



Written by [Bob Adelman](#) on May 9, 2023

Michigan to Pass Red Flag Law

The red flag bill [about to be signed into law](#) by anti-gun Democrat Governor Gretchen Whitmer won't become effective until next year. By that time, courts will likely have ruled such laws are unconstitutional.

In New York, anti-gun Democrat Governor Kathy Hochul sees the same handwriting on the wall and [has issued a directive](#) to the state police to ramp up use of the state's red flag law before it is declared unconstitutional.

The Michigan red flag law has all the unconstitutional markings of others passed elsewhere: It would allow family members, law-enforcement officials, mental-health professionals, roommates, and former dating partners to blow the whistle on an individual they perceive might be a danger to himself or to others.

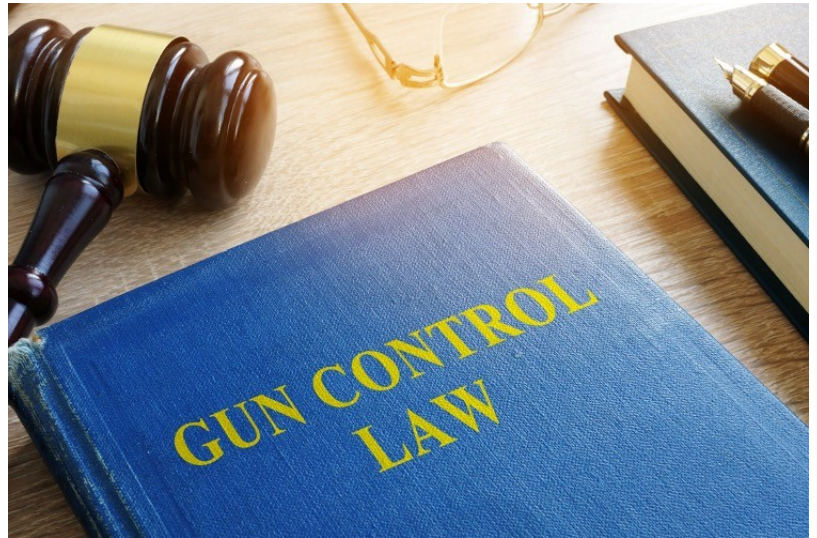
A judge has 24 hours to hear a complaint after it is filed. If he grants the motion to disarm the individual, he then must set a date no later than 14 days afterward for that individual to prove that he or she doesn't pose the risk the complaint alleges. In other words, a defendant is guilty until he proves himself innocent, in direct contradiction to long-standing jurisprudence that one is innocent until or unless he is proven guilty.

In New York, Hochul's haste in using the red flag law is explained by the fact that there have been two recent rulings in her state declaring the law unconstitutional. That's the good news. The bad news is that until those two rulings are affirmed at the appellate level, she and the state police intend to use the law to unconstitutionally disarm those targeted.

[The first ruling in New York](#) occurred in December when a judge declared that "protections of due process, expert testimony, and representation by counsel, are neither present nor guaranteed" under the law. Judge Thomas Moran expanded:

This Court believes that, in its position as *parens patrie* [legal protector], a potentially mentally ill citizen should enjoy the rights and privileges as any person of this state. However, this is not the standard as employed with TERPO/ERPO determinations, as they deprive a citizen of New York of their constitutional rights.

This Court is not unmindful of the dangers firearms may pose when possessed in the hands of a person suffering a mental illness, harboring a criminal intent, or both. However, when viewed objectively, CPLR §63-a's goal of removing weapons from the otherwise lawful possession of them by their owners, without adequate constitutional safeguards, cannot be condoned by this Court.



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While some may advocate that “the ends justify the means” in support of §63-a, where those means violate a fundamental right under our Bill of Rights to achieve their ends, then the law, on its face, cannot stand.

Therefore, the “Temporary Extreme Risk Protection Order” (TERPO) and “Extreme Risk Protection Order” (ERPO) are deemed to be unconstitutional by this Court as CPLR Article 63-a is presently drafted.

It cannot be stated clearly enough that the Second Amendment is not a second class right, nor should it ever be treated as such.

In April [another ruling](#) declaring the state’s red flag law unconstitutional was issued by Judge Craig Brown. His ruling was much shorter but just as clear:

It is ORDERED, ADJUDGED and DECREED that [the red flag law] is hereby declared unconstitutional, the Temporary Extreme Risk Protection Order dated January 20,2023 is vacated, and the petition against respondent is dismissed.

Judge Brown explained:

Absent from New York’s Red Flag Law is any provision whatsoever requiring even a single medical or mental health expert opinion providing a basis for the order to be issued.

New York’s Red Flag Law, as currently written, lacks sufficient statutory guardrails to protect a citizen’s Second Amendment Constitutional right to bear arms.

He quoted from the Supreme Court’s ruling in *McDonald* to bolster his case:

“Second Amendment rights are no less fundamental than... Fourth Amendment rights (the right to liberty), and must be provided the same level of due process and equal protection.”...

[A]nything less ... deprives a citizen of a fundamental right without due process of law.

More than 15,000 American citizens have had their Second and Fourth Amendment rights under the U.S. Constitution gravely violated as their firearms have been removed under these red flag laws. The New York rulings are the first olives out of the bottle. The others will come more easily.



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