Written by **Joe Wolverton, II, J.D.** on March 9, 2023

Ohio Bill Would Nullify Most Federal Gun Restrictions

A bill proposed in the Ohio state House of Representatives would prohibit state and local police from enforcing federal gun regulations.

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House Bill 51 would not only remove all reference to "federal firearms laws," but, within certain enumerated exceptions, declares:

> federal acts, laws, executive orders, administrative orders, rules, and regulations shall be considered infringements on the people's right to keep and bear arms, as guaranteed by the Second Amendment to the United States Constitution and Section 4 of Article I, Ohio Constitution, within the borders of this state.

Along with that clear and concise codification of the right of the people to keep and bear arms and the state and federal constitutional protections thereof, the proposal sets forth a bit of constitutional history in support of its proposed propping up of the Second Amendment:

> Acting through the Constitution of the United States, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving for the state governments the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs.
>
> The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal powers as being those which have been delegated by the people of the several states to the federal government, and all powers not delegated to the federal government in the Constitution of the United States are reserved to the states respectively or the people themselves.
>
> If the federal government assumes powers that the people did not grant it in the Constitution of the United States, its acts are unauthoritative, void, and of no force.

That is some very correct and commendable legislating!

To demonstrate the soundness of this succinct recitation of constitutional history, consider this selection from James Madison's Virginia Resolution:

> That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no

> further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

It seems the sponsors of the Ohio legislation are drawing from the best sources of constitutional interpretation.

Thomas Jefferson's Kentucky Resolutions similarly set out the correct constitutional relationship between the state and federal authorities, even naming nullification — state refusal to enforce unconstitutional acts of the federal government — as the "rightful remedy" for such tyranny:

> This commonwealth considers the federal union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers: That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy.

Ohio State Representative Mike Loychik is a sponsor of HB 51, and he informed local news outlets of the intended goal of the legislation.

"The Ohio law enforcement agencies cannot be compelled to enforce unconstitutional federal gun control laws, executive orders, or agency rule interpretations," Loychik said.

To be fair, Representative Loychik did mistakenly identify the Supremacy Clause as granting priority to federal laws over state laws. It does no such thing.

Hopefully Representative Loychik will read this article praising his proposal and learn that the so-called Supremacy Clause of Article VI of the U.S. Constitution does not grant higher status to federal laws than to state laws. It declares that the Constitution "and laws of the United States *made in pursuance thereof*" are the supreme law of the land.

The pertinent phrase — and the one Representative Loychik hopefully will take note of — is "In pursuance thereof."

If an act of Congress is not permissible under any enumerated power — and that would include every restriction on the right of the people to keep and bear arms — it is not made in pursuance of the Constitution and therefore not only is not the supreme law of the land, it is not the law at all.

As of the writing of this article, House Bill 51 is awaiting consideration by the Ohio State House of Representatives Government Oversight Committee.