

Opposition Testimony to Sub. HB51-House Government Oversight Committee

Submitted by Stephen P. Calardo

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I am an attorney and former assistant prosecuting attorney in Hamilton County. I am a gun owner who possesses a hunting license.

I oppose Sub. HB51 and urge you not to pass this reckless, vaguely worded, and likely unconstitutional legislation for the reasons below.

Most importantly, please recognize that Sub. HB51's incorporation of 18 USC 922(g)(1)-(9) into ORC 2923.111 applies only to permitless concealed carry, not to illegal possession of firearms by those under 18 USC 922 federal weapons disability.

1. **HB51's rejection of state and local cooperation with enforcement of federal laws remains a serious concern because Sub. HB51 will STILL prohibit state and local law enforcement from enforcing or assisting in the enforcement of 18 USC 922(g) weapons violations against domestic abusers (with misdemeanor convictions), illegal aliens, dishonorably discharged military personnel, and US citizenship renouncers. Under **Revised HB51**, an Ohio resident illegally possessing a firearm in violation of 18 USC 922 (g)(1)-(9) (a federal crime) is entitled to bring a lawsuit against any state or political subdivision that seeks to enforce the federal firearms restrictions or assists federal agents in enforcing such restrictions. Because domestic abusers (with misdemeanor convictions), illegal aliens, dishonorably discharged military personnel, and US citizenship renouncers may not legally possess firearms under federal law (**Ohio does not have similar provisions in ORC 2923.13**) ...federal law is the only law that could be used to charge the violator and remove the illegal weapon. **HB51** makes clear that an employee or agent of the state or its political subdivisions may not enforce or assist federal agents in enforcement of the federal gun restrictions. So, if a domestic abuser, illegal alien, individual dishonorably discharged from the military, or US citizenship renouncer illegally possesses a firearm in Ohio, local and state police can do nothing without violating **HB51's** ban on enforcing or assisting in enforcement of federal law and exposing the state or political subdivision to lawsuit, \$50,000 civil penalties, and an award of attorney fees/costs to be paid to the criminal who brings the lawsuit. This is **madness**. (Note that the proposed 'safe harbor "provisions of **Sub. HB51's** proposed 2923.50(G)—meant to address joint federal/state task forces, etc.-- do nothing to address such situations.)**
2. **HB51 provides crazy "special protection" for firearms of unlimited size.** Another example of the *recklessness* of **HB51** stands out: ORC 2923.11 would be revised to provide that a "dangerous ordinance" under Ohio law no longer includes "**any firearm with an overall length of at least twenty-six inches.**" So, size matters when it comes to firearms regulation in Ohio under **HB51**—the larger the gun, at least above 26", the less subject it is to gun safety regulations. This crazy result of **HB51** arises from striking reasonable, existing statutory language in 2923.11(L)(7) which referred to the ATF's regulatory authority with respect to guns with an overall length of at least 26".
3. **Unnecessary promotion of pistol braces.** Under **HB51**, federal regulations with regard to rapid-fire enhancing pistol braces (as used in the 2019 slaughter of Dayton residents) will be deemed unenforceable. Under promulgated ATF regulations, if a disabled, recreational user needs such a brace, it is available. They are not barred. One simply must register the device. Why should Ohio

needlessly promote a dangerous device used in mass shootings? Rendering this regulation “unenforceable” in Ohio smacks of unconstitutional nullification.

4. **HB51 violates the Supremacy Clause.** Removing the words “nullify” and “nullification” does not make the effect of HB51 any less an unconstitutional nullification statute under the Supremacy Clause. Anti-commandeering refers to the inability of the federal government to force a state to enact laws or programs. If Ohio lawmakers believe the federal government is unlawfully attempting to force Ohio to adopt a law or program, then Ohio can file suit against the federal government regarding that specific federal action. Instead, **HB51** seeks to pick a needless fight with the federal government over the US Constitution’s Supremacy Clause. As all committee members know, the federal court in Missouri held a similar Second Amendment Preservation Act to be unconstitutional under the Supremacy Clause. Costly, needless litigation will follow this bill.
5. **HB51** still reads like a *states’ rights*, anti-United States government proclamation that likely will fuel anti-government sentiment and may inspire increased gun violence in Ohio.

All the attempts to resuscitate HB51 from what should be its death bed are unnecessary and appear to be little more than an effort to appease fringe anti-federal government groups that oppose common sense gun safety laws—such as 18 USC 922(g) –laws that aim *only* to keep guns out of the hands of those who should not have them.

Because HB51 is a dangerous, costly, unnecessary, and likely unconstitutional proposal, I urge all members of the General Assembly to stop working on “revisions” to HB51, just say “NO” to this fatally flawed bill, and toss this anti-federal government legislative garbage into the trash heap where it belongs.