



## Ohio Gun Owners

Ohio's Grassroots Gun Rights Organization  
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### MEMORANDUM

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**DATE:** March 6, 2023

**TO:** Members of the Ohio House Government Oversight Committee

**FROM:** Jered Taylor, Ohio Gun Owners (OGO)

**RE:** Proponent Testimony on House Bill 51

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Chairman Peterson, Vice Chair Thomas, Ranking Member Forhan and members of the House Government Oversight Committee, My name is Jered Taylor and my testimony is on behalf of the members and supporters of Ohio Gun Owners today to support H.B. 51, the Second Amendment Preservation Act.

A little background about me, I recently termed out of the Missouri House, where I was a State Representative for 8 years, SAPA was my legislation in Missouri and we passed it in 2021. The version you have in front of you is a mirrored version to what we passed in Missouri and what is current law that our law enforcement is operating under.

#### **Anti-Commandeering**

SAPA is based on the established Anti-Commandeering doctrine that has been upheld numerous times by the Supreme Court of the United States dating as far back as 1842 with Prigg v. Pennsylvania. Congress passed a law called the Fugitive Slave Act that required states to return fugitive slaves to slave owners and the state of Pennsylvania

refused to enforce it. The Supreme Court ruled that the feds can't force states to enforce federal law. There are other examples such as in 1997 Printz v. U.S. dealing with the Brady Gun Control legislation the Supreme Court expanded anti-commandeering to include states officers.

The Supreme Court ruled that "*Congress cannot circumvent that prohibition by conscripting the States' officers directly.*" In 2012 NFIB v. Sebelius, the Supreme Court ruled that states can't be forced to expand Medicare and further the federal government can't withhold funding to the states as punishment. Anti-Commandeering was first introduced by James Madison in Federalist 46, explaining to the states that within the 10th amendment the way the states push back on federal overreach is by refusing to comply. He recognized that the feds will use states to enforce federal law and by one state refusing to comply it would cripple the effort by the feds but if multiple states refuse it would be nearly impossible for the feds to proceed.

The argument that is almost certainly brought up is regarding the Supremacy Clause, that SAPA law violates the Supremacy Clause and is therefore unconstitutional. As I mentioned above this law is based on the Anti-Commandeering doctrine, it does not violate the Supremacy Clause. This law does not tell Federal Law enforcement what they can or can't do in Ohio, we are directing our resources what they can and can't do. If we attempted to arrest or demand or inform federal officers that they can't enforce federal law in Ohio, then I would agree, this would violate the Supremacy Clause. However, nowhere in this legislation does it do any of those things.

### **What We saw in Missouri**

There were concerns with the original bill filed in Missouri but after hearing the concerns of law enforcement, we made several changes that you see reflected in this legislation before you, House Bill 51. We defined that this law only protects law abiding citizens and we defined a law-abiding citizen as an individual who is lawful under state law to own and possess a weapon. A prohibited possessor or felon is not a law-abiding citizen (page 19 Line 521-524).

This bill doesn't make Ohio a sanctuary state for criminals to flee from other states, this bill will not protect an individual who committed a crime in another state (page 26 Line 739-743). This law will not protect an individual who commits a Class A or B felony controlled substance crime or any felony crimes against a person (page 26-27 Line 747-758). We also clarified that Law Enforcement can work with federal law enforcement and use federal resources to enforce any Ohio laws (page 26 Line 734-738). Once these changes were made in Missouri, the law enforcement associations became neutral on this legislation. We worked with law enforcement for months leading up to the passage of this bill to ensure they could still put the bad guys away and protect law abiding citizens. At first our law enforcement had a knee jerk reaction and pulled back their officers from every task force. As they began to understand and operate under SAPA, they have realized that wasn't necessary and are participating in task forces with federal agencies, but they are operating a little differently than they previously did. To date, there have been no successful lawsuits from a law-abiding citizen filing a claim that a law enforcement agency violated SAPA. I am only aware of less than a handful of lawsuits filed and each were dismissed immediately because they were either felons or SAPA didn't protect them because of the crime they committed.

### **SAPA Protects Law Enforcement**

This legislation not only protects law-abiding citizens, but it also protects Ohio law enforcement. Right now, Ohio cops have two choices, either enforce federal law, including the new pistol brace ban or stick to their morals and lose their jobs. This legislation gives them a third option, the option to point to this legislation and refuse to enforce an unconstitutional dictate. The badges on the street love this legislation, they understand the protection it provides them. Most law enforcement officers are very pro-Second Amendment and many probably own a pistol brace. They know the risk of having to enforce federal law against law abiding citizens and they want a way out.

### **Missouri SAPA Court Battles**

It is true that the DOJ has filed suit in federal court in Kansas City and asked for an immediate injunction. In court the judge asked why the DOJ hasn't filed suit against any other states who have declared themselves a "sanctuary" state. The DOJ responded by saying that Missouri is the only one with an enforcement mechanism. Those states pose no real risk of severing the tie with federal enforcement of gun laws. That case was heard in July 2022 and the judge has not made a ruling in the case and did not issue an immediate injunction and SAPA is still operating successfully in Missouri.

There are two other lawsuits in state court. One was filed by the large democrat-controlled cities, Kansas City, STL, and Columbia. They also requested an immediate injunction that the court denied and ruled in favor of the state, which was then heard by the Missouri Supreme Court who also didn't order an injunction and remanded it back to the lower court. The second suit in the state was filed by several small municipalities who told me specifically that they aren't looking to stop SAPA from being implemented, they just want court clarification on a few things, rather than relying on different attorney opinions who are each giving them different answers. That case is being heard soon in district court.

### **Why It's Critical We Pass it Immediately**

Democrat gun control is no longer rhetoric, Biden has weaponized the ATF to go after law abiding citizens for purchasing and owning a piece of plastic. A pistol brace has been redefined by the ATF and it was legal last month but will become illegal as of May 30<sup>th</sup>. The ATF estimates there are 40 million pistol braces in circulation that must be registered as an NFA item, and failure to do so will result in a felony with a 10-year prison sentence and a \$250,000 penalty. Ohio Law Enforcement will be used to enforce the new pistol brace ban against law abiding citizens who purchased the brace legally. A few years ago, it was the bump stock ban, today is the pistol brace ban, what will it be tomorrow?

Five years ago, democrats stuck to the lie that they "don't want to take away your guns." But just last week Joe Biden said, "come hell or high water" he's going to ban "assault

weapons" and high-capacity magazines. They are actively attempting to ban "assault weapons," limit magazine capacity, require insurance to own a weapon, and ban an individual from possessing a gun without a criminal conviction. We expect you to uphold your oath and protect law abiding citizens from an out-of-control federal government. Stop using our tax dollars to enforce laws we vehemently disagree with. Our law enforcement isn't an extension of the federal government, they operate with our tax dollars and they should be enforcing our laws.

As a State Representative, we urge you to stand up for Ohio, stop being pushed around by the federal government and bowing down to their overreach. As a former State Representative myself, I think you as a State Representative know what your citizens want, not a Senator or Congressman from California or Illinois and certainly not an unelected bureaucrat with the ATF. When will you stop handing over your authority as an Ohio State Representative to the federal government?

If not now, when?

I thank you for your time, and I look forward to answering any questions you might have.

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