

THE OHIO ATTORNEY GENERAL CAN AND SHOULD CRIMINALLY PROSECUTE PUBLIC CORRUPTION IN OHIO GOVERNMENT

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I. INTRODUCTION

This seems to me an unremarkable proposition. But Ohio Attorney General Dave Yost disagrees. Yost takes the view that his office lacks the authority to criminally prosecute state government officials unless a local prosecutor invites him to assist with prosecution.¹ For that reason, he has not filed any criminal charges in connection with a \$60 million scandal in which Ohio-based FirstEnergy Corp. and affiliates bribed Ohio public officials in return for a \$1.3 billion bailout.² We join the story in July 2019 when the Ohio General Assembly enacted the bailout known as House Bill 6.³

*Member of the Ohio Bar and former Assistant Attorney General for the State of Ohio from 2011 to 2016 under former Ohio Attorney General Mike DeWine. All the views expressed here are my own and do not represent the views of any organization. Thank you to Bart Hubbard and Dale Oesterle for their helpful advice and comments on this article. Any and all errors are my own.

¹ Jessie Balmert, *Democratic Rep. Jeff Crossman Announces Bid for Ohio Attorney General*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/politics/elections/2021/12/16/democrat-jeff-crossman-challenge-republican-dave-yost-ohio-ag/8825821002/> [<https://perma.cc/A3SK-DP3C>] (last updated Dec. 16, 2021, 3:29 PM) (“Yost, on the other hand, challenged the fees for nuclear plants imposed on Ohioans' electric bills by House Bill 6, halting them before state lawmakers eliminated them altogether. He filed a lawsuit rather than pursue criminal charges against individuals already named in the federal investigation. Yost said his office didn't have the authority to indict individuals unless invited in by a local prosecutor.”).

² *Id.*

³ Am. Sub. H.B. 6 (133rd Gen. Assemb.) (Ohio 2019).

The ratepayer-funded bailout was designed to save two failing nuclear power plants near Lake Erie that are held by FirstEnergy affiliates.⁴

One year later, in July 2020, the U.S. Department of Justice (“DOJ”) arrested and charged then-Speaker of the Ohio House of Representatives, Larry Householder, and four lobbyists with criminal racketeering for their involvement in the nuclear bailout.⁵ The following year, in July 2021, FirstEnergy reached a corporate plea deal with the DOJ whereby it agreed to a \$230 million penalty for bribing Householder and former Public Utilities Commission of Ohio (“PUCO”) Chairman Sam Randazzo in connection with the nuclear bailout and other regulatory matters.⁶ David DeVillers, the U.S.

⁴ “FirstEnergy Corp. is an Akron, Ohio-based public utility holding company. During the relevant period (2016 until in or about February 2020), FirstEnergy Corp. was the parent company to entities involved in energy generation, including the entity formerly known as FirstEnergy Solutions (“FES”). As of November 16, 2016, FES had a separate and independent Board of Directors from FirstEnergy Corp., and on March 31, 2018, FES filed for Chapter 11 bankruptcy protections.” Deferred Prosecution Agreement, United States v. FirstEnergy Corp., No. 1:21-cr-00086, 14 (S.D. Ohio July 22, 2021) [hereinafter DPA]. FES is now known as Energy Harbor.

⁵ Aff. in Supp. of Criminal Compl. of Blane J. Wetzel, United States v. Householder, No. 1:20-MJ-00525, 3–4 (S.D. Ohio July 17, 2020) [hereinafter Criminal Compl. Aff.].

⁶ DPA, *supra* note 4, at 4; *FirstEnergy Charged Federally, Agrees to Terms of Deferred Prosecution Settlement*, U.S. DEP’T OF JUST. (July 22, 2021), <https://www.justice.gov/usao-sdoh/pr/firstenergy-charged-federally-agrees-terms-deferred-prosecution-settlement> [<https://perma.cc/WS6B-4QLC>] (FirstEnergy admits and agrees in the DPA that it conspired or agreed to devise a scheme to defraud the public of its right to the honest services of a public official through bribery or kickbacks.) In the DPA, FirstEnergy agreed that it paid millions of dollars to Householder in return for his pursuit of nuclear legislation for FirstEnergy’s benefit. FirstEnergy used 501(c)(4) entities to further the scheme because it allowed FirstEnergy to conceal from the public the nature, source and

Attorney for the Southern District of Ohio at the time of the arrests, described the nuclear scandal as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the State of Ohio."⁷

The eighty-one page DOJ criminal complaint sets forth the case against Householder and his cronies.⁸ It alleges in excruciating detail how Householder orchestrated an enterprise to facilitate the passage of the nuclear bailout legislation, House Bill 6, in exchange for bribes from FirstEnergy.⁹ The scheme passed at least \$60 million from

control of payments. FirstEnergy further acknowledged that it paid \$4.3 million dollars to Randazzo in return for his official acts as PUCO Chair to further First Energy's interests related to passage of nuclear legislation and other regulatory priorities of FirstEnergy. Householder and Randazzo are not expressly identified by name in the DPA but instead referred to as "Public Official A" and "Public Official B," respectively, and clearly identifiable by the context. DPA, *supra* note 4, at 14–17.

⁷ Giulia McDonnell Nieto del Rio, *Powerful Ohio Republican Is Arrested in \$60 Million Corruption Scheme*, N.Y. TIMES, <https://www.nytimes.com/2020/07/21/us/larry-householder-ohio-speaker-arrested.html> [<https://perma.cc/SR6U-W9D6>] (last updated July 22, 2020).

⁸ The criminal complaint, of course, contains the DOJ's allegations of criminal misconduct that two defendants dispute and citations to it should be understood in that context. The complaint is supported by the affidavit of an FBI agent. As this article goes to print, Householder and another indicted lobbyist, Matt Borges, contest the allegations and charges and await trial. Two other indicted lobbyists, Jeff Longstreth and Juan Cespedes, have agreed to plea agreements where they agreed that an enterprise existed as charged in the complaint and that they knowingly conspired to participate in the affairs of the enterprise through a pattern of racketeering activity. Criminal Compl. Aff., *supra* note 5, at 20–21. In addition, the forty-nine-page Deferred Prosecution Agreement contains a statement of facts that FirstEnergy agrees is true and accurate. I have made every effort to clearly and fairly represent the source of factual statements from whatever source derived, so that the reader has context for the statements and whether they are agreed to or disputed and by whom.

⁹ Criminal Compl. Aff., *supra* note 5, at 6 ("Company A entities paid Householder's Enterprise \$60,886,835.86 in secret payments over the

FirstEnergy and its affiliates through multiple entities that Householder controlled including a dark money entity central to the scheme named Generation Now.¹⁰ Householder's enterprise used the bribe money to fund political campaigns (e.g. staff, advertisements) for his handpicked candidates in order to elect a coalition of faithful legislators who would elect Householder as Speaker and enact the nuclear bailout.¹¹ The funds were also used by Householder personally (approximately \$500,000), for a media blitz that gave "cover" to legislators voting for the poorly justified bailout, and to quash a signature drive for a statewide referendum on the unpopular bailout.¹² Their goals, as the DOJ describes them, include establishing, maintaining and expanding Householder's political power in Ohio state government, enriching the criminal enterprise, its members and associates, and promoting these purposes while concealing the scheme from public exposure and criminal prosecution.¹³

approximately three-year period in exchange for the billion-dollar-bailout. The Enterprise concealed the payments by using a 501(c)(4) to receive the bribe money, and then transferring the payments internally to a web of related entities and accounts.") (footnote omitted).

¹⁰ *Id.*, at 15–16 (listing specific payments). Generation Now is an I.R.C. 501(c)(4) social welfare organization that is not required to disclose its donors.

¹¹ *Id.*, at 4, 21–62; DPA, *supra* note 4, at 17–34; *see generally* NEIL CLARK, WHAT DO I KNOW? I'M JUST A LOBBYIST at ch. 36, 39 & 41 (2021).

¹² Criminal Compl. Aff., *supra* note 5, at 7 (Householder personal benefits); *Id.* at 36–45 (media blitz to provide "cover"); *Id.* at 62–80 (referendum petition); *see also* DPA, *supra* note 4; CLARK, *supra* note 11.

¹³ Criminal Compl. Aff., *supra* note 5, at 4.

Now, as this article goes to print, it has been nearly two years since the July 2020 arrests. Householder and lobbyist Matt Borges have pled not guilty and await trial.¹⁴ The DOJ has also reached plea deals with Generation Now and lobbyists Jeff Longstreth and Juan Cespedes whereby all have pled guilty.¹⁵ Randazzo, a former FirstEnergy lobbyist, resigned as PUCO Chair but he has not been charged with any crime and maintains he did nothing wrong.¹⁶

¹⁴ Laura Bischoff, *Former Ohio House Speaker Householder Will Go on Trial in January 2023 in Federal Court*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/2022/03/11/larry-householder-public-corruption-federal-court-trial-date-2023/7006617001/> [<https://perma.cc/R4CL-ZZZX>] (last updated Mar. 14, 2022, 8:58 AM). On February 1, 2022, Householder filed a motion to dismiss pursuant to Fed. R. Crim. P. 7(c) and 12(b)(3)(B)(v) for failure to plead “the essential facts constituting the offense charged” and arguing that “the government fails to sufficiently allege an explicit quid pro quo agreement.” Mot. to Dismiss, Doc. 105, *United States v. Householder*, No. 1:20-cr-00077-TSB, 2, 7 (S.D. Ohio February 1, 2022); *see also* Jessie Balmert & Laura Bischoff, *Ohio Statehouse Corruption: Former House Speaker Wants the Court to Dismiss the Federal Case*, CIN. ENQUIRER, <https://www.cincinnati.com/story/news/2022/02/01/former-ohio-house-speaker-larry-householder-wants-federal-bribery-case-dismissed/9307381002/> [<https://perma.cc/XZS8-59WQ>] (last updated Feb. 1, 2022, 9:33 PM). The DOJ filed its memorandum in opposition on February 22, 2022, and replies were filed on March 8, 2022, but the motion has not been ruled upon as this article goes to print.

¹⁵ Press Release, U.S. Dep’t of Just., *Purported 501(c)(4) Admits to Being Used to Conceal Corrupt Payments Related to Passage of Legislation* (Feb. 19, 2021), <https://www.justice.gov/usao-sdoh/pr/purported-501c4-admits-being-used-conceal-corrupt-payments-related-passage-legislation> [<https://perma.cc/RNQ8-CHSC>]; Marc Kovac, *2 Householder Associates Take Plea Deals in HB 6 Corruption Case. Here’s What They Say*, COLUMBUS DISPATCH (Oct. 29, 2020), <https://www.dispatch.com/story/news/politics/state/2020/10/29/two-indicted-along-householder-ready-cop-pleas-hb-6-scandal/6067620002/> [<https://perma.cc/VS7R-5BCX>].

¹⁶ Jessie Balmert, *PUCO Delays Probe into Whether FirstEnergy Broke Ohio Law by Not Disclosing Randazzo Contract*, COLUMBUS DISPATCH (Dec. 16, 2021, 10:00 PM), <https://www.dispatch.com/story/news/politics/2021/12/17/puco-delays-probe-into-ex-chairman-randazzos-firstenergy-contract/8922054002/> [<https://perma.cc/3JTW-V4H2>] (“Randazzo has not been charged with any crime and maintains he did nothing wrong.”).

Another indicted lobbyist, Neil Clark, wrote a tell-all memoir on his nearly forty-year career in and around Ohio government and published it shortly before his death by suicide in March 2021.¹⁷ Clark served as one of Householder's closest advisors and his "proxy" in charge of the corrupt enterprise when Householder was unavailable, according to the DOJ complaint.¹⁸ Clark's memoir details a meeting he had with the DOJ and FBI on July 28, 2020 to explore a plea deal. In the meeting, he reported several allegations that Ohio public officials committed crimes in office, some related to nuclear bailout and others not.¹⁹ Among them is Clark's allegation that Ohio Governor Mike DeWine, who has close ties to FirstEnergy and key

¹⁷ Laura A. Bischoff, *Ohio Superlobbyist Neil Clark's Tell-All Book Has Statehouse Insiders Abuzz*, COLUMBUS DISPATCH (July 2, 2021), <https://www.dispatch.com/story/news/2021/07/02/ohio-lobbyist-neil-clark-memoir-published-posthumously/7842010002/> [<https://perma.cc/87Y9-T98D>].

¹⁸ Criminal Compl. Aff., *supra* note 5, at 8.

¹⁹ CLARK, *supra* note 11, at 415–17, 521–24 and Chapter 41 generally. Among the allegations are the steering of a JobsOhio personal protection equipment contract during the COVID-19 pandemic through an unregistered lobbyist working on a contingency contract and "sister bills" that the Ohio House of Representatives passed "to benefit other utilities or the cable industry for their silence on HB 6." Clark also suggests that Longstreth, who managed Generation Now, would have had to explain to DOJ the funding of other corrupt activity through Generation Now as part of his plea deal. CLARK, *supra* note 11, at 528. "Longstreth's first-hand knowledge of all contributors to Generation Now and its ancillary committees will lead to more investigations and arrests from a wide variety of industries including Charter Communications, Ohio's casinos and racinos, numerous owners of the nursing home industry, and AEP. If Longstreth tells the truth and collaboration is given for 'pay to play' legislation, I would predict Republican House will flip in 2022 and Statewide Republican domination ends in 2022. Jon Husted will never see his dream of being Governor unless DeWine dies in office before 2022."

players in the nuclear bailout,²⁰ agreed to accept a \$5 million contribution from FirstEnergy, or a commitment to make the contribution, in return for his support of the bailout.²¹ FirstEnergy and its affiliates spent over \$1 million to support DeWine in the 2018

²⁰ Clark identifies several close relationships between DeWine's political team and FirstEnergy and/or House Bill 6. CLARK, *supra* note 11, at 489–90. Rex Elsass served as both DeWine's media and messaging advisor and as a House Bill 6 media strategist. *Id.* Josh Rubin, the Campaign Manager for DeWine's gubernatorial campaign, is a former FirstEnergy lobbyist. *Id.* Mike Dawson is a former FirstEnergy lobbyist and communications consultant who is married to Laurel Dawson, DeWine's former Chief of Staff for more than two years from 2019 to 2021. *Id.* She resigned from the role in 2021 but retained her salary in another role advising the Governor. Jessie Balmert, *Ohio Gov. Mike DeWine's Chief of Staff Laurel Dawson Changes Roles*, CIN. ENQUIRER (May 20, 2021), <https://www.cincinnati.com/story/news/politics/2021/05/20/dewines-chief-staff-laurel-dawson-changes-roles/5187194001/> [<https://perma.cc/EZQ5-QVQ9>]. Dan McCarthy is a former FirstEnergy lobbyist who served as President of Partners for Progress, the 501(c)(4) entity that funneled FirstEnergy bribe money to Householder's enterprise, prior to his appointment as DeWine's Legislative Director. CLARK, *supra* note 11. He resigned in September 2021 under pressure from media reports linking him to Partners for Progress and the nuclear scandal. Seth A. Richardson, *Gov. Mike DeWine Aide Who Ran FirstEnergy-Funded Dark Money Group Resigns*, CLEVELAND.COM (Sep. 24, 2021, 4:29 PM), <https://www.cleveland.com/open/2021/09/gov-mike-dewine-aide-who-ran-firstenergy-funded-dark-money-group-resigns.html> [<https://perma.cc/HTS4-2NHD>]. Sam Randazzo, of course, is a central figure to the nuclear scandal and former FirstEnergy lobbyist who DeWine appointed as PUCO Chairman in 2019. Mike Koran is a FirstEnergy lobbyist and former PUCO Nominating Council Chairman who also served as a member of DeWine's Finance Committee. CLARK, *supra* note 11, at 489. He resigned his role to select candidates for PUCO Commissioner in 2022. Jessie Balmert, *Ex-FirstEnergy Lobbyist Resigns from Role Helping to Pick New Utility Regulators*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/politics/2022/01/25/ex-firstenergy-lobbyist-resigns-role-helping-pick-utility-regulators/9216377002/> [<https://perma.cc/A9ZA-6XKF>] (last updated Jan. 26, 2:51 PM). According to Clark, Brook Bodney raised funds to support DeWine's gubernatorial bid and later served in a similar role to support Householder's enterprise. CLARK, *supra* note 11, at 414, 490.

²¹ CLARK, *supra* note 11, at 417, 489. “But the demise of the DeWine/Husted ticket will certainly end, if there is any truth to what Juan Cespedes told a mutual friend after he pleaded guilty to his RICO indictment. Cespedes fingered a long-time lobbyist Bob Klaffky, and other participants who attended a meeting on October 10, 2018, at the Columbus Club in which DeWine agreed to accept a \$5 million contribution from FirstEnergy/FirstEnergy Solutions in exchange for his support of a planned bailout.”

gubernatorial election, including a \$300,000 payment from the same FirstEnergy affiliate that made the nuclear bribe payments.²² Part II details the flow of these funds and DeWine's appointment of former FirstEnergy lobbyists to key positions.

To date, there have been no new arrests arising from the scandal. Former U.S. Attorney DeVillers publicly suggested in March 2021 that additional charges would be forthcoming.²³ Yet, as of this writing, there have been none. The DOJ has not prosecuted, nor is the DOJ known to have opened any investigation into, the other corrupt activity reported by Clark, the media and in court filings.²⁴

²² First Energy, FirstEnergy Solutions, its executives, family, political action committees, lobbyists and/or related entities contributed \$236,000 to the DeWine campaign and inauguration, \$500,000 through the Republican Governor's Association and \$300,000 to a dark money 501(c)(4) entity supporting DeWine's gubernatorial bid named Securing Ohio's Future, Inc. Laura A. Bischoff, *FirstEnergy Pumped \$1M into Backing DeWine, Records Show*, DAYTON DAILY NEWS (Mar. 5, 2021), <https://www.daytondailynews.com/local/firstenergy-pumped-1m-into-backing-dewine-records-show/ZHCCGM5E6JB4RDNKUKZK7KYKEQ/> [<https://perma.cc/QXR9-AYD8>]. The discussion in Part II(C), *infra*, provides further detail.

²³ Jessie Balmert, *DeVillers on House Bill 6 Bribery Case: 'I Suspect That You're Going to Hear a Bit More'*, CIN. ENQUIRER (Mar. 16, 2021, 4:41 PM), <https://www.cincinnati.com/story/news/politics/2021/03/16/hb-6-bribery-scandal-dave-devillers-says-more-indictments-coming/4721516001/> [<https://perma.cc/569V-38XY>].

²⁴ The Ohio Public Utilities Commission is conducting four investigations into FirstEnergy's charitable spending (including whether illicit political contributions were recovered from ratepayers), the use of other funds including a Distribution Modernization and Delivery Capital Recovery rider funds, and compliance with corporate separation laws. *Official Overseeing FirstEnergy Probes Withdraws*, GONGWER OHIO REP. (Mar. 7, 2022). Democrat Attorney General candidate Jeff Crossman has criticized the investigations and called for an independent inspector general to conduct the investigations. Karen Kasler, *Democratic Lawmaker Wants Records, Investigation on Former Ohio Utilities Commission Chair and FirstEnergy*, STATEHOUSE NEWS BUREAU (Aug. 25, 2021, 4:50 PM),

Householder is still the only public official that has been criminally charged in the scheme despite a scandal that reverberates widely across Ohio government and to its highest levels.

Many Ohio public officials were slow to condemn the nuclear bailout and Householder after the arrests. It was controversial whether to repeal the corrupt bailout and expel Householder from the Ohio House of Representatives. Governor DeWine, for one, continued to support the bailout in the aftermath of Householder's arrest, though he quickly reversed course.²⁵ The bailout was not repealed for several months and, still today, portions of the bailout legislation – a corrupt legislative bargain – remain law, including subsidies for coal-powered plants and the repeal of renewable energy subsidies.²⁶ It was not until

<https://www.stateneews.org/government-politics/2021-08-25/democratic-lawmaker-wants-records-investigation-on-former-ohio-utilities-commission-chair-and-firstenergy> [<https://perma.cc/9FVH-BRRE>]; *Crossman Blasts Yost over Lack of Energy Scandal Investigation*, GONGWER OHIO REP. (Feb. 10, 2022).

²⁵ Jeremy Pelzer, *Gov. Mike DeWine Stands by Billion-Dollar Nuclear Bailout Authorities Say Was Forged in Corruption*, CLEVELAND.COM (July 22, 2020, 4:52 PM), <https://www.cleveland.com/open/2020/07/gov-mike-dewine-stands-by-billion-dollar-nuclear-bailout-authorities-say-was-forged-in-corruption.html> [<https://perma.cc/PRR5-KBRM>]; Associated Press, *Ohio Gov. Mike DeWine Reverses Course, Calls for Repeal of Nuclear Bailout Law at Center of Scandal*, WCPO.COM (July 23, 2020, 3:13 PM),

<https://www.wcpo.com/news/government/state-government/ohio-state-government-news/ohio-gov-mike-dewine-reverses-course-calls-for-repeal-of-nuclear-bailout-law-at-center-of-scandal> [<https://perma.cc/JG8S-MYJ3>].

²⁶ Jeremy Pelzer, *Gov. Mike DeWine Signs Repeal of Nuclear Bailout, Other Parts of Scandal-Tainted House Bill 6*, CLEVELAND.COM (Mar. 31, 2021, 4:51 PM), <https://www.cleveland.com/open/2021/03/gov-mike-dewine-signs-repeal-of-nuclear-bailout-other-parts-of-scandal-tainted-house-bill-6.html> [<https://perma.cc/J3FK-BR3E>]; Jake Zuckerman, *House Lawmakers Review Coal Bailouts, Energy Efficiency Proposal*, OHIO CAP. J. (Nov. 1, 2021, 12:50 AM),

almost a year after his arrest that the Ohio House expelled Householder by a seventy-five to twenty-one vote.²⁷ There appears to be a question as to whether some public officials have continuing loyalty to Householder and/or FirstEnergy.²⁸

These events surrounding the nuclear scandal are worthy of thoughtful consideration in these pages due to their effect on the integrity of Ohio elections and the threat posed to our democratic institutions. Widespread use of bribe money in political campaigns casts doubt upon the effectiveness of voting to hold public officials accountable to the people. Householder corrupted legislative races by his use of FirstEnergy bribe money in political campaigns to support

<https://ohiocapitaljournal.com/2021/11/01/house-lawmakers-review-coal-bailouts-energy-efficiency-proposal/> [<https://perma.cc/HC53-LS8N>].

²⁷ Michael Levenson, *Ohio House Expels Ex-Speaker Charged in \$60 Million Corruption Scheme*, N.Y. TIMES (June 16, 2021), <https://www.nytimes.com/2021/06/16/us/larry-householder-expelled-ohio-house.html> [<https://perma.cc/UUS7-26W5>]. Householder was previously removed as speaker on July 30, 2020 and re-elected to his House seat at the 2020 general election. Rachel Treisman, *Ohio House Removes and Replaces Newly Indicted Larry Householder as Speaker*, NPR (July 30, 2020, 11:57 PM), <https://www.npr.org/2020/07/30/897508779/ohio-house-removes-and-replaces-newly-indicted-larry-householder-as-speaker> [<https://perma.cc/3AB8-27CB>]. A federal grand jury also indicted Householder and the others. Press Release, U.S. Dep't of Just., Federal Grand Jury Indicts Ohio House Speaker Enterprise in Federal Public Corruption Racketeering Conspiracy Involving \$60 Million (July 30, 2020), <https://www.justice.gov/usao-sdoh/pr/federal-grand-jury-indicts-ohio-house-speaker-enterprise-federal-public-corruption> [<https://perma.cc/ATD6-UN95>].

²⁸ *E.g.*, Laura Bischoff, *Facing Corruption Charges, Larry Householder Still Contacts Ohio House GOP Lawmakers*, CIN. ENQUIRER (Feb. 17, 2022, 2:18 PM), <https://www.cincinnati.com/story/news/2022/02/17/larry-householder-contacts-ohio-house-lawmakers-despite-criminal-case/6830281001/> [<https://perma.cc/M9T7-PFPR>].

twenty-one loyal candidates, including himself.²⁹ Most of these candidates won their races and he effectively built a coalition of legislators who supported his bid for Speaker and the passage of the nuclear bailout.³⁰ Still more FirstEnergy bribe money was used to quash the direct democracy institution of popular referenda on the bailout.³¹ And if FirstEnergy supported DeWine's candidacy in return for his support of the bailout – something we cannot ignore in light of his close ties to FirstEnergy, FirstEnergy's large contributions, the FirstEnergy plea deal and Clark's allegation – it could have swung the race for governor and had other consequences. A dark money group supporting DeWine's gubernatorial run received FirstEnergy contributions and hired a media firm that claims to have generated unexpected votes that swung the election for DeWine.³² To the extent DeWine served as the Ohio GOP standard-bearer in the 2018 election, and favorably affected down-ticket races in that role, any illicit support for him could have indirectly influenced other statewide races that Republicans won including the Ohio Auditor and Secretary of State.

²⁹ Criminal Compl. Aff., *supra* note 5, at 22–23.

³⁰ *Infra* Part II(A).

³¹ *Infra* Part II(B).

³² *Infra* Part II(C). “These additional 206,858 unexpected DeWine votes created by Securing Ohio’s Future were critical to victory – as Governor DeWine’s margin over Cordray was 164,070 votes.” *Data Insights: 2018 General Election*, MAJORITY STRATEGIES (Feb. 13, 2019), https://www.majoritystrategies.com/wp-content/uploads/2019/04/MS_Sales_2018CaseStudy_SOF.pdf [<https://perma.cc/W6DL-8GHF>].

As if that were not enough, the 2018 elections tainted by the nuclear scandal determined the balance of power on the Ohio Redistricting Commission that found itself mired in a constitutional crisis in 2022 over the drawing of congressional and state legislative districts.³³ In a series of four-to-three decisions, the Ohio Supreme Court repeatedly struck down gerrymandered maps that favored Republican candidates.³⁴ Of course, we cannot know the extent to

³³ The seven-member Ohio Redistricting Commission consists of the Ohio Governor, Auditor of State, Secretary of State, one person appointed by the Speaker of the Ohio House of Representatives, one person appointed by the Ohio House Minority Leader, one person appointed by the President of the Ohio Senate, and one person appointed by the Senate Minority Leader. OHIO CONST. art. XI, § 1. State legislative redistricting maps must be approved by a majority of the Commission. If passed with the approval of at least two members of each political party, the maps are effective for ten years, whereas maps approved by a simple majority of the Commission without the support of two members of each political party remain in effect for only four years. OHIO CONST. art. XI, §§ 1, 8; *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, Nos. 2021-1193, 2021-1198, and 2021-1210, 2022 WL 110261, ¶¶ 7–8 (Ohio S. Ct. Jan. 12, 2022) [hereinafter *League I*]. The Congressional redistricting process calls for the General Assembly to adopt a ten-year plan by a three-fifths supermajority in each house including at least half of the members of each political party in each house, or if not, for the Commission to do so by majority vote with approval from at least two Commission members of each party. If each of those congressional redistricting procedures fail, the General Assembly may adopt a ten-year plan by a three-fifths supermajority in each house including at least one third of the members of each political party in each house, or a four-year plan with a simple majority in each house. OHIO CONST. art. XIX, § 1; *Adams v. DeWine*, Nos. 2021-1428 and 2021-1449, 2022 WL 129092, ¶¶ 8–11 (Ohio S. Ct. Jan. 14, 2022).

³⁴ Legal challenges to the state legislative and congressional districts approved by the Ohio Redistricting Commission under the procedures discussed in footnote 33 are currently pending as this article is being published. On January 14, 2022, the Ohio Supreme Court struck down, by a 4-3 vote, a proposed congressional map as violative of the Ohio Constitution and ordered the General Assembly to redraw it. *Adams*, 2022 WL 129092. The General Assembly declined and, on March 2, 2022, the Commission approved a redrawn congressional map. There are challenges to the redrawn congressional map pending in the Ohio Supreme Court but the 2022 primary election was held using the map on May 3, 2022 and it appears unlikely that any court will intervene in its use for the 2022 general election. *Congressional*

which money flowing into the 2018 elections from the nuclear scandal influenced election outcomes. Regardless, the redistricting crisis is consequential here to the extent gerrymandered districts remain and/or the crisis has tarnished voter confidence in Ohio elections and their recourse against corrupt politicians to vote the rascals out. These issues with our electoral institutions place added pressure on our

Map Likely to Remain in Place Under Supreme Court Case Schedule, GONGWER OHIO REP. (Mar. 29, 2022); League of Women Voters of Ohio v. Larose, Ohio Supreme Court Case Nos. 2022-303 and 2022-298. Regarding the state legislative maps, the Ohio Supreme Court has struck down by 4-3 votes four sets of proposed Ohio state legislative maps, as violative of anti-gerrymandering provisions regarding partisanship and proportionality in the Ohio Constitution, and the matter is not yet resolved as this article goes to print. OHIO CONST. art. XI, §§ 6(A), 6(B); *League I*, *supra* note 33; League of Women Voters of Ohio v. Ohio Redistricting Comm'n, Nos. 2021-1193, 2021-1198, and 2021-1210, 2022 WL 354619 (Ohio S. Ct. Feb. 7, 2022) [hereinafter *League II*]; League of Women Voters of Ohio v. Ohio Redistricting Comm'n, Nos. 2021-1193, 2021-1198 and 2021-1210, 2022 WL 803033 (Ohio S. Ct. Mar. 16, 2022) [hereinafter *League III*]; League of Women Voters of Ohio v. Ohio Redistricting Comm'n, Nos. 2021-1193, 2021-1198 and 2021-1210, 2022 WL 1113988 (Ohio S. Ct. Apr. 14, 2022) [hereinafter *League IV*]. On April 20, 2022, a panel of three federal judges issued an order asserting that it will impose the third set of Ohio state legislative maps that the Ohio Supreme Court invalidated under the Ohio Constitution if the state fails to finally decide upon state legislative maps by May 28, 2022. Memorandum and Order, *Gonidakis v. LaRose*, Case No. 2:22-cv-0773 (S.D. Ohio Apr. 20, 2022). It is not clear that the panel of federal judges has this authority in light of principles of comity and federalism. *State v. Burnett*, 93 Ohio St. 3d 419, 422–24 (2001). On May 4, 2022, after the federal judge panel issued this order, Republican House Speaker Bob Cupp and Republican Senate President Matt Huffman resigned from the Commission. *Redistricting Panel Rejects Rehiring Mapmakers, Will Meet Thursday*, GONGWER OHIO REP. (May 4, 2022). On May 5, 2022, the Commission adopted the same third set of state legislative maps that the Ohio Supreme Court held were unconstitutional in *League III*. *Commission Re-Adopts Legislative Maps Declared Unconstitutional*, GONGWER OHIO REP. (May 5, 2022). Objections to the Commission's resubmission of the invalidated maps were filed in the Ohio Supreme Court the next day on May 6, 2022. *Opponents Push for New Legislative Maps Under Threat of Sanctions*, GONGWER OHIO REP. (May 6, 2022). It should be noted that Republicans currently hold twelve of sixteen Ohio congressional seats and supermajorities in both Houses of the Ohio General Assembly despite being regarded as a swing state in Presidential elections. The Ohio GOP currently holds sixty-four of ninety-nine Ohio House seats and twenty-five of thirty-three Ohio Senate seats.

prosecutorial institutions to uncover and prosecute corruption in state government where it exists.

Enter the Ohio Attorney General. This constitutional office has broad, discretionary common law power to criminally prosecute individuals involved in state government public corruption including those involved the nuclear scandal.³⁵ There must be a mechanism to ferret out and prosecute public corruption in state government and the Ohio Attorney General is better situated than federal or local prosecutors for this role.³⁶ In recent years the U.S. Supreme Court has placed limits on the ability of federal statutes to prosecute state officials for corruption and cited federalism principles as a basis for

³⁵ *Infra* Part III.

³⁶ The National Association of Attorneys General published an “Anticorruption Manual” for state and local prosecutors in 2021 because they are increasingly “the only sheriff in town.” AMIE ELY & MARISSA WALKER, ANTICORRUPTION MANUAL, at xxxi, 27–32, 63–64 (Nat’l Ass’n of Att’ys Gen. 2021); see also Amie Ely, *The Anticorruption Manual: Helping State Corruption Prosecutors Fill the Role the U.S. Supreme Court Expects Them to Play*, NAT’L ASS’N OF ATT’YS GEN. (Aug. 11, 2021), <https://www.naag.org/attorney-general-journal/the-anticorruption-manual-helping-state-corruption-prosecutors-fill-the-role-the-u-s-supreme-court-expects-them-to-play/> [<https://perma.cc/5MJA-EAWY>]. The Anticorruption Manual emphasizes that successful state government corruption enforcement occurs in state courts as well as federal courts. ELY & WALKER, *supra*. In Alabama, for example, the state attorney general obtained the conviction of the Speaker of the Alabama House of Representatives. *Id.* at 63–65 (citing *Ex parte* Hubbard, No. 1180047, 2020 Ala. LEXIS 54, at *1, *2–3 (Ala. Apr. 10, 2020)). In Pennsylvania, a local prosecutor obtained the conviction of a corrupt state attorney general. *Id.* at 27–32 (citing *Commonwealth v. Kane*, Nos. 6239-2015, 8423-2015, 2017 Pa. Dist. & Cnty. Dec. LEXIS 3228, at *5–6 (C.P. Ct. Montgomery Cnty., Pa. Mar. 2, 2017)).

doing so.³⁷ These cases are significant and Householder has invoked them in federal court to defend against the charges he faces.³⁸ Meanwhile, the U.S. Supreme Court in 2020 affirmed the broad investigative powers of state prosecutors by upholding a New York grand jury subpoena issued to a sitting U.S. President.³⁹ County prosecutors, for their part, generally do not have the resources to prosecute state government corruption nor the political accountability to the statewide constituency.

By contrast, the Ohio Attorney General has the resources, accountability to the statewide electorate, and familiarity with state government to unearth and prosecute public corruption within it. And

³⁷ *E.g.*, *McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016); *Kelly v. United States*, 140 S. Ct. 1565, 1571–73 (2020). The U.S. Supreme Court in *McDonnell* unanimously reversed a federal bribery conviction of the former governor of Virginia. *McDonnell*, 136 S. Ct. at 2375. The Court noted federalism concerns while narrowly construing the definition of “official act” under a federal anticorruption statute to limit the scope of illegal behavior under the statute. *Id.* at 2373 (state governments have “the prerogative to regulate the permissible scope of interactions between state officials and their constituents.”). Similarly, in *Kelly*, the Supreme Court reversed the federal conviction of a New Jersey official involved in the “Bridgegate” scandal with reliance on federalism principles. *Kelly*, 140 S. Ct. at 1571–73. The Court held that the federal statute does not “[criminalize] all acts of dishonesty by state and local officials” and “did not authorize federal prosecutors to ‘set[] standards of disclosure and good government for local and state officials.’” *Id.*

³⁸ Mot. to Dismiss, *supra* note 14.

³⁹ *Trump v. Vance*, 140 S. Ct. 2412, 2429–30 (2020) (“[I]f the state subpoena is not issued to manipulate, the documents themselves are not protected, and the Executive is not impaired, then nothing in Article II or the Supremacy Clause supports holding state subpoenas to a higher standard than their federal counterparts.”). Similarly, on February 17, 2022, a New York trial court upheld a subpoena requiring Donald Trump, Donald Trump Jr. and Ivanka Trump to appear for sworn testimony. Decision and Order on Mot. to Quash Subpoena, Doc. 654, *New York v. Trump Organization*, No. 451685/2020, (N.Y. Sup. Ct. Cty. of N.Y. Feb. 17, 2022).

there is a personal incentive—regardless of party affiliation—for the Ohio Attorney General to prosecute state government corruption inasmuch as it generates positive press that hastens his or her political ascendancy.⁴⁰ As an independent state office, the Ohio Attorney General can serve as a powerful check on other public officials in state government who may abuse their power.⁴¹ In some situations where public corruption impacts elections, the direct election of the Ohio Attorney General may be the only real recourse Ohio voters have to

⁴⁰ Colin Provost, *When Is AG Short for Aspiring Governor? Ambition and Policy Making Dynamic in the Office of State Attorney General*, 40 PUBLIUS 597 (2010) (“AGs who are active in multistate litigation are also likely to run for higher office.”). Critics argue that a unitary executive in which the attorney general serves at the pleasure of the governor is preferential because the legislature already serves as a check on the governor, special counsel may be appointed, and the attorney general “may not only be in open disagreement with the governor on important policy questions, but may actually be one of his outspoken political rivals, aspiring to the governor’s office, with the result that the office of attorney general might well be used to obstruct the workings of government.” Note, *Appointing State Attorneys General: Evaluating the Unbundled State Executive*, 127 HARV. L. REV. 973, 994 (2014) (internal citation omitted). This argument misses the mark because there is an effective institutional safeguard against such abuse in that the direct election of the attorney general allows voters to decide if the office is being abused for political advantage and vote anyone doing so out of office. See also Clinton J. Miller III & Terry M. Miller, *The Constitutional Charter of Ohio’s Attorney General*, 37 OHIO ST. L.J. 801, 842 (1976) (“The suggestion that this power may be abused raises no doubt as to its existence.” (quoting *Hale v. State*, 55 Ohio St. 210, 214 (1896))).

⁴¹ OHIO CONST. art. III, §1 (providing that “[t]he executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general . . .”) Each executive officer has a separate and distinct executive function and is independent from one another. State *ex rel.* S. Monroe & Son Co. v. Baker, 112 Ohio St. 356, 366–67 (1925). The attorney general is an independent arm of the executive department. State *ex rel.* Merrill v. Ohio Dep’t of Nat. Res., 130 Ohio St. 3d 30, ¶ 31 (2011). The attorney general’s authority to prosecute public corruption, discussed *infra*, therefore acts as a check on other state officials that may abuse their power in any branch of government and this principle is embodied in the separation of powers doctrine under the Ohio Constitution.

safeguard their electoral institutions, and arguably the government itself, against public corruption. But voters must be aware that the attorney general has the power to criminally prosecute public corruption in order to expect it and, from such prosecutorial activity, obtain the corresponding knowledge of corrupt behavior that helps them become informed voters. It is my hope that public-minded Ohioans recognize the awesome common law powers of the Ohio Attorney General and elect candidates with the courage to take on the responsibility the Office entails.⁴²

The discussion that follows elaborates upon the points already introduced and concludes with lessons on public corruption from the early days of Ohio statehood. Part II takes a more in-depth look at why the nuclear scandal matters and how it exposes vulnerabilities with our democratic institutions in Ohio. I examine the political strategy Householder followed to become Speaker and secure passage of the nuclear bailout, the political tricks employed to stop the popular referendum on the nuclear bailout, and the FirstEnergy funds that

⁴² Public support for prosecutorial elections can affect their outcome. In recent years, for example, many attorneys supported by billionaire George Soros have won elective office in cities across the U.S. as prosecutors. Scott Bland, *George Soros' Quiet Overhaul of the U.S. Justice System*, POLITICO (Aug. 30, 2016, 5:25 AM), <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519> [<https://perma.cc/RMD9-F3SB>].

supported DeWine's victory in the 2018 gubernatorial race together with his appointment of Randazzo as PUCO Chair.

Part III is my effort to be helpful, a tribute to Professor Dale Oesterle. In law school, he instilled in me a sense of intellectual curiosity, public spirit and integrity. We had fascinating discussions, first during office hours and continuing still today, on a number of topics that inspired me to think critically, publish articles and get involved with public-minded projects. For example, he published an article on state and local government subsidies for business while I was in law school that sparked my interest in the issue that continues through this article.⁴³ His courses and our discussions enriched my legal training and experience beyond measure. One of the lessons I learned from Professor Oesterle is to approach tough societal problems with positivity and an eye towards pragmatic solutions. The discussion of the attorney general's common law powers in Part III is just that. While our democratic institutions in Ohio do not appear to be functioning well, we as Ohio voters can do something about it through the direct election of our attorney general.

Finally, my parting thoughts in Part IV draw comparisons between the renewable energy infrastructure we are developing today

⁴³ Dale A. Oesterle, *State and Local Government Subsidies for Business: A Siren's Trap*, 6 OHIO ST. ENTREPRENEURIAL BUS. L.J. 491 (2011).

and transportation infrastructure that the State of Ohio publicly financed in the 19th century. So many issues arose from state financing for railroads and canals that Ohioans adopted the 1851 Ohio Constitution to address it.⁴⁴ We should recognize that the nuclear scandal likely will not be the last effort to use clean energy as pretext to seize power and personal enrichment. Just last year, voters in Columbus, Ohio rejected a popular initiative that was widely condemned as a scam and would have transferred \$87 million in taxpayer funds to a secretive group for “green energy” uses with little oversight.⁴⁵ As we pursue clean energy, and indeed we should, let the nuclear scandal serve as an opportunity to discuss the democratic institutions, including prosecutorial tradition, that we need to safeguard against abuse.

II. THE CULTURE OF CORRUPTION MATTERS

This is serious stuff. The quantitative aspect of the \$1.3 billion nuclear bailout, while enormous, pales in comparison to the existential threat to the integrity and legitimacy of Ohio government from a

⁴⁴ Richard Davis, *The Business Subsidy Industry in Ohio* (pts. I, IV(A), and VI) (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2751747 [<https://perma.cc/J59T-9QY4>].

⁴⁵ Mike Ferenchik, ‘Biggest Scam in City’s History.’ *Columbus Voters Defeat Nebulous ‘Green Energy’ Issue 7*, COLUMBUS DISPATCH (Nov. 2, 2021), <https://www.dispatch.com/story/news/politics/2021/11/02/what-is-issue-7-columbus-green-energy-secretive-proenergy-ohio/6231850001> [<https://perma.cc/PM62-AG3W>].

qualitative standpoint. Corruption can undermine popular trust in government.⁴⁶ It can drive public servants “to give up or get out,” thereby diminishing the morale, dedication and integrity of people in positions of public trust.⁴⁷ Public-minded leaders with integrity may find themselves at a disadvantage in elections relative to candidates who accept campaign contributions in return for official acts without detection. Corruption also correlates with “lower per capita income, higher levels of poverty and inequality, worse health outcomes, less innovation and entrepreneurship, greater risk of macroeconomic crises, lower levels of public trust, and higher levels of political instability and violence.”⁴⁸ A culture of corruption may also encourage businesses to allocate resources to political conflict and away from investment in other activities such as research and development that are more socially advantageous.⁴⁹

The nuclear scandal comes on the heels of other public corruption scandals in Ohio that suggest there may be a systemic

⁴⁶ Chris Toth, *Foreword to AMIE ELY & MARISSA WALKER, ANTICORRUPTION MANUAL: A GUIDE FOR STATE PROSECUTORS*, at xxxi (Nat’l Ass’n of Att’y’s Gen. 2021).

⁴⁷ *Id.*

⁴⁸ Mariano-Florentino Cuellar & Matthew C. Stephenson, *Taming Systemic Corruption: The American Experience and its Implications for Contemporary Debates 2* (Harv. Pub. L., Working Paper No. 20-29, Sep. 4, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686821 [<https://perma.cc/RK24-SKCN>] (internal citations omitted).

⁴⁹ GORDON TULLOCK, 5 *THE SELECTED WORKS OF GORDON TULLOCK: THE RENT-SEEKING SOCIETY* 36, 116–17, 244–47 (Charles K. Rowley Ed., Liberty Fund, Inc. 2005).

problem and a prosecutorial void.⁵⁰ Former Ohio House Speaker Cliff Rosenberger abruptly resigned in 2019 amid an FBI investigation into alleged bribes he took from payday lenders to stall bills that would have reformed the industry.⁵¹ He has not been charged with a crime despite the appearance that he took bribes from payday lenders.⁵² Another scandal involves an online charter school that misrepresented student attendance, or login, data to the State and collected \$1 billion

⁵⁰ More than sixty people, including a county commissioner, two judges, and the county auditor, were convicted in 2012 as a result of a federal investigation into public corruption in Cuyahoga County, Ohio. Laura A. Bischoff, *From Pancaking and Coingate to ECOT and House Bill 6: 50 years of Ohio Public Corruption Cases*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/2021/12/30/50-years-public-corruption-cases-ohio/5296784001> [<https://perma.cc/B7LC-94AH>] (last updated Dec. 30, 2021, 1:11 PM). Three members of Cincinnati City Council were indicted on federal corruption charges in 2020 and thus far one has pled guilty. Michael Levenson, *A Third Member of the Cincinnati City Council Is Charged with Corruption*, N.Y. TIMES, <https://www.nytimes.com/2020/11/19/us/politics/cincinnati-city-council-bribes.html> [<https://perma.cc/DK55-JPGH>] (last updated Nov. 23, 2020). In 2013, a former Ohio deputy state treasurer was indicted for a bribery and kickback scheme. Bischoff, *supra*. In 2012, Ohio lawmaker Carlton Weddington was sentenced to prison for bribery and election falsification. John Futty, *Ex-Rep. Weddington Gets 3 Years for Bribery*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/crime/2012/06/19/ex-rep-weddington-gets-3/23366238007> [<https://perma.cc/DQ4B-W3AW>] (last updated June 19, 2012, 10:09 AM). State legislator Clayton Luckie followed with his guilty plea for election falsification and the misuse of campaign funds in 2013. Jim Siegel, *Former State Rep. Luckie Pleads Guilty, Sentenced to 3 Years in Prison*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/politics/2013/01/22/former-state-rep-luckie-pleads/23483244007> [<https://perma.cc/2LJQ-DQFU>] (last updated Jan. 22, 2013, 3:49 PM).

⁵¹ Jackie Borchardt, *Payday Lenders Say Ex-Ohio House Speaker Cliff Rosenberger Threatened Them, Delayed Bill*, CLEVELAND.COM (May 24, 2018, 6:08 PM), https://www.cleveland.com/metro/2018/05/payday_lenders_say_ex-ohio_hou.html [<https://perma.cc/L6J5-86QC>]. Clark advised or represented the Ohio Consumer Lenders Association, a group in favor of the reform, and discusses the scandal in his book. CLARK, *supra* note 11, at 439–43.

⁵² Bischoff, *supra* note 50; CLARK, *supra* note 11, at 438–44.

in publicly funded tuition from 2000 to 2018. Its founder, William Lager, is well-connected in Ohio political circles and made \$2.5 million in political contributions to Ohio politicians during the long-running scam but faces no charges.⁵³

While the nuclear scandal is troubling for several reasons – the large amounts of bribe money, the many key political insiders involved, the public corruption trend in Ohio – its effect on elections stands out. In this section I examine how illicit FirstEnergy campaign contributions and illicit funds were used in an effective manner to sway or confuse voters or otherwise achieve electoral results that may not have been accomplished without it. From Householder’s ascent to power, to the passage of the nuclear bailout, to tactics that prevented a popular referendum on the bailout, and even the funds used for DeWine’s successful 2018 gubernatorial bid, we see a common thread: FirstEnergy money. The effect on elections is so profound that it is an open question whether our electoral institutions actually hold public officials accountable to the people.

A. The Team Householder Playbook

⁵³ Bischoff, *supra* note 50; see also Marty Schladen, *As ECOT Collapses, Questions Rise About \$2.1 Million in Campaign Contributions*, COLUMBUS DISPATCH, <https://www.dispatch.com/story/news/politics/elections/2018/01/23/as-ecot-collapses-questions-rise/12900479007> [<https://perma.cc/62GC-FRV2>] (last updated Jan. 24, 2018, 5:30 AM).

Larry Householder had two stints as Speaker of the Ohio House of Representatives, serving in that role from 2001 to 2004 and again in 2019–2020. Each time, he followed essentially the same blueprint with reliance on legislative term limits to get there and left office amid a corruption scandal.⁵⁴ Central to his strategy are legislative term limits for members of the Ohio General Assembly that Ohio voters approved by popular statewide initiative in 1992. Due to these limits, Ohio state senators are now limited to two successive terms of four years and Ohio state representatives are limited to four successive terms of two years.⁵⁵

When Householder entered the Ohio House as a freshman representative in 1997, JoAnn Davidson served as the Speaker. Though she had served as state representative since 1981, her term in office could not extend beyond the year 2000 due to the term limits adopted in 1992. Her personal choice for successor was then-Representative Bill Harris. But term limits meant that 40 of the 99 members of the Ohio House would be new when her successor took

⁵⁴ When Householder was arrested in 2020, he was in the midst of organizing a statewide initiative to extend term limits to a maximum sixteen years for Ohio lawmakers. At first blush this position seems ironic due to importance of term limits to Householder's political career. But the reason for his position is that the proposed law change would have applied to sitting lawmakers and allowed him to extend his political life as Speaker of the Ohio House. DPA, *supra* note 4, at 33–34.

⁵⁵ OHIO CONST. art. II, § 2.

the speakership in 2001.⁵⁶ Householder, with Neil Clark as his consultant, saw opportunity and together they built a team of lobbyists, political consultants and candidates – Team Householder – to win mostly open seats in Republican-leaning districts against Davidson-Harris candidates in primary elections.⁵⁷ Householder urged lobbyists and others to make campaign contributions for these races to him and he allocated over \$1.2 million to his candidates as necessary to best promote the success of the collective Team Householder enterprise.⁵⁸ The scheme worked and Householder succeeded Davidson as Speaker with the support of his loyal representatives whom he helped elect.⁵⁹ Householder’s first stint as Speaker ended due to term limits in 2004 amid an FBI investigation into allegations that he and two aides orchestrated a kickback scheme involving vendors to the Ohio House Republican campaign fund.⁶⁰ No charges would result from that investigation.

⁵⁶ Sandy Theis, *Householder No Longer Has to Idle on the Road He Has Built to the House Speakership, Because There’s . . . No Deal, No Waiting*, CLEV. PLAIN DEALER (Aug. 27, 2000), at 1-G, 3-G.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Householder initially agreed to delay his Speakership for one year while Harris served as Speaker, but he would become Speaker without delay. Neil Clark’s assistance engineered the resignation of former State Senator Dick Schafrath and appointment of Harris to his Senate seat. CLARK, *supra* note 11, at 425–34.

⁶⁰ Andrew J. Tobias, *Are You Just Learning About Larry Householder Following His Arrest? Those in Ohio Political Circles Know All About Him*, CLEVELAND.COM (July 27, 2020, 11:45 AM), <https://www.cleveland.com/open/2020/07/are-you-just-learning-about-larry->

If all this sounds familiar, it should. Householder won election to the House once more in 2016 and quickly set his sights on the speakership set to come open due to term limits in 2019. The DOJ complaint in the nuclear scandal details how Householder used FirstEnergy contributions, or bribe money, to bankroll campaigns for a new coalition of loyal representatives who would elect him Speaker.⁶¹ The strategy was remarkably similar to one he used for his first ascent to power and, once again, Neil Clark served as his right-hand man to consult on the scheme.⁶² But this time the speakership came open early when Speaker Cliff Rosenberger abruptly resigned amid an FBI investigation into his own scandal involving bribes from payday lenders.⁶³ And Team Householder did not have the votes because he did not win as many legislative races as planned.⁶⁴ An interparty feud among House Republicans erupted and Householder emerged victorious, this time by enlisting the support of House Democrats to elect him Speaker.⁶⁵

householder-following-his-arrest-those-in-ohio-political-circles-know-all-about-him.html [https://perma.cc/M5K4-PC9Q]; Jim Provance, *U.S. Inquiry Hurt, Householder Says*, THE BLADE (June 17, 2006, 7:08 AM), <https://www.toledoblade.com/news/state/2006/06/17/U-S-inquiry-hurt-Householder-says/stories/200606170049> [https://perma.cc/Q2ZS-BJNH].

⁶¹ Criminal Compl. Aff., *supra* note 5, at 21–32.

⁶² *Id.*; see also CLARK, *supra* note 11, at 437–39.

⁶³ Borchardt, *supra* note 51.

⁶⁴ CLARK, *supra* note 11, at 445–47.

⁶⁵ Tobias, *supra* note 60.

There are lessons to be learned here. The prosecution of public corruption matters. If the allegations against Householder during his first stint in office were true, the nuclear scandal may have played out differently or not at all had he faced charges for public corruption back then. Money in elections matters. Householder was able to leverage contributions mostly from one company to wield a broad array of power. The Speaker of the Ohio House of Representatives has tremendous power to control committees, caucus campaign spending, and tank or advance legislation, meaning that those with views opposed by the Speaker may have little power to influence legislation.⁶⁶ And the consequences of public corruption are damaging and not easily remedied. Some may view the nuclear scandal and Householder's use of FirstEnergy bribe money to assume the speakership as tainting the legitimacy of most or all legislation the General Assembly enacted during his reign. That cannot be easily undone and voters watching this play out may lose confidence in our democratic institutions.

B. To Stop a Referendum

The Householder enterprise also used millions of dollars in FirstEnergy money to defeat efforts to organize a statewide

⁶⁶ CLARK, *supra* note 11, at 491–500 (“Pet Peeve number one: the House Speaker and Senate President rule the roost.”).

referendum on the nuclear bailout legislation after its passage. The DOJ alleges that at least \$23 million in FirstEnergy funds was used for this purpose while Neil Clark estimates that the enterprise spent almost \$69 million to stop the referendum.⁶⁷ The use of FirstEnergy money to block the referendum was successful and shows the impact that public corruption can have to undermine the will of the people and this direct democracy institution.

Householder and his enterprise went to great lengths to stop the referendum on the nuclear bailout from reaching the ballot because they knew that they would lose a referendum election. Clark explained in his book that polling showed that voters would defeat the unpopular bailout:

In preparation for the referendum, we polled again. This time we used Neil Newhouse's POS. The results were posted on August 2, 2019 and were just about what Longstreth and I expected. Support for HB 6 dropped 20 points to 34%, while the opposition increased by 14 points to 44%. Our conclusion was if enough signatures were collected to put the referendum on the ballot we would lose. The Householder changes had killed us. The only solution was to ensure the

⁶⁷ Criminal Compl. Aff., *supra* note 5, at 64–65; CLARK, *supra* note 11, at 487 (“Contrary to US Department of Justice comments, we didn’t spend \$60 million, we spent \$69 million. My lucky draft number. Here is how the money was spent according to my estimates: \$32 million media buy and polling paid to The Strategy Group; \$12.5 million for Voter to Voter and others for our petition drive and conflicting-out signature firms; \$13 million for JPL Consultants for his direct mail company; \$300,000 for Public Opinion Research for polling; \$7.8 million for FieldWorks for voter education; \$2.2 million for AJ Stokes for media services; \$1.3 million to Matt Borges for his services; and \$1.6 million for legal services—all totaling \$68.7 million.”).

opposition did not get the required 265,754 valid signatures. Fortunately, that same poll showed Ohioans were 88% against foreign countries like the Chinese government investing in Ohio's energy grid.⁶⁸

With their polling also showing that voters were overwhelmingly against foreign governments investing in Ohio's energy infrastructure, the enterprise spent millions on advertisements making the false claim that the Chinese government was behind the opposition to House Bill 6. Ohio voters, myself included, were inundated with commercials and direct mail showing images of Chinese President Xi Jinping in front of Chinese leadership and promoting the idea, without any evidence, that the Chinese government was invading the U.S. energy grid to control it. Ads like this television commercial suggested that voters had to choose between House Bill 6 and turning over control of Ohio energy to the Chinese Government:

They took our manufacturing jobs. They shuttered our factories. Now they are coming for our energy jobs. The Chinese government is quietly invading the American electric grid, intertwining them financially in our energy infrastructure. Now a special interest group boosting Chinese financial interests is targeting Ohio energy, taking Ohio money, exporting Ohio jobs, even risking our national security. They are meddling in our elections. In the coming weeks you may be approached on the street or at your door to sign a petition to defund U.S. jobs and energy. They will ask for your name, your address, your signature. Tell them no. Don't sign your

⁶⁸ CLARK, *supra* note 11, at 476.

name to a plan that kills Ohio jobs, harms Ohio communities, and endangers our energy independence. China turned off the power on Ohio manufacturing. Don't let them do it to you. Don't sign the petition allowing China to control Ohio's power.⁶⁹

The front company for Householder's Enterprise, Ohioans for Energy Security, defended the ads on the basis that three natural gas-fired plants in Ohio were financed in part by a Chinese government-owned bank.⁷⁰ An owner of one of the natural gas plants, Bill Siderewicz, pledged to support the referendum upon the passage of the nuclear bailout.⁷¹ But investment differs from control and there is no evidence of Chinese government control of Ohio energy interests, which is subject to U.S. regulation including the Committee on Foreign Investment in the United States. The opposition group, Ohioans Against Corporate Bailouts, never disclosed its donors, but

⁶⁹ Criminal Compl. Aff., *supra* note 5, at 65–67.

⁷⁰ Jackie Borchardt, *Fact Check: Is China Bankrolling an Effort to Repeal Ohio's New Nuclear Subsidies?*, CIN. ENQUIRER, <https://www.cincinnati.com/story/news/politics/2019/08/28/ohio-nuclear-plant-bailout-china-bankrolling-effort-repeal-subsidies/2130190001/> [<https://perma.cc/3JQ2-FT5S>] (last updated Aug. 28, 2019, 4:18 PM ET); CLARK, *supra* note 11, at 484–85.

⁷¹ Jessie Balmert, *Ohio Nuclear Bailout Opponents Fined \$5K for not Disclosing Donors; No Info Required from Proponents*, COLUMBUS DISPATCH (Aug. 27, 2020, 11:27 AM), <https://www.dispatch.com/story/news/politics/2020/08/27/ohio-nuclear-bailout-opponents-fined-5k-for-not-disclosing-donors-no-info-required-from-proponents/113590108/> [<https://perma.cc/73PE-8WWS>].

other publicly available records showed that the oil and natural gas industry backed the effort.⁷²

The media blitz was just the beginning of the outlandish, yet effective, tactics to stop the referendum with illicit FirstEnergy funds. Clark allegedly hired fifteen petition signature-gathering firms, including nine of the largest, to conflict them out from the opposition hiring them.⁷³ In what Clark described as “the employment wars,” the enterprise bribed signature collectors for the opposition to either stop working or to work for the enterprise.⁷⁴ The enterprise hired people to monitor opposition signature gatherers and circulate a competing, non-binding petition in favor of House Bill 6 to confuse voters who might sign the real petition.⁷⁵ There were several reports of the people working for the enterprise harassing or intimidating the opposition signature gatherers.⁷⁶

⁷² Jessie Balmert, *Oil and Gas Group Gave Nearly \$1.5M to Help Block House Bill 6 Nuclear Bailout*, CIN. ENQUIRER (Apr. 27, 2021, 6:16 PM), <https://www.cincinnati.com/story/news/politics/2021/04/27/american-petroleum-institute-gave-nearly-1-5-m-help-block-house-bill-6-nuclear-bailout/4860755001/> [<https://perma.cc/UQ5N-DA8K>].

⁷³ Criminal Compl. Aff., *supra* note 5, at 65, 69–71; CLARK, *supra* note 11, at 482–84.

⁷⁴ Criminal Compl. Aff., *supra* note 5, at 75–79; CLARK, *supra* note 11, at 482–84.

⁷⁵ CLARK, *supra* note 11, at 482–84; Randy Ludlow, *HB 6 Foes Say Fake Petition is a Dirty Trick*, COLUMBUS DISPATCH (Sep. 23, 2019, 4:56 PM), <https://www.dispatch.com/story/news/politics/state/2019/09/23/hb-6-foes-say-fake/2709817007/> [<https://perma.cc/NE9K-V6YR>].

⁷⁶ Jessie Balmert, *Man Says He Was Shoved While Collecting Signatures to Overturn Ohio Nuclear Bailout*, CIN. ENQUIRER (Sep. 11, 2019, 12:40 PM), <https://www.cincinnati.com/story/news/politics/2019/09/11/man-says-he-shoved->

The enterprise prioritized intelligence on the progress of the opposition in obtaining signatures because it helped the enterprise gauge how to best allocate their resources.⁷⁷ The FBI recorded Clark explaining that each day the enterprise sent out a crew of 235 people to survey 2600 sites to track the progress of the opposition and estimate the signatures they had gathered.⁷⁸ The DOJ further alleges that the enterprise attempted to gain inside information on the opposition signatures gathered by bribing an employee working on the ballot campaign for the opposition.⁷⁹ That employee eventually became an FBI informant and helped gather evidence against indicted lobbyist Matt Borges who allegedly offered the bribe and awaits trial on the charges.⁸⁰

In the end, all this low-integrity behavior worked and Ohioans never had an opportunity to vote on a referendum on the nuclear bailout legislation. The opposition failed to gather enough signatures to make the ballot and attempts to obtain additional time through

collecting-signature-overtake-nuclear-bailout/2285786001/
[<https://perma.cc/Q92M-T3KA>]; Robert Goist, *Ohio AG to Investigate Reports of 'Aggressive' Activity by Opponents of House Bill 6 Referendum*, CLEVELAND.COM (Sep. 30, 2019, 4:23 PM), <https://www.cleveland.com/open/2019/09/ohio-ag-to-investigate-reports-of-aggressive-activity-by-opponents-of-house-bill-6-referendum.html> [<https://perma.cc/8495-DYGA>].

⁷⁷ Criminal Compl. Aff., *supra* note 5, at 71.

⁷⁸ *Id.*

⁷⁹ *Id.* at 71–75.

⁸⁰ *Id.*

litigation were unsuccessful.⁸¹ House Bill 6 took effect on October 22, 2019.⁸²

C. Ohio Governor Beholden to FirstEnergy

The Office of Ohio Governor is another core state institution that appears to be tainted by the nuclear scandal and FirstEnergy political contributions. The winner of the 2018 election, Mike DeWine, was the beneficiary of over \$1 million in FirstEnergy support for the race.⁸³ As discussed in the Introduction, he has several close relationships with FirstEnergy, including office staff, campaign personnel, a fundraiser, and his PUCO appointee, Randazzo, who is a former FirstEnergy lobbyist.⁸⁴ At least three DeWine staffers and allies with these ties have resigned or been reassigned to less prominent positions in the wake of the nuclear scandal.⁸⁵

⁸¹ *Ohioans Against Corp. Bailouts, LLC v. LaRose*, 417 F. Supp. 3d 962 (2019) (Ohioans Against Corporate Bailouts filed a case in federal court seeking additional time to gather signatures. The federal court certified a question of state law to the Ohio Supreme Court and the Court accepted it. However, Ohioans Against Corporate Bailouts would eventually voluntarily dismiss both cases. *Ohioans Against Corp. Bailouts, LLC v. LaRose*, 157 Ohio St. 3d 1559 (2020)). *See also* CLARK, *supra* note 11, at 482–84; Criminal Compl. Aff., *supra* note 5, at 79.

⁸² *House Bill 6 Summary*, OHIO LEGIS., <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-hb-6> [https://perma.cc/SA7G-LPPY] (last accessed Mar. 12, 2022).

⁸³ Bischoff, *supra* note 22.

⁸⁴ Several of these relationships between DeWine and FirstEnergy are identified in our discussion. *Supra* Part I, particularly at note 20.

⁸⁵ *Supra* Part I, note 20; *see also* CLARK, *supra* note 11, at 489–90; Bischoff, *supra* note 22.

The dark money group that FirstEnergy used to make the bribe payments for the nuclear scandal, Partners for Progress, also made payments to support DeWine's bid for governor and DeWine later hired the President of Partners for Progress as his legislative director. The FirstEnergy Deferred Prosecution Agreement with the DOJ disclosed that FirstEnergy created and controlled the 501(c)(4) entity Partners for Progress as a vehicle to fund the Householder-controlled 501(c)(4) Generation Now at the heart of the nuclear scandal.⁸⁶ FirstEnergy created Partners for Progress in 2017 and, as the exclusive source of its funding, donated \$25 million to the entity between 2017 to 2019.⁸⁷ Dan McCarthy, who served as DeWine's Legislative Director from 2019 to 2021, served as President of Partners for Progress during 2017 and 2018.⁸⁸ Partners for Progress donated approximately \$15 million to Generation Now (including \$900,000 during 2018), \$300,000 to a dark money 501(c)(4) group supporting DeWine in the gubernatorial race named Securing Ohio's Future, Inc. in 2019, and \$75,000 to an entity named Protecting Ohio Inc. in 2019

⁸⁶ DPA, *supra* note 4, at 15–16.

⁸⁷ *Id.*

⁸⁸ Partners in Progress Inc., I.R.S. Form 990 (2018), at Part VII. McCarthy would serve as DeWine's Legislative Director for nearly three years before resigning in September 2021 under pressure from media reports linking him to Partners for Progress and the nuclear scandal. Richardson, *supra* note 20; *see also* CLARK, *supra* note 11, at 522 (“I added the person who orchestrated FirstEnergy contributions to Republicans was Dan McCarthy, who was now Husted's right-hand man and Legislative Director of the Governor's Office.”).

that supported DeWine's daughter Alice's unsuccessful run for Greene County Prosecutor.⁸⁹ Generation Now used the funds it received to benefit public officials in return for their efforts to advance the enactment of the nuclear bailout and has pled guilty to federal racketeering charges in connection therewith.⁹⁰

Securing Ohio's Future, Inc., which received FirstEnergy contributions via Partners for Progress and is not required to disclose its donors, donated \$2.1 million to DeWine's super PAC, Securing Ohio's Future Action Fund, Inc.⁹¹ The only other donor to the super PAC during the 2018 election cycle was the Republican Governors Association ("RGA"), which made several donations totaling \$2.75

⁸⁹ DPA, *supra* note 4, at 15; Partners for Progress Inc., I.R.S. Form 990 (2018 & 2019), at Schedule I; Jessie Balmert, *FirstEnergy Cash Comprised Big Chunk of Donations to Dark Money Outfits Backing DeWine and His Daughter, Documents Show*, CIN. ENQUIRER (Jan. 8, 2021), <https://www.cincinnati.com/story/news/politics/2021/01/08/firstenergy-contributions-dark-money-groups-backing-ohio-gov-mike-dewine-and-his-daughter/6593154002/> [<https://perma.cc/NDA6-QUFZ>]. DeWine also asked FirstEnergy to support Alice DeWine with independent expenditures. *Id.* Securing Ohio's Future, Inc. also donated \$105,000 to Alice's campaign in 2019. Securing Ohio's Future, Inc., I.R.S. Form 990 (2019), at Schedule I. FirstEnergy also contributed to Householder's enterprise other than through Partners for Progress, for example a \$1,000,000 contribution from FirstEnergy Service to Generation Now in 2017 through four quarterly payments. DPA, *supra* note 4, at 21–22.

⁹⁰ DPA, *supra* note 4, at 21–33; Criminal Compl. Aff., *supra* note 5, at 4; John Caniglia, *Generation Now, the Nonprofit That Prosecutors Say Received Millions in Bribes, Pleads Guilty to Racketeering Charge Involving House Bill 6*, CLEVELAND.COM (Feb. 19, 2021), <https://www.cleveland.com/court-justice/2021/02/generation-now-the-nonprofit-that-prosecutors-say-received-millions-in-bribes-pleads-guilty-to-racketeering-charge-involving-house-bill-6.html> [<https://perma.cc/J25K-F7NS>].

⁹¹ Securing Ohio's Future, Inc., I.R.S. Form 990 (2018 & 2019), at Schedule I; Balmert, *supra* note 89.

million in 2018.⁹² Securing Ohio's Future, Inc. also paid \$1.9 million to a media firm named Majority Strategies run by a former Householder legislative aide.⁹³ Majority Strategies claims to have swung the election in DeWine's favor by generating 206,858 unexpected votes for DeWine in an election that he won by only 164,070 votes.⁹⁴ Funds flowing through from FirstEnergy to DeWine, through the same entity that made the nuclear bribe payments, may therefore have affected the outcome of the 2018 Ohio gubernatorial election.

There are official acts that DeWine took that could be a quid pro quo for the FirstEnergy contributions. He appointed McCarthy as

⁹² According to its campaign finance report filed with the Federal Elections Commission, DeWine's super PAC, Securing Ohio's Future Action Fund, Inc., received \$4.85 million in contributions and made \$4.83 million in expenditures for the 2018 election cycle. FEC Form 3X for Securing Ohio's Future Action Fund, Inc. The \$4.85 million came from only two donors, the Republican Governor's Association in the amount of \$2.75 million and the dark money group Securing Ohio's Future, Inc. in the amount of \$2.1 million. *Securing Ohio's Future Action Fund, Inc. Receipts*, FED. ELEC. COMM., https://www.fec.gov/data/receipts/?committee_id=C00679951&two_year_transaction_period=2018&cycle=2018&line_number=F3X-11AI&data_type=processed; see also 2018 IRS Form 990 for Securing Ohio's Future, Inc., at Schedule I.

⁹³ Securing Ohio's Future, Inc. paid Majority Strategies \$1,940,188 during 2018 and 2019. Securing Ohio's Future, Inc., IRS Form 990, *supra* note 91, at Part VII Section B. Former Householder aide Brett Buerck is the owner of Majority Strategies. Balmert, *supra* note 89. Buerck was a Householder aide accused of embezzling campaign funds with Householder during his first stint as Ohio Speaker. *Scandal, Fighting Plague Ohio GOP*, NBC NEWS (Aug. 28, 2004), <https://www.nbcnews.com/id/wbna5851011> [<https://perma.cc/6H2V-QRJY>].

⁹⁴ "These additional 206,858 unexpected DeWine votes created by Securing Ohio's Future were critical to victory – as Governor DeWine's margin over Cordray was 164,070 votes." Data Insights: 2018 General Election, MAJORITY STRATEGIES (Feb. 13, 2019), https://www.majoritystrategies.com/wp-content/uploads/2019/04/MS_Sales_2018CaseStudy_SOF.pdf.

his legislative director in the Governor's Office and Partners for Progress later supported DeWine. DeWine also appointed longtime FirstEnergy lobbyist Sam Randazzo as PUCO Chair in February 2019, shortly after DeWine met with FirstEnergy officials in October and December 2018.⁹⁵ FirstEnergy admitted in its plea deal with DOJ that it made a \$4.3 million bribe to Randazzo.⁹⁶ In exchange for that bribe, FirstEnergy admits, Randazzo advanced FirstEnergy's interests with the bailout legislation, including drafting key language in House Bill 6, and by taking official action in his capacity as PUCO Chair to eliminate a requirement for FirstEnergy subsidiaries to file a rate case with the PUCO in 2024.⁹⁷

⁹⁵ Just weeks prior to making the Randazzo appointment, DeWine and Lt. Gov. Jon Husted dined with FirstEnergy executives at the Columbus Athletic Club on Dec. 18, 2018. Bischoff, *supra* note 22. DeWine also met with FirstEnergy officials at the RGA fundraiser on Oct. 10, 2018. *Id.*

⁹⁶ DPA, *supra* note 4, at 1–5, 17; Press Release, U.S. Dep't of Just., FirstEnergy Charged Federally, Agrees to Terms of Deferred Prosecution Settlement (July 22, 2021), <https://www.justice.gov/usao-sdoh/pr/firstenergy-charged-federally-agrees-terms-deferred-prosecution-settlement> [<https://perma.cc/2C5J-A5UM>] (“FirstEnergy Corp. further acknowledged that it paid \$4.3 million dollars to a second public official. In return, the individual acted in their official capacity to further First Energy Corp.’s interests related to passage of nuclear legislation and other company priorities.”). The DPA does not name Randazzo directly but instead refers to him as “Public Official B.”

⁹⁷ DPA, *supra* note 4, at 17, 34–43; *see also*, Jake Zuckerman, *DeWine Says He Didn't Know About Alleged \$4.3m Bribe of Utility Regulator He Appointed*, OHIO CAP. J. (July 27, 2021), <https://ohiocapitaljournal.com/2021/07/27/dewine-says-he-didnt-know-about-alleged-4-3m-bribe-of-utility-regulator-he-appointed/> [<https://perma.cc/ZU9M-NEJE>]; Jake Zuckerman, *FirstEnergy Paid \$4.3 Mil to Top Energy Regulator and Reaped the Benefits, Court Docs State*, OHIO CAP. J. (July 23, 2021), <https://ohiocapitaljournal.com/2021/07/23/firstenergy-paid-4-3-mil-to-top-energy-regulator-and-reaped-the-benefits-court-docs-state/> [<https://perma.cc/JRM2-6TTM>]; Jake Zuckerman, *Gov. Mike DeWine Won't Say*

DeWine's chief of staff was aware of the \$4.3 million payment at least as early as October 2020, but DeWine and his Office failed to act on the information.⁹⁸ Randazzo maintained his position of public trust as PUCO Chair until the FBI raided his home in November 2020 and he resigned shortly thereafter. Randazzo denies any wrongdoing, and, to date, he has not been charged with a crime.⁹⁹ It appears less and less likely that Randazzo will be charged with each passing day, though it is possible that the delay in prosecution is due to his cooperation with an ongoing federal investigation.¹⁰⁰

He Regrets Picking Energy Regulator Now at the Center of Historic Bribery Scandal, CLEVESCENE (Aug. 13, 2021), <https://www.clevescene.com/news/gov-mike-dewine-wont-say-he-regrets-picking-energy-regulator-now-at-the-center-of-historic-bribery-scandal-36477394> [<https://perma.cc/8VVR3-MGKC>]. (“Sen. Mark Romanchuk, R-Ontario, disagreed. He said that since 2009 the PUCO has allowed \$1.5 billion in rate increases that were later ruled to be unlawful — and because the PUCO wouldn’t require refund mechanisms the utilities got to keep the money.”).

⁹⁸ Jeremy Pelzer, *Sam Randazzo Told Gov. Mike DeWine’s Chief of Staff About FirstEnergy’s \$4.3M Payment Weeks Before He Resigned*, CLEVELAND.COM (July 26, 2021), <https://www.cleveland.com/open/2021/07/gov-mike-dewine-knew-about-firstenergys-43m-payment-to-sam-randazzo-before-randazzo-resigned.html>. [<https://perma.cc/7PWK-FLQ5>]. DeWine claims that he did not personally learn of the payment until Nov. 16, 2020, the day the FBI raided Randazzo’s house.

Democrats Keep Heat on DeWine over HB6 Fallout, GONGWER OHIO REP. (July 29, 2020) (“The governor’s office has said that Ms. Dawson was informed by Mr. Randazzo of the payment in October 2020 but that she first told the governor about it Nov. 16 — the day the FBI raided Mr. Randazzo’s home.”).

⁹⁹ Jeremy Pelzer, *Gov. Mike DeWine Will Donate FirstEnergy Campaign Donations, Says He Didn’t Know Sam Randazzo’s ‘Motives.’* CLEVELAND.COM (July 23, 2021), <https://www.cleveland.com/open/2021/07/gov-mike-dewine-will-donate-firstenergy-campaign-donations-says-he-didnt-know-sam-randazzos-motives.html>. [<https://perma.cc/KU93-942P>].

¹⁰⁰ Even if charges are announced against Randazzo in the future, at this point the delay could have impacted the 2022 primary election and may impact the 2022 general election, including challenges to DeWine’s re-election bid from Democrats and other Republicans.

Still more startling, perhaps, are Neil Clark's more detailed allegations that FirstEnergy bribed DeWine for his support of the nuclear bailout. According to Clark, the lobbyist at Householder's side, DeWine agreed to accept a \$5 million contribution from FirstEnergy, or a promise to do so, in exchange for his support of the nuclear bailout.¹⁰¹ Clark alleges that DeWine struck the deal with FirstEnergy officials on October 10, 2018 at a RGA fundraiser.¹⁰² Days later, on October 23, 2018, DeWine made a personal \$3 million loan to his gubernatorial campaign.¹⁰³ These events occurred less than a month prior to the November 6, 2018 gubernatorial election.

Our ability to follow the money is clouded by the use of 501(c)(4) entities to support candidates, or "dark money groups,"

¹⁰¹ CLARK, *supra* note 11, at 417, 489. "But the demise of the DeWine/Husted ticket will certainly end, if there is any truth to what Juan Cespedes told a mutual friend after he pleaded guilty to his RICO indictment. Cespedes fingered a long-time lobbyist Bob Klaffky, and other participants who attended a meeting on October 10, 2018, at the Columbus Club in which DeWine agreed to accept a \$5 million contribution from FirstEnergy/FirstEnergy Solutions in exchange for his support of a planned bailout."

¹⁰² CLARK, *supra* note 11, at 417, 489; Bischoff, *supra* note 22 (noting the meeting took place).

¹⁰³ Laura A. Bischoff, *Ohio Governor Race One of the Most Expensive in U.S.; DeWine Gives Self \$3M Loan*, DAYTON DAILY NEWS (Oct. 25, 2018), <https://www.daytondailynews.com/news/43m-spent-ohio-governor-race-making-one-most-expensive/YI7h8JeQx91ykR6fMKzVHL/> [<https://perma.cc/YH7N-A4Y6>]. In all, DeWine personally loaned his campaign \$4 million and he plans to solicit funds after taking office to repay himself from his campaign. *See also* Jo Ingles, *Mike DeWine Plans to Pay Himself Back Loans Made to Governor Campaign*, NPR NEWS (Feb. 21, 2019), <https://news.wosu.org/news/2019-02-21/mike-dewine-plans-to-pay-himself-back-loans-made-to-governor-campaign> [<https://perma.cc/NLJ4-Z4JX>].

which are not required to disclose their donors.¹⁰⁴ But not completely. FirstEnergy made a \$500,000 payment to the RGA on October 11, 2018, the day after the DeWine-FirstEnergy meeting.¹⁰⁵ Just days later, on October 18 and 23, 2018, the RGA made two donations totaling \$1,650,000 to DeWine's super PAC, Securing Ohio's Future Action Fund, Inc.¹⁰⁶ The timing of these payments contemporaneous with the DeWine-FirstEnergy meeting at the RGA fundraiser provides corroboration for Clark's allegation.¹⁰⁷ And DeWine supported the bailout, even in the immediate aftermath of Householder's arrest, though he quickly pivoted to call for its repeal.¹⁰⁸

¹⁰⁴ As a 501(c)(4) entity, Securing Ohio's Future, Inc. is not required to disclose its donors. *Securing Ohio's Future, Inc.*, Form 990, IRS (2018), https://apps.irs.gov/pub/epostcard/cor/811486276_201812_990O_2020062217197877.pdf. DeWine's campaign itself raised \$29.1 million. Bischoff, *supra* note 103.

¹⁰⁵ IRS Form 8872 for Republican Governors Ass'n for the Oct. 1, 2018 to Nov. 26, 2018 reporting period, at 17.

¹⁰⁶ The FEC and IRS reporting regarding these payments are inconsistent with one another. DeWine's super PAC, Securing Ohio's Future Action Fund, Inc. reported to the FEC that the RGA directly made these October 18 and 23, 2018 donations totaling \$1,650,000 to Securing Ohio Future Action Fund, Inc. *Securing Ohio's Future Action Fund, Inc. Receipts*, *supra* note 92. By contrast, the RGA affiliate and super PAC, American Comeback Committee, reported that it, not the RGA, made the October 18 and 23, 2018 payments. IRS Form 8872 for American Comeback Committee for the Oct. 18, 2018 to Nov. 26, 2018 reporting period, at 12–13. Note that the RGA contributed approximately \$1.1 million to the American Comeback Committee during 2018, and an RGA affiliated nonprofit, State Solutions, Inc., contributed \$11 million to the American Comeback Committee during 2018. IRS Form 8872 for American Comeback Committee for the Oct. 18, 2018 to Nov. 26, 2018 and Nov. 27, 2018 to Dec. 31, 2018 reporting periods.

¹⁰⁷ FirstEnergy officials also met with Householder in Columbus on October 10, 2018 and personally delivered a \$400,000 bribe check to him. DPA, *supra* note 4, at 23–24.

¹⁰⁸ Jeremy Pelzer, *Gov. Mike DeWine Stands by Billion-Dollar Nuclear Bailout Authorities Say Was Forged in Corruption*, CLEVELAND.COM (July 22, 2020), <https://www.cleveland.com/open/2020/07/gov-mike-dewine-stands-by-billion->

To put it lightly, these circumstances appear to show that DeWine is beholden to FirstEnergy, or worse, yet I am not aware of any investigation in that regard. It would be difficult to imagine a set of circumstances that warrant an investigation into whether a public official took a bribe in return for an official act more so than those presented here. Together with Householder's ascent to Speaker and the tricks to quash the referendum, this situation shows that the nuclear bailout has widely tainted our democratic institutions in Ohio and that our investigatory and prosecutorial institutions are failing to operate as they should.

III. THE COMMON LAW AUTHORITY OF THE OHIO ATTORNEY GENERAL

The Ohio Attorney General should be regarded as possessing broad, unconditional and discretionary common law prosecutorial powers, civil as well as criminal.¹⁰⁹ The Ohio Supreme Court has

dollar-nuclear-bailout-authorities-say-was-forged-in-corruption.html [https://perma.cc/9BWS-L7Y7]; *Ohio Gov. Mike DeWine Reverses Course, Calls for Repeal of Nuclear Bailout Law at Center of Scandal*, WCPO: CIN. (July 23, 2020), <https://www.wcpo.com/news/government/state-government/ohio-state-government-news/ohio-gov-mike-dewine-reverses-course-calls-for-repeal-of-nuclear-bailout-law-at-center-of-scandal> [https://perma.cc/ANL9-95E7].

¹⁰⁹ *State ex rel. Merrill v. Ohio Dep't of Nat. Res.*, 130 Ohio St. 3d 30, ¶ 31 (2011); *State ex rel. Cordray v. Marshall*, 123 Ohio St. 3d 229, ¶¶ 14–20 (2009) (both civil cases recognizing the common law authority of the Ohio Attorney General); *see also*, Miller & Miller, *supra* note 40, at 803 (“[I]t is the contention of this article that the charter of Ohio's attorney general is comprised of the fundamental characteristics of the common law attorney general concept—the status of ‘chief law officer’ and its incidental attributes—and that these traditional qualities inhere in the office of the attorney general of Ohio by virtue of its constitutional origin.”);

recognized that the Ohio Constitution establishes the attorney general as a common law attorney general and as an independent arm of state government within the executive branch.¹¹⁰ The text of the Ohio Constitution expressly describes few powers and duties of the attorney general because the phrase “attorney general” is sufficiently descriptive to incorporate broad common law powers and duties for the Office.¹¹¹

At common law, attorneys general have broad, discretionary authority to investigate and prosecute crime subject to limited exceptions.¹¹² Most notably, legislatures may abrogate the common

State *ex rel.* Doerfler v. Price, 101 Ohio St. 50, 57 (1920); State *ex rel.* Little v. Dayton & Southern-Eastern RR Co., 36 Ohio St. 434, 440 (1881).

¹¹⁰ OHIO CONST. art. III, § 1 (“The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general . . .”); *Merrill*, 130 Ohio St. 3d ¶ 31; *Cordray*, 123 Ohio St. 3d ¶¶ 14–20.

¹¹¹ *Miller & Miller*, *supra* note 40, at 807–18 (“Hence, the express constitutional creation of the office of attorney general, when coupled with the evident circumstance that the framers perceived no need to otherwise outline or even allude to the nature of that officer’s functions, irresistibly favors the conclusion that the article III, § 1 attorney general is an officer of broad common-law dimensions.”).

¹¹² *State v. Jiminez*, 588 P.2d 707, 708–09 (Utah 1978) (“At common law the top legal adviser was invested with criminal prosecution authority, and such authority is deemed to be that of Attorney General in the common law states of this country.”); *Ex parte Young*, 209 U.S. 123, 161 (1908) (“It would seem to be clear that the attorney general, under his power existing at common law, and by virtue of these various statutes, had a general duty imposed upon him, which includes the right and the power to enforce the statutes of the state[.]”); *Fay v. Miller*, 183 F.2d 986, 988 (D.C. Cir. 1950) (“[T]he United States Attorney is vested with broad discretion to protect the public from crime, such discretion being derived both from statutory grant and the authority of the Attorney General at common law.”); *Pub. Def. Agency v. Superior Court*, Third Judicial Dist., 534 P.2d 947, 950 (Alaska 1975) (“Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state’s litigation which he thinks

law powers of the attorney general where they have done so clearly and consistent with the governing constitution. Ohio law embraces this principle.¹¹³ When discussing common law powers of the attorney general, the Ohio Supreme Court has explained that it is well settled that “the General Assembly will not be presumed to have intended to abrogate a settled rule of common law unless the language used in a statute clearly supports such intention.”¹¹⁴

Ohio statutes also recognize the common law powers and duties of the Ohio Attorney General.¹¹⁵ R.C. 109.02 describes the attorney general as “the chief law officer for the state and all its departments.” The use of the phrase “chief law officer” to describe the

best. This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases.”); *Johnson v. Commonwealth ex rel. Meredith*, 165 S.W.2d 820, 839 (Ky. 1942) (“It is generally recognized that unless denied by statute the attorney general of any state is clothed with all the powers incident to and traditionally belonging to his office.”); *State ex rel. Ford v. Young*, 170 P. 947, 948 (Mont. 1918) (“It is the general consensus of opinion that in practically every state of this Union whose basis of jurisprudence is the common law, the office of Attorney General, as it existed in England, was adopted as a part of the governmental machinery, and that in the absence of express restrictions, the common-law duties attach themselves to the office so far as they are applicable and in harmony with our system of government.”); *State ex rel. Derryberry v. Kerr–McGee Corp.*, 516 P.2d 813, 818 (Okla. 1973) (“At common law the duties of the Attorney General, as chief law officer of the realm were numerous. He was the chief legal advisor of the crown and was [entrusted] with the management of all legal affairs and the prosecution of all suits, both civil and criminal in which the crown was interested. He alone could discontinue a criminal prosecution by entering a nolle prosequi therein.”); *see also* *Miller & Miller, supra* note 40, at 802–03, 842.

¹¹³ *Cordray*, 123 Ohio St. 3d ¶¶ 14–20; *Merrill*, 130 Ohio St. 3d ¶¶ 32–37.

¹¹⁴ *Cordray*, 123 Ohio St. 3d ¶ 18; *Merrill*, 130 Ohio St. 3d ¶ 34.

¹¹⁵ OHIO REV. CODE §109.02 (2018); *State ex rel. Cordray v. Marshall*, 123 Ohio St. 3d 229, ¶ 14 (2009).

attorney general is historically synonymous with the common law attorney general and shows the General Assembly's awareness of the common law powers and duties of the Office under the Ohio Constitution.¹¹⁶ The General Assembly also recognized these powers through R.C. 109.24, which provides that the attorney general's enforcement powers relative to charitable trusts are "in addition to and not in limitation of [the Attorney General's] powers held at common law."

R.C. 109.02, the statute providing for the duties of the attorney general, reads as follows:

The attorney general is the chief law officer for the state and all its departments and shall be provided with adequate office space in Columbus. Except as provided in division (E) of section 120.06 and in sections 3517.152 to 3517.157 of the Revised Code, no state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested. When required by the governor or the general assembly, the attorney general shall appear for the state in any court or tribunal in a cause in which the state is a party, or in which the state is directly interested. Upon the written request of the governor, the attorney general shall prosecute any person indicted for a crime.

¹¹⁶ Miller & Miller, *supra* note 40, at 832–35 (citing with approval *State ex rel. Landis v. Kress*, 115 Fla. 189, 200, 155 So. 823, 827 (1934)); *State ex rel. Young v. Robinson*, 101 Minn. 277, 288, 112 N.W. 269, 272 (1907); *State ex rel. Sorensen v. State Bd. of Equalization & Assessment*, 123 Neb. 259, 261, 242 N.W. 609, 610 (1932); *see also Derryberry*, 516 P.2d 813, 818.

In *State ex rel. Cordray v. Marshall*, it was argued that under R.C. 109.02 the attorney general lacks standing to file a writ of prohibition unless the Governor or General Assembly request it, or if instituted as an original action in the Ohio Supreme Court.¹¹⁷ There, the Ohio Attorney General sought a writ of prohibition to compel a common pleas court judge to vacate his entry granting relief from judgment and allowing judicial release from prison for a man who had been convicted of murder.¹¹⁸ The local prosecutor had no objection to the motion seeking relief from judgment.¹¹⁹ The Ohio Supreme Court considered whether the attorney general had standing to seek the writ and found that he did. The Court recognized the attorney general's common law power in this regard and the absence of any Ohio statute that abrogated that power.¹²⁰

¹¹⁷ *State ex rel. Cordray v. Marshall*, 123 Ohio St. 3d 229, ¶ 16 (2009).

¹¹⁸ *Id.* ¶¶ 14–24.

¹¹⁹ *Id.* ¶ 5.

¹²⁰ *Id.* ¶¶ 17–23. There is language in R.C. 109.02 that provides that upon the written request of the governor, the attorney general shall prosecute any person indicted for a crime. This language appears to grant the governor authority to make a request to the Attorney General in this regard. This statute does not carry any negative implication to limit the Attorney General's powers, particularly in light of the "chief law officer" designation, the rule that the common law may be abrogated only by clear legislative directive, and the inherent power of the Attorney General under the Ohio Constitution. In a similar vein, R.C. 109.83 provides that "[w]hen directed by the governor or general assembly, the attorney general may investigate any organized criminal activity in this state." This language gives the Attorney General the discretion to investigate organized criminal activity, as defined in R.C. 177.01(E)(1) to include public corruption, when the Governor or General Assembly so request, or to decline that request. It does not carry any implication to abrogate the common law, let alone clearly.

Indeed, the Ohio Attorney General's role as chief law officer for the state, together with the absence of any statute clearly abrogating the prosecutorial powers of the Office, embraces common law civil and criminal prosecutorial powers.¹²¹ This authority is particularly strong when applied to prosecute violations of the rights of the collective populace.¹²² In matters of statewide importance, the nuclear scandal being one, the attorney general should be recognized as empowered to criminally prosecute public corruption in his role as

¹²¹ The Ohio Revised Code sets forth an enforcement mechanism for Ohio campaign finance laws, including solicitation rules, that appear to require the filing of a complaint with the Ohio Elections Commission, any subsequent proceedings including the Commission's discretionary referral to a county prosecutor for prosecution, and the completion of those proceedings as a prerequisite for any other prosecution of the campaign finance laws. OHIO REV. CODE § 3517.153 (2019) ("No prosecution shall commence for a violation of a provision in sections 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03 or 3599.031 of the Revised Code unless a complaint has been filed with the commission under this section and all proceedings of the commission or a panel of the commission, as appropriate, under sections 3517.154 to 3517.157 of the Revised Code are completed."); *see also* OHIO REV. CODE §§ 3517.154-.157; OHIO REV. CODE § 109.95 (2016). These statutes should be read in *pari materia* with R.C. 109.02 to uphold the attorney general's discretionary common law authority as chief law officer to civilly and criminally prosecute Chapter 3517 regardless of whether a complaint has been filed with the Ohio Elections Commission, rather than to abrogate the common law. To the extent the statutes may be read to limit or abrogate the attorney general's common law powers in this regard, it should be regarded as unconstitutional for violating the core, irreducible minimum of common law authority that adheres to the Office of Ohio Attorney General under the Ohio Constitution. The placement of this important prosecutorial function in a commission of political appointees who are not required to be attorneys is of highly suspect constitutional validity.

¹²² *State ex rel. Corday v. Marshall*, 123 Ohio St. 3d 229 ¶ 23 ("Given the unique, limited nature of the attorney general's exercise of authority in this matter and the important statewide interests in reinstating a murder conviction vacated by a court without jurisdiction to do so, we hold that the attorney general had the requisite common-law standing to commence the prohibition action against Judge Marshall."); *see also* *People v. Kramer*, 33 Misc. 2019 (1900) (common law cited); *Miller & Miller, supra* note 40, at 834.

chief legal officer.¹²³ The Ohio anti-bribery statute, R.C. 2921.02, does not curtail the attorney general's authority to enforce it.

But more fundamentally, the attorney general's authority to prosecute public corruption in state government should be regarded as inherent in the Ohio Constitution, regardless of Ohio statutory law now or in the future. By the creation of common law attorney general, the Ohio Constitution establishes an "irreducible minimum" of authority inherent in that office that the General Assembly cannot abrogate by statute.¹²⁴ A Kentucky court discussing the common law powers of their attorney general has explained this limitation on the legislative ability to curtail attorney general powers as follows:

[T]he office may not be stripped of all duties and rights so as to leave it an empty shell, for, obviously, as the legislature cannot abolish the office directly, it cannot do so indirectly by depriving the incumbent of all his substantial prerogatives or by practically preventing him from discharging the substantial things appertaining to the office.¹²⁵

Ohio courts have not addressed the scope of this irreducible minimum of attorney general authority. Two former Ohio Assistant

¹²³ Miller & Miller, *supra* note 40, at 842 ("For example, incipient problems in the areas of consumer protection, environmental quality, and criminal activity' can be far more expeditiously addressed, at least in the first instance, through the proper exercise of the attorney general's inherent authority than through the often lengthy process of legislative action.").

¹²⁴ Miller & Miller, *supra* note 40, at 829–32.

¹²⁵ Johnson v. Commonwealth *ex rel.* Meredith, 291 Ky. 829, 165 S.W.2d 820, 829 (1942).

Attorneys General writing on the subject have described it as the “core of authority [] defined by the traditional role of the attorney general as the lawyer of the government and the legal guardian of the public interests and by the incidents necessary for the fulfillment of that role.”¹²⁶ It is also illuminative that the Ohio Supreme Court has invoked “important statewide interests” when upholding the attorney general’s common law authority.¹²⁷

It is my contention that the irreducible minimum of attorney general authority includes the common law power to criminally prosecute public corruption in state government. Any well-functioning democracy must have a prosecutorial institution to safeguard against public corruption, particularly when it affects elections.¹²⁸ Kickbacks and bribes can have broadly reaching implications that may call into question the legitimacy of elections, the redistricting process and a wide range of official acts and legislation. Rarely, if ever, is there a truly adequate retrospective remedy available to address such broad implications. As a consequence, the prosecution of public corruption

¹²⁶ Miller & Miller, *supra* note 40, at 832.

¹²⁷ State *ex rel.* Cordray v. Marshall, 123 Ohio St. 3d 229 ¶ 23 (“Given the unique, limited nature of the attorney general’s exercise of authority in this matter and the important statewide interests in reinstating a murder conviction vacated by a court without jurisdiction to do so, we hold that the attorney general had the requisite common-law standing to commence the prohibition action against Judge Marshall.”).

¹²⁸ Toth, *supra* note 46, at xxxii.

takes on added significance to deter such behavior and root it out going forward. Voters are not as well positioned to perform this function in situations where bribe money influences elections and they lack information about corrupt behavior because it has not been investigated or prosecuted. Moreover, the crisis over the Ohio redistricting process during 2022 shows how difficult it is for courts to remedy gerrymandered legislative districts.

It would be difficult to conceive of more “important statewide interests” relative to the constitutional office of Ohio Attorney General than the prosecution of public corruption in state government.¹²⁹ This authority is critical to our democracy and should be regarded as essential authority inherent in the common law Ohio Attorney General. The prosecution of public corruption is not something that the Ohio Constitution leaves to the discretion of members of the General Assembly who may themselves participate in corrupt activity subject to prosecution. Rather, the separation of powers principle embraces the attorney general as a check on other state officials.¹³⁰

¹²⁹ *Cordray*, 123 Ohio St. 3d 229 ¶ 23.

¹³⁰ One situation where Ohio might have benefitted from a stronger investigatory-prosecutorial tradition as a check on the executive followed the publication in LIFE Magazine of an article about then-Governor James Rhodes entitled “The Governor and the Mobster.” *The Governor and the Mobster*, LIFE, May 2, 1969. The article, while providing no documentary evidence, raised questions as to whether the mafia bribed Rhodes in exchange for granting clemency to a convicted murderer and, additionally, whether Rhodes stole money from his campaign funds for personal

Nonetheless, the common law authority of the Ohio Attorney General to prosecute public corruption in state government has been controversial. The Office does not have a strong tradition of prosecuting public corruption.¹³¹ And Ohio Attorney General Dave Yost subscribes to the view that he does not have the authority to indict individuals in connection with the nuclear scandal unless a local prosecutor invites him to participate.¹³² For this reason, even though FirstEnergy admitted to bribing disgraced former PUCO Chair Sam Randazzo with a \$4.3 million payment, Yost has not sought criminal charges against him. Instead, Yost filed a civil lawsuit and seeks to freeze Randazzo's assets and reclaim his bribe money and salary rather

use. *Id.*, at 28–32A. Rhodes categorically denied taking a bribe to grant clemency. Richard G. Zimmerman, *Rhodes's First Eight Years, 1963-1971*, in OHIO POLITICS 104 (Lamis ed., Kent State U. Press 2d. ed. 2007). But, as explained by Richard Zimmerman, "*Life* maintained that Rhodes's tax problems extended to 1966 and that eventually he had to settle for more than \$100,000 in back taxes, interest and penalties for converting political funds to personal use. . . . But as in 1962, Rhodes's answer to the tax charge was hedged and, to many, unsatisfactory. He denied only having to pay a "penalty" and said that *Life's* figures were "exaggerated." The *Life* issue faded. What lasting effect it had on voters' perceptions of Rhodes, if any, is unclear." *Id.*, at 104–05.

¹³¹ Miller & Miller, *supra* note 40, at 819 ("Ohio's attorneys general have characteristically been content to occupy a restricted role in Ohio government, discharging the more prominent duties associated with the office, but infrequently demonstrating innovative zeal in the prosecution of the public's legal business.").

¹³² Balmert, *supra* note 1 ("Yost, on the other hand, challenged the fees for nuclear plants imposed on Ohioans' electric bills by House Bill 6, halting them before state lawmakers eliminated them altogether. He filed a lawsuit rather than pursue criminal charges against individuals already named in the federal investigation. Yost said his office didn't have the authority to indict individuals unless invited in by a local prosecutor.").

than seek criminal charges under the Ohio anti-bribery statute or other Ohio anti-corruption laws.¹³³

Contrary to this view, the local office of the county prosecuting attorney is one of purely local authority and does not supplant the attorney general's common law powers.¹³⁴ R.C. 309.08 sets forth the powers of the county prosecutor, in pertinent part, as follows:

The prosecuting attorney may inquire into the commission of crimes within the county. The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code, and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals. In conjunction with the attorney general, the prosecuting attorney shall prosecute in the supreme court cases arising in the prosecuting attorney's county, except for those cases required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code.

¹³³ *Former PUCO Chair Alleges 'Fatal' Flaws in State's Seizure of Assets*, GONGWER OHIO REP. (Oct. 15, 2021); *Texts Highlight Alleged Relationship Between Randazzo, FirstEnergy*, GONGWER OHIO REP. (Oct. 21, 2021).

¹³⁴ OHIO REV. CODE § 309.08 (2015); State *ex rel.* Doerfler v. Price, 101 Ohio St. 50, 51 (1920); Miller & Miller, *supra* note 40, at 838–40 (“Indeed, under article X, § 1 of Ohio's constitution, a legislatively created prosecuting attorney cannot wield any power in matters not germane to the affairs of his own county” * * * “the prosecuting attorney, though empowered to represent the state in litigation, may act on behalf of the state only insofar as such action is predicated by the need to assure the protection of the law to those by whom he is elected.”).

This grant of power to local authorities through the establishment of counties and prosecuting attorneys is a sensible decentralized system of maintaining law and order.¹³⁵ While the county prosecutor has the power to represent the state in litigation, this authority appears to be available only inasmuch as it is based upon the protection of the local constituency that elected the prosecutor and to which he or she is politically accountable.¹³⁶ This authority is concurrent with the ultimate authority of the “attorney general—constitutionally established and statutorily recognized as the chief law officer—who must exercise ultimate authority in the prosecution of litigation on behalf of the state.”¹³⁷ Far from a clear abrogation of the attorney general’s common law powers, the power of local prosecutors to prosecute crimes involving the state, as set forth by statute, is an additional vehicle for vindicating public rights.¹³⁸ Among other reasons, this concurrent jurisdiction is desirable to safeguard against public corruption due to the possibility that the attorney general or the county prosecutor could be engaged in corrupt activity.¹³⁹

¹³⁵ *Doerfler*, 101 Ohio St. at 51.

¹³⁶ Miller & Miller, *supra* note 40, at 840.

¹³⁷ *Id.*

¹³⁸ *Id.* at 839.

¹³⁹ Ohio statutory law including R.C. 177.02 and R.C. 177.03 recognize and take into account the possibility that the attorney general or local prosecutor may be engaged in public corruption. OHIO REV. CODE § 177.02–.03 (2020).

There are shortcomings with relying exclusively on county prosecutors to prosecute corrupt activity in state government because they do not have the resources or political accountability to a statewide constituency. As a case in point, no charges resulted when Yost, then sitting as Ohio Auditor of State, referred the notorious e-school scandal involving \$1 billion in public funds, as briefly discussed in Part II, to the Franklin County, Ohio Prosecutor.¹⁴⁰ For good reason, the Ohio Constitution and the General Assembly embrace the common law authority of the Ohio Attorney General, rather than elevate county prosecutors over the attorney general.¹⁴¹

IV. CONCLUSION

The State of Ohio needs an attorney general with the courage to criminally prosecute public corruption. The institutional framework is already in place and the need to exercise it is evident from the nuclear bailout and other recent corruption scandals. The direct election of the Ohio Attorney General offers an opportunity for Ohioans to mobilize and elect a candidate who will fight public corruption and take back state government. We should not continue to

¹⁴⁰ Bischoff, *supra* note 50.

¹⁴¹ *State v. Jiminez*, 588 P.2d 707, 708–09 (Utah 1978); Miller & Miller, *supra* note 40, at 838–40.

rely exclusively on federal and local prosecutors for this critical law enforcement role.

We should also take other lessons learned from the nuclear scandal to heart. Government programs that advance clean energy projects can be rife for abuse to the extent they involve special governmental benefits and privileges. By contrast to general laws, special governmental benefits and privileges lend themselves more to incentive mismatches among elected public officials and their constituents. The interests of public officials may not align with their constituents where they are influenced to secure government approval or assistance for a private project in return for campaign contributions to secure re-election or outright bribes.¹⁴² Special laws can enable undesirable or even corrupt bargains in which public officials elevate their interests in re-election over the public interest.¹⁴³ This is a problem as old as democracy itself but one that constitutional institutions can be designed to guard against with the benefit of our experience in this area.

¹⁴² See TULLOCK, *supra* note 49, at 36.

¹⁴³ See 10 JAMES M. BUCHANAN & GEOFFREY BRENNAN, *The Reason of Rules: Constitutional Political Economy*, in THE COLLECTED WORKS OF JAMES M. BUCHANAN 1, 33 (Cambridge University Press 1985) ("If the participants are constrained by the knowledge that any outcome reached must be equally applicable to all of them, they have much less incentive to try to hold out for purely distributional gains analogous to those promised to the successful strategist in the game of bilateral monopoly in goods.").

Indeed, the present-day Ohio Constitution arose as an institutional remedy to address the mismanagement of public funds and corruption that accompanied public funding for 19th century canal and railroad infrastructure.¹⁴⁴ Pork barrel politics was rampant with government programs to publicly build and finance a statewide system of canals. Canal lines were built in situations where they were unnecessarily duplicative of other routes, or along meandering routes made economically feasible by government subsidies, and continued even after railroads had emerged as the dominant technology.¹⁴⁵ The state lent funds for projects in some cases with no inquiry into the proposed project at all.¹⁴⁶ Funded with public debt, the Ohio canal system project also nearly drove the State of Ohio bankrupt.¹⁴⁷ This shows how spend-now-pay-later schemes can push costs off on future taxpayers and allow politicians to take credit for public works while skirting political accountability for their costs.¹⁴⁸

In light of this experience, Ohioans called to order the 1850–1851 Ohio Constitutional Convention in large part to reign in abuse of public finance and taxation through institutional restraint. The 1851

¹⁴⁴ David M. Gold, *Public Aid to Private Enterprise Under the Ohio Constitution*, 16 U. TOL. L. REV. 405, 407–11 (1985).

¹⁴⁵ HARRY N. SCHEIBER, *OHIO CANAL ERA: A CASE STUDY OF GOVERNMENT AND THE ECONOMY (1820–1861)* 124–25, 133, 170–71 (Ohio Univ. Press 2012).

¹⁴⁶ *Id.* at 173.

¹⁴⁷ *Id.* at 126–27; Gold, *supra* note 144, at 410.

¹⁴⁸ BUCHANAN & BRENNAN, *supra* note 143, at 104–06 (“The Public-Debt Trap”).

Ohio Constitution includes a package of constitutional provisions designed to promote general laws and place constraints on the General Assembly in the area of public debt, taxation, and public investment in private enterprise.¹⁴⁹ These constitutional constraints were designed to better match benefits of public goods and services with public burdens including taxation.¹⁵⁰ This story played itself out in other states as well, as fiscal crises arising from publicly funded transportation infrastructure led to the reform of other American state constitutions.¹⁵¹

The 1851 Ohio constitutional constraints on public finance, taxation, and other areas have deteriorated significantly since the 19th century. A notable event in this regard was a 1965 amendment to the Ohio Constitution that adopted a large exception to the 1851 prohibition on public investment in private businesses.¹⁵² More recently, in 2014, the Ohio Supreme Court rejected standing for parties challenging the state's quasi-private economic development agency,

¹⁴⁹ Davis, *supra* note 44, at 54–80.

¹⁵⁰ Davis, *supra* note 44, at 46; *see also* JAMES BUCHANAN, *Public Finance and Public Choice* (1975), in 14 THE COLLECTED WORKS OF JAMES M. BUCHANAN: DEBT AND TAXES 29 (Liberty Fund 2000).

¹⁵¹ Stewart E. Sterk & Elizabeth S. Goldman, *Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations*, 1991 WIS. L. REV. 1301, 1306–1310 (1991).

¹⁵² OHIO CONST. art. VIII, § 13; Davis, *supra* note 44, at 61–63.

JobsOhio, under the 1851 fiscal constraints on the General Assembly.¹⁵³

The Ohio General Assembly now has wide—but not unfettered—latitude to provide special benefits and funding to private entities and individuals.¹⁵⁴ The nuclear scandal has shown us that this discretion to grant special benefits and privileges on a private company places more pressure on our electoral and prosecutorial institutions, which are not functioning properly. In this article I have suggested something we can do about it through the direct election of the Ohio Attorney General. But more broadly, I wonder if Ohio has the institutional framework in place to protect against abuse going forward as it adopts public-private programs for clean energy infrastructure and other projects. Perhaps fittingly, let me close with an old suggestion from Professor Oesterle: maybe it is time for Ohio to take a hard look at holding a constitutional convention.¹⁵⁵

¹⁵³ ProgressOhio.org, Inc. v. JobsOhio, 139 Ohio St. 3d 520 (2014).

¹⁵⁴ Dave Ebersole, *Democracy in Ohio: Ohio's Fiscal Constitution and the Unconstitutional Nationwide Arena Deal*, 40 U. HASTINGS CONST. L.Q. 319 (2013).

¹⁵⁵ Dale Oesterle, Editorial, *Silence of the Lambs* (Feb. 19, 2013). The General Assembly may propose a constitutional convention to Ohio voters by a two-thirds supermajority of each house. OHIO CONST. art. XVI, § 2. The Ohio Constitution also requires a periodic referendum every twenty years, and the issue will next appear on the ballot in 2032. OHIO CONST. art. XVI, § 3. A constitutional convention would be called to order if a majority of electors vote for the convention under either procedure. OHIO CONST. art. XVI, §§ 2, 3.