

Guest Column: Red Flag laws work, but they have to be used

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When Colorado passed its Red Flag law, called “Extreme Risk Protection Orders,” in 2019, El Paso County Sheriff Bill Elder announced his opposition: “I am exploring all legal options and am vigorously challenging the constitutionality of this law.”

He wasn’t alone. Many county sheriffs in Colorado said they believed the law didn’t allow enough due process or was unconstitutional.

But since then, some 20 of these so-called “sanctuary” counties have seen the light, implementing this sensible law so that weapons have been taken away from violent people. But it was not used in El Paso County’s Colorado Springs, where a man recently killed five people and wounded many others at Club Q, an LGBTQ bar.

The shooter, who survived, never had to go to court to defend himself against the Red Flag law — even after law enforcement was called in a year ago to stop him from threatening his family with a bomb.

If anyone needed to be parted from weapons, it was the Club Q shooter. But sadly, in the wake of massacres like this, we frequently learn that no action was taken earlier by either law enforcement or family.

The El Paso County Sheriff's office, in a statement to the Colorado Sun, admitted that it has never initiated an extreme risk protection order, the first step in removing a firearm from someone under Colorado law.

The Red Flag law builds in due process, as only a judge can begin the process of removing someone's guns. A second court appearance is necessary to extend a temporary protection order beyond two weeks. While a Red Flag law is now used in 19 other states, the Associated Press found that Colorado residents invoke the law less often than residents of other states.

Why not? A major reason is the anti-democratic ideology of county sheriffs who choose what laws to enforce. Sheriffs have bought into the peculiar notion that a county has ultimate legal authority to uphold the Constitution of the United States.

One result of this old "Posse Comitatus" approach is that local sheriffs feel free to ignore state laws they don't like. All they have to do is label them "unconstitutional."

This attitude was on full display in several states when they issued emergency orders to curb the spread of Covid 19. Rural sheriffs in Nevada, New Mexico, Oregon, Washington and California resisted. They defied the orders of their state government and refused to enforce public health measures.

The backbone of this county approach is best represented by the Constitutional Sheriff and Peace Officer Association, a group based in Arizona and founded by Richard Mack, described by the Anti-Defamation League as an "anti-government extremist." Mack is also credited as a founding member of the Oath Keepers, infamous for their involvement in the January 6th Capitol riot.

In my home state of Oregon, this rhetoric has made inroads. Though a contentious ballot measure restricting magazine capacity and implementing a new firearm permitting system recently passed, several county sheriffs have joined lawsuits to prevent the reforms from going into effect. Many more of Oregon's 36 county sheriffs have stated they will not enforce all or parts of the law.

While not all of these sheriffs may view themselves as members of the Constitutional Sheriff and Peace Officer Association, the influence of its ideology is undeniable.

You would think it goes without saying, but the job of a county sheriff has never been to interpret laws as they see fit. Sheriffs are elected officials entrusted by their community to apply laws fairly. Allowing sheriffs to act as supreme legal arbiters is wrongheaded and dangerous. If the El Paso County sheriff or the shooter's family had implemented the Red Flag law, a massacre might have been prevented.

So called "Constitutional Sheriffs" couch their rhetoric and ideology as a fight to preserve liberty and justice. It is almost as if they were living in a fictionalized version of the Wild West, where a lone sheriff with a gun upholds civilization.

That is not the world we live in. Guns are not sacrosanct possessions, unstable and dangerous people should not be allowed to stockpile weapons, and activating the Red Flag law can save lives.

If our sheriffs won't uphold the laws, maybe it's time to vote for someone who will.

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