

Ohio Government Oversight Committee  
May 22, 2023

HB51 is dangerous, because it would resurrect the discarded doctrine of nullification. On December 10, 1832, President Andrew Jackson said nullification “was incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it [the Union] was founded.”<sup>1</sup> Of course, the United States rejected nullification in the Civil War.

In 1954<sup>2</sup> the United States Supreme Court also rejected the doctrine of nullification and held that the Constitution required the integration of public schools in the South. Although Alabama Governor George Wallace then shouted “segregation today, segregation tomorrow...segregation forever,”<sup>3</sup> the Republican Eisenhower administration rejected nullification and called out federal troops to integrate the public schools in Arkansas.<sup>4</sup> In 1958, the Eisenhower administration, through its Attorney General, explained that 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.”<sup>5</sup>

Yet HB51 attempts to resurrect such attitude of defiance and nullification by unilaterally nullifying and declaring invalid certain federal gun laws and regulations [proposed R.C. 2923.50(C)]. HB51 goes further and purports to prohibit federal and state law enforcement officers from enforcing federal gun laws [proposed R.C. 2923.50(F)] and giving private individuals power as vigilantes to disobey and challenge federal gun laws [proposed R.C. 2923.50(G)]. This would lead to chaos.

In its analysis of HB51, the Ohio Legislative Service Commission appears to recognize that HB51 is unconstitutional, since it says HB51 “may be vulnerable to challenge under the Supremacy Clause.”<sup>6</sup> What is the General Assembly doing when it is considering a proposed statute when its own staff seems to recognize the statute would be unconstitutional?

In *United States v. Missouri*, on March 7, 2023, Case No. 2:22-CV- 04022-BCW, 2023 U.S. Dist. LEXIS 37537, the US District Court for the District of Missouri held that the Missouri Second Amendment Act – similar to HB51 - was unconstitutional in its entirety. The court explained, “[t]he law of congress is paramount; it cannot be nullified by direct act of any state, nor the scope and effect of its provisions set at naught indirectly.” *Anderson v. Carkins*, 135 U.S. 483, 490, 10 S. Ct. 905, 34 L. Ed. 272 (1890). **As such, a state legislature's attempt to "interpos[e]" itself against federal law "is illegal defiance of constitutional authority.”**<sup>7</sup> What is your basis, if any, for considering HB51?

If this Committee ever believes that a federal gun law is unconstitutional, it should bring an action in federal court challenged the constitutionality of such law, rather than encouraging others to act as vigilantes and take the law into their own hands.

HB51 reflects a discarded relic of time past that this Committee should reject.

Thank you for your consideration, and please let me know if you have any questions.

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<sup>1</sup> *American Lion*, Jon Meacham, (2008), p. 227

<sup>2</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954)

<sup>3</sup> <https://www.blackpast.org/african-american-history/speeches-african-american-history/1963-george-wallace-segregation-now-segregation-forever/>

<sup>4</sup> <https://www.eisenhowerlibrary.gov/research/online-documents/civil-rights-little-rock-school-integration-crisis>

<sup>5</sup> <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/12-07-1958.pdf>

<sup>6</sup> <https://www.legislature.ohio.gov/download?key=20418&format=pdf> (p. 11)

<sup>7</sup> *Id.*, citing *Bush v. Orleans Parish School Board*, 364 U.S. 500, 501, 81 S. Ct. 260, 5 L. Ed. 2d 245 (1960) (citing *Bush v. Orleans Parish Sch. Bd.*, 188 F. Supp. 916, 926 (E.D. La. 1960); *Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401, 3 L. Ed. 2d 19, 79 Ohio Law Abs. 462 (1958))." (emphasis added).