Research Department, Crime & Law Enforcement, *Rate of homicides in U.S. cities with populations greater than 250,000 in 2019 (per 100,000 residents)** Oct. 2, 2020, at <https://www.statista.com/statistics/718903/murder-rate-in-us-cities-in-2019/>.

²⁰ Tim Prudente, Baltimore Sun, “2019 closes with 348 homicides in Baltimore, second-deadliest year on record,” Jan. 1, 2020, at <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-2019-homicide-final-count-20200101-jnauumukbdh3edsyypspm3he-story.html>