

# Spying on American Gun Owners Act



by Paul Engel

December 23, 2021

- Is engaging in commerce probable cause that a crime is being committed simply because it involves a firearm, firearm accessory, or ammunition?
- What about other writs of assistance that Congress has illegally authorized through legislation?
- How can you live at liberty if government claims the right to watch anything they think might be used criminally in the future?

Benjamin Franklin said:

*They who would give up an essential liberty for temporary security, deserve neither liberty or security.*

## **Benjamin Franklin**

With the promise of keeping us safe from “gun violence”, “violent extremists”, and “domestic terrorists”, Congress wants you to give up your essential liberty to be free from unreasonable searches. H.R. 5764 is the first step to a writ of assistance against anyone who buys or sells firearms. This has been done before, so why shouldn't Congress think they can get away with it again?

To understand the dangers of H.R. 5764 we need to understand a little bit of our history. One of the most intrusive abuses in

the colonial era was the use of writs of assistance.

*a writ authorizing officers of the British crown to search any premises for smuggled goods.*

### [Writ of Assistance – The Free Legal Dictionary](#)

The idea of a writ of assistance is simple. Government actors would be given legal permission to search your premises for contraband without probable cause. If they found something, then they would fill out the warrant to seize what they have found. As James Otis put it in 1761:

*I will to my dying day oppose, with all the powers and faculties God has given me, all such instruments of slavery on the one hand and villainy on the other as this Writ of Assistance is. It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book...*

### [JAMES OTIS SPEAKS AGAINST WRITS OF ASSISTANCE \(1761\)](#)

The idea of writs of assistance was so onerous that when the first Congress drafted the amendments that became our Bill of Rights, they specifically prohibited anything like them.

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

### [U.S. Constitution, Amendment IV](#)

The idea behind the Fourth Amendment is also quite simple: You have a right to be secure from unreasonable searches. For a warrant to be issued to search your person, houses, papers, or effects, it must be based on probable cause and supported by

oath or affirmation. In other words, someone had to go to court and swear or affirm that the information showing probable cause was true. Not only that, but any warrant issued must be specific in where people can search and what they can seize. In other words, the very concept of a writ of assistance is anathema to the rights protected by the Fourth Amendment to the U.S. Constitution. That, however, has not stopped Congress from authorizing writs of assistance, in direct violation to their oath of office.

## **Internal Revenue Service**

*(a) Authority to summon, etc.*

*For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized-*

*(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;*

*(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and*

*(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.*

**[18 U.S.C. §7602 Examination of books and witnesses](#)**

Congress passed a law supposing to give the Internal Revenue Service the authority to search your books, papers, records, or other data, for the purpose of seeing if you filed your tax returns correctly. That means, should you receive an audit notice from the IRS, they are seeking to search your records with an invalid warrant.

*A written order issued by a judicial officer or other authorized person commanding a law enforcement officer to perform some act incident to the administration of justice.*

### [Warrant – The Free Legal Dictionary](#)

This law also claims to allow the IRS to summon you, without probable cause, oath, or affirmation. The purpose of this summons is to take testimony, under oath, to determine if you have violated the IRS code. In other words, Congress has claimed the power to have the IRS issue invalid warrants, perform unreasonable and illegal searches, and to have you witness against yourself, which could be used against you later in a court of law. 18 U.S.C. §7602 violates both the Fourth and Fifth Amendments to the Constitution in only one paragraph. Yet each year thousands of Americas voluntarily submit to these illegal searches for fear of what the almighty IRS would do to them if they do not comply. And this is only the beginning.

### **Financial Transactions**

*(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A*

*participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.*

### **31 USC 5313: Reports on domestic coins and currency transactions**

This little piece of tyranny basically says the Secretary of the Treasury gets to tell banks and other financial or trading businesses to collect and report whatever information the Secretary may prescribe by regulation, without probable cause. If you watch crime dramas, you've probably heard that banks are required to submit a Suspicious Activity Report (SAR) to the government for every transaction of \$10,000 or more. One of the things Congress tried to do was lower that threshold to just \$600. While that attempt was defeated, the constitutional violation still exists. This "law" assumes that any transaction of \$10,000 or more is not only suspicious, but probable cause that a crime may have been committed. I don't know if you've noticed, but the price of a car, home, motorcycle, land, and many other perfectly legitimate transactions are greater than \$10,000. So the claim that any transaction of \$10,000 or more is probable cause of a crime is offensive, ludicrous, and yet another violation of the oath of office every member of Congress took before assuming office. And should you wish to comply with this law by conducting transactions in smaller amounts than need to be reported, you are charged with structuring transactions. So even if your transaction was perfectly legal, Congress considers it a crime to hide it from the federal government.

### **They're Coming For Your Guns**

With H.R. 5764, Congress wants to use the same writs of assistance technique to track firearm transactions.

*IN GENERAL.— Not later than 1 year after the date of enactment of this Act, FinCEN shall request information from financial*

*institutions for the purpose of developing an advisory about the identification and reporting of suspicious activity relating to—*

*(A) how homegrown violent extremists and perpetrators of domestic terrorism procure firearms and firearm accessories for the purpose of carrying out lone actor or lone wolf acts of terror within the United States; and*

*(B) the ways in which the firearms market in the United States is exploited to facilitate gun violence in the United States.*

### [H.R. 5764](#)

This legislation doesn't demand reporting of transactions yet, but it's the first step towards doing so. It appears Congress wants to expand the definition of suspicious activities for financial institutions to report on, including what they think "homegrown violent extremists and perpetrators of domestic terrorism" might do to acquire firearms. The questions that never seems to be asked in legislation like this is: What makes a transaction suspicious? And what makes these transactions probable cause that a crime has been committed?

For example, you may think that buying 10,000 rounds of ammunition is suspicious. However, everyone from competitive shooters to people who are looking for a bargain or just concerned about shortages, may see this as a reasonable action to take. And if someone finds 10,000 rounds suspicious, what about 1,000? 100? Or just ten?

One day I was at a gun store and they had nice older rifles on sale. So I bought two; one for me and one for my father. Some people may see a person purchasing two rifles at the same time suspicious, while I was just thinking it would be nice for my father and I to have identical rifles with consecutive serial numbers. And let's face it, if someone is planning to perpetrate some form of domestic terrorism, they're either going to buy their weapons on the black market or make sure

their transactions are squeaky clean to avoid attracting attention. So the only real outcome of this attempt to develop a reporting system for “suspicious activities” related to firearms is a further erosion of our right to be secure from unreasonable searches and potentially create another illegal federal firearm registry.

## **Conclusion**

Some of you may be thinking that if people don't have anything to hide, why are they worried about those in government checking their actions? While you may have nothing to hide, you do have everything to protect. As Benjamin Franklin said, if you are willing to give up essential liberties for the promise of temporary safety, you deserve neither. If you're willing to give up your right to be secure against unreasonable searches for either of these reasons, who will protect your rights when someone else comes up with an even more intrusive reason? You may think it's reasonable for the government to poke around in your financial records to make sure you paid your taxes correctly, but what about making  sure you pay your mortgage and credit cards on time? You may find a \$10,000 transaction suspicious until you need to borrow money from a friend. And sure, you may think that your neighbor purchasing firearms and ammo are suspicious, until the day the mob shows up and only one who has the tools to protect you is that neighbor. The question shouldn't be whether someone thinks something is suspicious, but what are the requirements before government can go snooping around your stuff? Those in government claim that these laws are necessary to keep the people safe. As William Pitt (the Younger) said

*Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.*

**William Pitt (the Younger), Speech in the House of Commons, November 18, 1783**

The Constitution requires there be probable cause before you or your stuff can be searched. Not what a government bureaucrat thinks is suspicious or not what your neighbor thinks is suspicious. The Constitution also requires that said probable cause be supported by oath or affirmation before a warrant is issued. Not legislation that demands you show people your books or that you show up to witness against yourself. Yet today the government in Washington, D.C. has claimed the power to issue these writs of assistance, and we the people have given up our right to be secure against unreasonable searches in exchange for the promises that government will keep us safe. Because Mr. Franklin was right; the American people deserve neither liberty nor safety. And we will not deserve them again until we refuse to give up our rights every time someone in government claims it's to keep us safe or for our own good.

© 2021 Paul Engel – All Rights Reserved

E-Mail Paul Engel: [paul@constitutionstudy.com](mailto:paul@constitutionstudy.com)

[BIO: Paul Engel founded The Constitution Study in 2014 to help everyday Americans read and study the Constitution. Author and speaker, Paul has spent more than 20 years studying and teaching about both the Bible and the U.S. Constitution. Freely admitting that he “learned more about our Constitution from School House Rock than in 12 years of public school” he proves that anyone can be a constitutional scholar. You can find his books on Amazon and Apple Books. You can also find his books, classes and other products at the Constitution Study website (<https://constitutionstudy.com>).]