

Testimony against HB51
House Government Oversight Committee
by Douglas Rogers

When I was in grade school in 1959, my father – then Attorney General of the United States - opposed the South's massive defiance of school integration and spoke publicly: "A grave consequence of attitudes of defiance is that they **create an atmosphere in which extremists and fanatics are encouraged to take the law into their own hands.**"¹

I did not realize then that over 60 years later extremists would resurrect such misguided claims of defiance to support HB51. Neither the sponsors nor the proponents appeared to be attorneys, however, and that may be why they misstated or ignored the law.

Do Not Take Ohio Backwards and Increase Gun Violence

In 1803 the US Supreme Court unanimously held that the "constitution vests the whole judicial power of the United States in one supreme court"² The Court continued, "It is emphatically the province and duty of the judicial department to say what the law is."³ Yet HB51 disregards federal courts and declares that various federal laws and regulations "shall be invalid to this state ... and shall not be enforced by this state."⁴ The Ohio General Assembly cannot legally declare federal laws unconstitutional.

HB51 also falsely states: "each party [state] has an equal right to judge for itself as to whether infractions of the compact [the US Constitution] have occurred, as well as to determine the mode and measure of redress."⁵ Any first year law student would know that statement is false. In 1958 the US Supreme Court unanimously explained, "If the legislatures of the several states may at will, annul the judgments of the courts of the United States, ... the constitution itself becomes a solemn mockery."⁶

HB51 would cause some Ohioans to believe the declarations in HB51 that various federal gun laws are unconstitutional and disobey them. However, in cases the courts would uphold the validity of those federal laws, and the defendant would be convicted and left with a criminal record.

For instance, in *United States v. Cox*⁷ the defendant was convicted of violating the National Firearms Act in spite of his defense that the Missouri Second Amendment Protection Act made his possession of the gun legal. The Tenth Circuit affirmed the defendant's conviction and explained: "**allowing state legislatures to estop the federal government** from prosecuting its laws **would** upset the balance of powers between states and the federal government and **contravene the Supremacy Clause.**"⁸

Similarly, just last week another federal judge (in *USA v. State of Missouri*)⁹ held Missouri's current version of its so-called Second Amendment Act "unconstitutional in its entirety."¹⁰ He added, the "law of Congress is paramount; it cannot be nullified by direct act of any state, nor the scope of and effect of its provisions set at naught indirectly."¹¹

HB51 would result in more violations of federal gun laws by citizens misled by the General Assembly's false declarations of invalidity. This would make Ohio more dangerous. What would the sponsors of HB51 say to Ohioans who have to pay fines or serve jail time for violating federal gun laws due to their reliance on the statements in HB51 encouraging lawlessness?

Some have falsely suggested that the "anti-commandeering doctrine" prevents Congress from regulating firearms. In *Printz v. United States*,¹² however, the Supreme Court said that the Federal government could not direct state officials how to act, but could prohibit private individuals from acting.¹³ The federal laws challenged in HB51 just prohibit individuals from taking certain actions, so the anti-commandeering doctrine is inapplicable to HB51.

HB51 Would Harm Law Enforcement in Ohio in General

As the District Court in *USA v. State of Missouri* found, the Missouri Act "exposes citizens to greater ham by interfering with the Federal Government's ability to enforce lawfully enacted firearms regulations designed by Congress for the purpose of protecting citizens with the limits of the Constitution."¹⁴ **HB51 would have the same chilling, dangerous effect on law enforcement in Ohio.**

HB51 Would Encourage More Domestic Violence

HB51 deletes the reference currently in Ohio law [R.C. 2923.111(A)(2)(b)] to the federal statute that prohibits persons convicted of misdemeanor domestic violence ["18 U.S.C. 922 (g)(1) to (9)"]¹⁵ from carrying guns. This deletion would mean that in the future Ohioans convicted of misdemeanor domestic violence would be allowed to carry guns. **The General Assembly should not make it easier for persons convicted of domestic violence to carry firearms by passing HB51.**

Conclusion

HB51 seeks to nullify federal law. Nullification was wrong in the 1850s and 1950s and is still wrong. HB51 is subversive legislation that would harm Ohioans and weaken our union.

Please do not pass HB51 to placate extremists and to encourage them to disregard federal law.

Douglas Rogers

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- ¹ <https://www.justice.gov/ag/speeches-attorney-general-william-pierce-rogers> (emphasis added).
- ² *Marbury v. Madison*, 5 U.S. 136, 173 (1803)
- ³ *Id.* at 177-178
- ⁴ 2923.50(C) and (F), lines 641-679.
- ⁵ lines 581-584.
- ⁶ *Cooper v. Aaron*, 358 U.S. 1, 18 (1958), citing *United States v. Peters*, 5 Cranch 115, 136.
- ⁷ 906 F3d 1170, 1174-1178 (2018), cert. denied, 2019 U.S. LEXIS 3931 (U.S. June 10, 2019)
- ⁸ *Id.* at 1192.
- ⁹ *United States of America v. State of Missouri*, W.D. Missouri, Case No. 2:22-CV-04022-BCW, (March 7, 2023), citing 4 Supreme Court cases: *McCulloch v. Maryland*, 17 US 316, 361 (1819); *Anderson v. Carkins*, 135 U.S. 483, 490 (1890); *United States v. Louisiana*, 364 U.S. 500, 501 (1960) (citing *Bush v. Orleans Parish Sch. Bd.*, 188 916, 926 (E.D.La. 1960); and *Cooper v. Aaron*, 358 U.S. 1 (1958).
- ¹⁰ *United States of America v. State of Missouri*, W.D. Missouri, Case No. 2:22-CV-04022-BCW, *24 (March 7, 2023),
- ¹¹ *United States of America v. State of Missouri*, W.D. Missouri, Case No. 2:22-CV-04022-BCW, **30 & 37 (March 7, 2023).
- ¹² 421 U.S. 898 (1997)
- ¹³ The Supreme Court in *Printz* explained, “the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. 421 U.S. at 921. In her crucial concurring opinion in *Printz* that determined the result in *Printz*, Justice O’Connor explained, “of course Congress is free to amend the interim program to provide for its continuance on a contractual basis with the States if it wishes, as it does with a number of other federal programs.” *Id.* at 936
- ¹⁴ *United States of America v. State of Missouri*, W.D. Missouri, Case No. 2:22-CV-04022-BCW, *37 (March 7, 2023).
- ¹⁵ Lines 218-219.