

Gun Lawyer -- Episode 37 Transcript

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SPEAKERS

Evan Nappen, Speaker 3

Evan Nappen 00:18

I'm Evan Nappen, and welcome to Gun Lawyer. We are law-abiding citizens, and we always want to act as law-abiding citizens. But you know who's not a-Biden? President Joe Biden, that Biden's not a-Biden. He's not a Biden by the Second Amendment. He is not a-Biden by it at all. So, Mr. Biden, who is not a-Biden, has put forward a number of things that are very dangerous for law-abiding gun owners. These proposals run the gamut, and I want to discuss in detail, a number of these things that Biden, who is not a-Biden, is doing to us. It is probably going to take a couple shows to get through it all because he has really piled it on.

Evan Nappen 01:16

I want to start with Biden not abiding by the Constitution, not just in the Second Amendment, but also in terms of due process, which is really seen in his gun confiscation proposals. You may say what gun confiscation proposals is that, and I will tell you what it is. He has put forward model red flag laws. Essentially, he is putting out these red flag laws as suggestions for anti-gun states to pass and run roughshod over gun owners' rights. Not only our Second Amendment rights, but also our Due Process rights, rights to fundamental fairness and rights to property, etc. He does not just stop Second Amendment when it comes to not abiding by the Constitution. He is going at all kinds of Constitutional rights in his proposals.

Evan Nappen 02:24

What is particularly disturbing about the so-called model red flag is that it is essentially based on New Jersey's red flag laws that are already law in New Jersey. I have a lot of experience in fighting New Jersey's red flag laws. Today I am going to discuss with you these model red flags and just how insane New Jersey's gun laws are when it comes to the red flag laws. This is what Biden who is not a-Biden wants to, and it is something that needs to be stopped from happening nationwide. There are many bad gun laws that originated in what I call the experiment states like California and New Jersey, the real left-wing, anti-gun, progressive states.

Evan Nappen 03:31

This agenda of hating us that they have and passing these draconian, horrible laws to try them out so they can then nationalize the laws. You can see that in a number of laws that originated first in New

Jersey such as the domestic violence prohibition for those convicted of domestic violence misdemeanors. New Jersey had that as a prohibited before it was put through as a national law. Of course, who put that through? New Jersey Senator Lautenberg got that through federally and imposed it on the entire country. I oppose anybody that abuses another person, that is not something I support. I do not want to see anyone suffer domestic violence. But what happened with the domestic violence law was making a misdemeanor, a low-level offense, a non-felony, a firearm prohibitor in which you lose your Second Amendment rights. All in the name of the political correctness of domestic violence and that is the vehicle they used to get it through. We have lived under it since, and it is a Federal and State disqualifier.

Evan Nappen 05:02

As I pointed out, this started in Jersey. These things start in the experiment states, and New Jersey has a red flag law that is particularly bad, and I want to explain to you how this works because it is rather shocking. Red flag is kind of a slogan for what is called an ERPO which initiates as a TERPO, and then it can become a FIRPRO. So, what are we talking about here? Well, the ERPO stands for Extreme Risk Protection Order. The TERPO is a Temporary Extreme Risk Protection order, and they're done under so called emergent resources. Then after the TERPO is issued, there is a hearing for a FERPO (Final Extreme Risk Protection Order).

Evan Nappen 06:17

Let's talk about how these things take place and the significance of them. In New Jersey, the person who can file for a TERPO is any family or household member, or any law enforcement officer. Now, if it is a family member, you do not need to even have a law enforcement officer involved. The family or household member is extremely broadly defined. It not only includes what you normally would think it would include, (husband, wife, or kids) but anybody that you may have resided with at any time in the past. So, if you had a roommate from college, they still qualify as a former household member. It is even so extreme that it covers anyone you have ever had a dating relationship with. They can go to the Court and file a TERPO against you, a Temporary Extreme Risk Protection Order. When they do this, it is done ex parte, meaning you do not even know that they are doing it. Then it goes to a judge who decides whether or not to issue the TERPO, and you are given no notice of it. You are totally unaware that it is happening. There is no Due Process at this stage, none, zero, zip.

Evan Nappen 07:57

If that TERPO is issued, it will prohibit you from owning, purchasing, possessing, or receiving firearms and ammunition, by the way. It also requires your immediate surrender of all firearms and ammunition, and it revokes (that is the word used) your firearm licenses. So, now you have a revocation, and you have not had one word in this. You have not even been given notice of it, and you have had no part in this process. This issues against you taking all your guns, revoking your licenses, prohibiting you from possessing, owning, and purchasing firearms. The Court will issue this Order and issue a Search Warrant as well for you to immediately surrender firearms, ammunition, and licenses to the police.

Evan Nappen 08:52

Then your privacy is invaded by the search of your home. When this takes place, by the way, are the police liable for any damage to the guns taken? No. It is only if it was reckless, or there was gross

negligence or intentional misconduct. Otherwise, police have no liability for normal negligence and handling of your firearms, banging them, scratching them and throwing them in the trunk of the police car. Sure, no problem there. Guess what? Isn't this nice? They have to give you a receipt in New Jersey. They have to give you a receipt. Wow, that's really big of them. But after they give you that receipt, you are now under an obligation to file, within 48 hours of that receipt, the receipt with the County Prosecutor. The obligation is on you to file the receipt with the County Property. If you fail to file the receipt of your property stolen by the government (even though they are already aware of it; so, why do you have to file it?) you are held in Contempt of the Order for your failure to file the receipt.

Evan Nappen 10:08

Do you know how long the red flag order lasts? Until a Court issues a further ruling and decides otherwise. So, what is it that they have to show in order to issue this? What is the standard of proof? The standard of proof is that a judge must find good cause (that's it, good cause; the level of good cause is a little bit over suspicion) that the gun owner poses an immediate and present danger of causing bodily injury to himself or others by having a gun. You might say to yourself, "Well, I don't present danger in any way of causing bodily injury to himself or others by having a gun." You might think that, except that the law lays out exactly what the judge shall consider in making that determination. Wait until you hear this list.

Evan Nappen 11:15

The Court shall consider the following now, as to whether that standard gets met. 1. Whether you have any history of threats or acts of violence. It does not mean there is anything present. It is just if you had any history of the use, attempted use or threatened use of physical force against another person. Look, that's not deadly force. It's just physical force: you got into a shoving match in a bar when you were in college. Okay, that's good enough. The court has to consider that. 2. If you are the subject of a restraining order or violated one. Well, if you already have a domestic violence conviction, you are already prohibited under a restraining order. So, why is that? It is a redundancy. 3. If you are subject to a protective order issued pursuant to the sexual assault survivor act. Well, if you are a rapist and you have an order against you, you are already barred from firearms. So, what is that? It is just window dressing in there, I guess. 4. But get a load of this. If you have any prior arrests, pending charges, or convictions for a violent indictable crime or offense, stalking offense or domestic violence (a prior arrest - doesn't say conviction, a pending charge - well, that's not a conviction, so much for innocent till proven guilty), you are an immediate and present danger because you have pending charges or a prior arrest, even though it was dismissed.

Evan Nappen 12:46

5. But don't worry, it gets better. It also asks, and the judge has to consider, whether you have any prior arrests, pending charges, or convictions for any offense involving cruelty to animals, or any history of acts involving cruelty to animals. Wait a minute, folks. In today's day and age, the PETA (People for the Ethical Treatment of Animals) people claim all hunters act cruelly against animals. All the bunny huggers out there say you are killing animals and that is cruel. We will just have to pull your list of deer kills off the Fish and Game files, and there is a history of your cruelty to animals. You don't think they will go there? Oh, you bet they will. They will throw in that you are a hunter and have shot and killed game. Absolutely. 6. If you have had any history of drug or alcohol abuse, (and here's the part I really

love) and recovery from this abuse. So, in other words, if you are that person they point to as the one that did it; the one that beat their demons; the one that worked on it, recovered and has been fine; the model for others in the struggle over abuse of alcohol and drugs, you are an immediate danger to yourself and others. Your recovery is a factor in whether you lose your Second Amendment rights. 7. Finally, the award-winning factor, without a doubt, is the following, you recently acquired a firearm, ammunition, or other deadly weapon. The fact that you went and got a license, and you bought a gun legally is a factor to lose your guns. Yep, sure is under Jersey's model Red Flag laws that Biden, who's not a-Biden, wants to impose on the entire United States. When we come back, we will continue with our examination of the outrage known as Red Flag Laws.

Evan Nappen 15:26

For over 30 years, Attorney Evan Nappen has seen what rotten laws do to good people. That's why he's dedicated his life to fighting for the rights of America's gun owners. A fearsome courtroom litigator fighting for rights, justice, and freedom. An unrelenting gun rights spokesman tearing away at anti-gun propaganda to expose the truth. Author of six best-selling books on gun rights, including Nappen on Gun Law, a bright orange gun law Bible that sits atop the desk of virtually every lawyer, police chief, firearms dealer, and savvy gun owner. That's what made Evan Nappen America's gun lawyer. Gun laws are designed to make you a criminal. Don't become the innocent victim of a vicious anti-gun legal system. This is the guy you want on your side. Keep his name and number in your wallet and hope you never have to use it. But if you live, work, or travel with a firearm, the deck is already stacked against you. You can find him on the web at EvanNappen.com or follow the link on the Gun Lawyer resource page. Evan Nappen - America's Gun Lawyer.

Speaker 3 16:40

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Evan Nappen 16:56

Alright, so the Red Flag Law is incredibly disturbing. It is used to take people's guns, gun rights, and create a lot of problems for folks. This is what is looking to be imposed nationally. With everything that I have explained to you so far, you still have not had your hearing. You have not had any Due Process. It has not even occurred. So, do you ever get a final hearing? Oh, yes. Under New Jersey's model laws, you will finally get a final hearing and by law that hearing has to take place within 10 days. Oh, that's good. They make it so that you at least within 10 days get a hearing because you have had no Due Process so far, right? No, wrong. By that point, all the damage has been done. Your home has been searched, your privacy has been invaded, and your guns and ammunition have been seized. You have been given no Due Process whatsoever. You have had your licenses revoked. All that has been done, and now within 10 days, you get to have a hearing. Oh, great.

Evan Nappen 18:05

So, does that give us a lot of time to prepare, to get the discovery to see what was said and stated? No, this is called railroading you, friends. They railroad you into this, and what is the burden of proof that must be demonstrated for the judge if they are going to issue the FERPO? What is the burden of proof? Well, the burden of proof is Preponderous of Evidence. By the way, this is in Biden's, not a-Biden,

model law. Preponderance of the evidence standard is the lowest level for proofs in courts. It is the one for Civil cases. Preponderance of the evidence simply means more likely than not. So, a single judge gets to decide if it is more likely than not, based on the criteria of standards that we have already discussed, whether a FERPO should issue barring you from your guns and your property and maintaining the revocation of your licenses. By the way, even if the licenses and your property are ordered to be returned, you still have a revocation on your record. Your license was revoked and then it was unrevoked, so to speak, but it does not undo the initial revocation. So, when any future application for a gun license where it says, "Have you ever had a license revoked?" You are going to have to answer yes, from then on even though you won your FERPO. How do you get rid of a Red Flag order? There's a good question. Let's say your hearing finally happened and they issue a FERPO anyway. Can you ever get rid of it? Well, you can, but the burden is on the gun owner to show by Preponderance of the Evidence that he no longer poses a significant danger of causing bodily injury to himself or others by having a gun. In other words, you've got to disprove a negative. Good luck with that. Okay, so you can regain your rights back.

Evan Nappen 20:05

What is the impact of this FERPO, even beyond the taking of your property and the taking of your rights? You get put on a list where you are identified as an extreme risk. Boy, that's a fun list to be on. An electronically databased list that you are an extreme risk. I bet that'll help you get a job. What do you think? Yeah. So, they put you on this list. They have taken away your rights, taken away your property, and given you the most minimal of Due Process that begins with zero Due Process. Let's just say this happens to you and you say, "Hey, you know what? I don't care. I'm gonna keep guns, and I'm gonna ignore this." Well, that is crime at the Third Degree in Jersey, and you face up to five years in State Prison. Red Flag law is a horrible thing, and it is another method of individually disarming and disenfranchising individuals of their Constitutional rights. It is an outrage, but it doesn't end there.

Evan Nappen 21:26

Part of Biden's not-abiding is health care gun confiscation. Oh, yeah. That is the Duty to Warn stuff that also passed in New Jersey. Duty to Warn is a health care privacy violation that is going to take place. Under the New Jersey model law, anybody who is licensed in New Jersey to practice psychology, psychiatry, medicine, nursing, or clinical social work, even a marriage and family therapist, shall, they must, notify law enforcement, if you as a gun owner communicate a threat of imminent serious physical violence against himself or others, or the practitioner believes that the gun owner intends to carry out an imminent physical violence against himself or others. They are required to do it, and if they do not do it, they will suffer consequences. So, better to be safe than sorry.

Evan Nappen 22:34

If you go to your doctor, or your therapist, or your psychiatrist, and you are feeling sad, and say I could kill myself, even though it's just hyperbole. Or you got so mad at a guy, and say man, I could kill that guy for what he did, again a hyperbole. Oh, you just communicated a threat of imminent serious bodily harm, and they are required to notify the authorities. And believe me, they do. Boom. Then your guns are being confiscated, and now you are put into the situation of having a healthcare confiscation. This is another tool for the disarmament of the citizenry, of being able to disenfranchise them of their Constitutional rights, of taking their guns, and putting them in a situation where their rights are taken.

Again, where is the Due Process? Oh, sorry, there wasn't any here. As soon as they report it, the police are coming, and they are taking your guns and your gun rights. It is up to the interpretation of this doctor or practitioner, many of whom don't know anything about guns or are even scared of guns. Even the fact that you possess a gun is enough to scare them into thinking you are an imminent danger or a threat.

Evan Nappen 23:48

Let me just say this. If you say, "Well, my doctor is great, and I don't have this problem. I'm not gonna worry about this." Let me tell you what happens in Jersey. They do not mention this, but I see it all the time. Someone else in your household gets health care swatted or someone else in your household gets a Red Flag order. Guess who else is having their guns taken? You, because they take everything in the household. You do not even have to be a party to the issue, to the problem, to the threat, or to the person who is out to get the other person and make their life miserable. No, you are an innocent bystander, and they do not care. Your guns and your rights are getting seized, and you are going to go through it just like the guy that they targeted. We have case after case of this happening.

Evan Nappen 24:41

What's even worse about this model law is another factor that they do not mention. There is an actual case now where a judge was murdered and that is a bad thing. No question about it. But the family of the judge is suing the relatives of the murderer for their failure to get a Red Flag on the murderer. Now the civil system is being used to encourage family members to file Red Flags on other family members, and if they fail to do so, then they are subjected to a lawsuit. This is another twist to this whole model Red Flag law by Biden, who is not a-Biden. You can see why he's not a-Biden because what's happening here is disgusting. It is an attack on all our rights, our basic freedoms, and the lack of due process. So, it is a problem.

Evan Nappen 25:48

I want to give you some things that you can do to protect yourself from the Red Flag laws. If your state ends up going down this path and passes these horrible laws or maybe you live in a state that already has these horrible laws, you should privately for yourself, photograph your firearms. Record their make, model, type, caliber, serial number, and condition, in case they are seized by the government. Store this information off site. Somewhere where only you can access it because guns have a habit sometimes of disappearing out of evidence rooms. I have had cases with that. Their condition gets ruined, and all kinds of things. You want to make sure you know what guns you have. But keep that private because like I said, even if you are an innocent third party, you can suffer from the Red Flag law. So, watch out. Have a homeowner's insurance policy with an umbrella. An umbrella policy is one of the more reasonable bargains out there in insurance. Because if a family member wrongfully uses a firearm, you can be sued for failing to Red Flag them, and you better have insurance for that. You want to make sure you are covered.

Evan Nappen 27:09

Know your jurisdictions and gun laws. Make certain you do not possess anything that is prohibited. This includes accessories. For example, in New Jersey, magazines over 10 rounds are prohibited. Bump stocks have a separate state prohibition as well as a federal prohibition. Hollow nose bullets are

strictly regulated. Don't, God forbid, possess a slingshot in Jersey. We are talking about a felony there for possession of a slingshot. What happens if these things get seized under a Red Flag with no due process, or a healthcare gun confiscation with no due process, or any other method they choose, then anything you have that might be contraband or unlawful may very well lead to criminal charges, felony level charges even, and now it's compounded. Now you are going to have to defend yourself and try to stay out of prison. While you are at it, you should have an attorney who is knowledgeable about guns and Red Flag laws who is ready to help you. You want to have somebody local, wherever your jurisdiction is, that knows this stuff. It is critical. You do not want your attorney to suddenly have to get educated on how to defend you on a Red Flag law or a red flag confiscation, or worse - so prepare.

Evan Nappen 28:30

I also want to emphasize - never physically resist a Red Flag raid. Gun owners have been shot and killed by the government during Red Flag raids. Many times, the raids take place in the early morning, and the gun owner has no clue that any of this was taking place because there is no due process, no notice. Next thing you know, armed law enforcement is at the door, and the gun owners have no clue what is going on. People have come to the door with a firearm not even knowing it is law enforcement and law enforcement sees the gun and have killed them. These cases are on record. So, Red Flag can literally kill you. Beware and never physically resist. You will deal with it in court, and we will go through the due processes that we are afforded and fight to get your property and your rights back. But resistance as they say is futile, and it can only get you killed.

Evan Nappen 29:35

So, do not physically resist ever and ask for your attorney when this happens. Do not make any statement until you first speak with your attorney. You have a Sixth Amendment right to counsel. Don't waive it. Say I need to talk with my attorney even though it is a Red Flag or healthcare gun confiscation. If you start making statements, they are going to use it against you. They are going to use it in the hearing and maybe even used against you criminally. Say nothing. Remember, Due Process comes after the government takes your guns, takes your rights, and takes your licenses. They will invade your privacy by searching your home. Then you will get your Due Process, and then we get to fight to restore what they have taken from you.

Evan Nappen 30:23

This is Evan Nappen reminding you that gun laws do not protect honest citizens from criminals. They protect criminals from honest citizens.

Speaker 3 30:33

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