

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

<p>CITY OF CINCINNATI and CITY OF COLUMBUS,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>v.</p> <p>FIRSTENERGY CORP., an Ohio corporation; SAM RANDAZZO, in his official capacity as the CHAIRMAN OF THE STATE OF OHIO PUBLIC UTILITIES COMMISSION, an individual; ROBERT SPRAGUE, in his official capacity as the TREASURER OF THE STATE OF OHIO, and individual,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case No. 20-CV-007005</p> <p>Judge William H. Woods</p>
<p>STATE OF OHIO <i>ex rel.</i> Dave Yost, Ohio Attorney General,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>FIRSTENERGY CORP., <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Case No. 20-CV-006281</p> <p>Judge Christopher M. Brown</p>

**MOTION FOR LEAVE TO FILE AMICUS BRIEF *INSTANTER* AND MEMORANDUM
IN SUPPORT
BY THE OHIO ENVIRONMENTAL COUNCIL**

The Ohio Environmental Council (OEC) respectfully moves the Franklin County Court of Common Pleas for leave to file the attached amicus curiae brief in opposition to Plaintiffs' Motion for Preliminary Injunction, and deem it filed *instanter* in the above-captioned case.

For the reasons set forth in the following Memorandum in Support, the OEC respectfully requests that the Commission grant its Motion for Leave to File its Amicus Brief *Instante*.

MEMORANDUM IN SUPPORT

The Ohio Environmental Council (OEC) respectfully seeks leave of the Franklin County Court of Common Pleas to file an amicus curiae brief in opposition to Plaintiffs' Motion for Preliminary Injunction. The OEC respectfully requests that the Court accept its amicus brief, attached here as Exhibit A, and that the Court deem it filed *instante*. For the following reasons, the Court should grant the OEC's request.

I. INTEREST OF AMICUS OHIO ENVIRONMENTAL COUNCIL

The Ohio Environmental Council (OEC) requests leave to file this amicus curiae brief *instante* because the subject matter of this case goes to the heart of the OEC's mission to secure healthy air, land, and water for all who call Ohio home. The OEC's interest in this case, and support of the Plaintiffs' position, is fundamental to its mission to protect Ohio's environment and ensure clean energy for all of the State's citizens, and that interest will fundamentally assist the Court in its decision on Plaintiffs' Motion for Preliminary Injunction.

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with approximately 3,000 individual members and nearly 100 member organizations. The OEC's principal purpose is to protect the natural resources and environment of the citizens of the State of Ohio. OEC can best protect Ohio's environment and natural resources by pursuing a clean energy future for the state, which is why the OEC is

moving for leave to file an amicus brief in this matter. The OEC's goal is to protect Ohio's environment by reducing air pollution coming from the electric power sector, and therefore OEC has a real and substantial interest in whether clean energy technologies, such as wind turbines and wind farms, are able to be built in Ohio.

OEC submits Exhibit A, its amicus brief, with a particular focus on climate change and the clean energy, and a desire to ensure Ohioans' have access to a more just, cleaner, sustainable future.

II. THE OEC'S AMICUS BRIEF IS PROPERLY BEFORE THE COURT AND WILL NOT DELAY THE PROCEEDINGS.

The OEC's amicus brief offers a unique perspective, and will assist the Court in reaching a decision on the matter presented. The OEC approaches this issue not from the perspective of a utility customer (although many of our members are), but as a non-profit dedicated to protecting Ohio's environment and ensuring clean air for Ohioans. The threat of climate change is ever-increasing, and in a state that gets over 50% of its energy from coal, the OEC is dedicated to moving Ohio toward a low carbon future as quickly as possible. The OEC is not only an advocacy organization that educates the public and decision-makers on shifting toward a low carbon future, but the OEC also uses its legal expertise to remove artificial barriers to reaching that goal. As the only non-profit environmental law center in the state of Ohio, the OEC is uniquely positioned to offer its expertise in this matter, and the OEC respectfully requests that its amicus brief, attached as Exhibit A, be deemed filed *instanter*. The OEC and its members have a substantial interest in the outcome of this case, and its contribution of the attached amicus brief will lead to a just resolution of the issues involved in this case, without causing delay.

III. CONCLUSION

For the foregoing reasons, the Ohio Environmental Council respectfully requests that its Motion for Leave to File an Amicus Brief *Instante* be granted, and the Court deem OEC's amicus brief, attached hereto as Exhibit A, filed.

Respectfully submitted,

/s/Trent Dougherty

Trent Dougherty (0079817)

Chris Tavenor (0096642)

The Ohio Environmental Council

1145 Chesapeake Ave., Suite I

Columbus, OH 43212

(614) 487-7506 - Telephone

tdougherty@theoec.org

ctavenor@theoec.org

(614) 487-7510 - Fax

CERTIFICATE OF SERVICE

I certify that on December 6, 2020, the foregoing was electronically filed via the Court's e-Filing System, which will send notice to counsel of record.

/s/Trent Dougherty

Trent Dougherty (0079817)

Counsel for Amicus Ohio Environmental Council

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**THE OHIO ENVIRONMENTAL COUNCIL’S AMICUS BRIEF IN SUPPORT
OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

The Ohio Environmental Council (OEC) submits this amicus curiae brief in support of Plaintiffs City of Cincinnati and City of Columbus (“Plaintiffs”) Motion for Preliminary Injunction. Plaintiffs move this court to revoke authorization for electronic distribution utilities to charge customers for the so-called HB 6 Clean Air Fund Rider (“HB 6 Rider”); and enjoin the Treasurer of state from remitting any money collected by the HB 6 Rider. As outlined in the Plaintiffs’ motion and the OEC’s foregoing brief, and for Ohio’s environment and Ohioans’ pocketbooks, we urge the court to grant the Motion.

The question presented in this case is whether the State of Ohio may impose new utility fees on Ohio ratepayers when the legislation authorizing these new fees was secured through fraud, deceit, and intimidation. Federal prosecutors rightly describe this legislation—the now-infamous Ohio House Bill 6 (“HB 6”)—as “the largest bribery, money-laundering scheme ever perpetrated against the people of the state of Ohio.” Compl. ¶ 1. And yet, as the law currently stands, this gross product of corruption will soon impose crushing monetary payments on Ohio consumers through the so-called HB 6 Rider.

Beginning on January 1, 2021, ratepayers in the state will see, in aggregate, *more than \$900 million* in new fees added to their utility bills. *Id.* at ¶ 2. Standing up for their constituents, Plaintiff Cities of Cincinnati and Columbus have filed this suit to block those fees from appearing on ratepayers’ utility bills, a case now consolidated with the AG’s lawsuit. The Cities’ approach is the *only* way to properly “address the harm that Ohio utility ratepayers still face as they pay into a corporate bailout fund that was secured through fraud, deceit, and intimidation.” *Id.* Furthermore, Plaintiff Cities have rightly moved this court for a preliminary injunction. An injunction will ensure everyday Ohioans are not held to recoup the utilities fifteen-fold for the

unconstitutional tax that resulted from their corrupt activity, especially while this case plays out before the Court.

The Plaintiffs have presented a viable challenge against the HB 6 Rider as an unconstitutional tax, and they have submitted a viable claim alleging that the scheme behind the passage of HB 6 demonstrates a clear violation of the Ohio Corrupt Practices Act (OCPA), R.C. § 2929.31 *et seq.* Therefore, the OEC respectfully urges the Court to order the Plaintiffs' requested Preliminary Injunction.

INTEREST OF AMICUS OHIO ENVIRONMENTAL COUNCIL

The OEC's interest in this case, and our unique perspective, will fundamentally assist the Court as it considers the potential impact of the HB6 on Ohioans. For 51 years and counting, the OEC has advocated on behalf of Ohio's environment, protecting the state's air, land, and water for all of its people. To protect our state's natural resources, we must ensure affordable renewable energy for all of the State's citizens. When we advocate for Ohio's renewable energy future, we advocate removing any real or artificial barriers to that goal. Therefore, the OEC has a real and substantial interest in whether HB 6 remains in effect and whether the collection of the HB 6 Rider is enjoined. The OEC submits its amicus brief with a particular focus on the renewable energy needs of Ohioans, the cost of their energy, and a desire to ensure they have access to a sustainable future.

The substantial threat HB 6 poses to Ohio's renewable energy future has been apparent since the beginning, even before the rampant and wide scale corruption and fraud behind the bill were exposed. HB 6 has been rightly described as "the worst energy bill of the [twenty-first] century" and "[a] corrupt bailout for dinosaur power plants that screws renewable energy in the

process.”¹ HB 6 weakens Ohio’s renewable energy incentive structure by reducing utilities’ renewable energy requirements from 12.5% by 2027 to 8.5% by 2026. Compl. ¶ 32. Moreover, the bill exempts large industrial customers from the requirement and institutes a 2026 sunset clause, meaning utilities will not be required to generate any of their power from renewables after 2026. *Id.*

Due to the significant use of fossil fuels in Ohio, energy efficiency also presents one of Ohio’s best opportunities to reduce its greenhouse gas emissions. However, HB 6 also removes incentives and requirements for utilities to increase energy efficiency standards via energy efficiency programs, “which were set to save Ohio ratepayers \$4 billion over the next 10 years.” *Id.* Previously, utilities were required to reduce their customers’ energy use by 22% from 2008 levels by 2027. *Id.* Now, utilities can abandon those efforts once they reach 17.5% reduction, which most have already almost reached. *Id.*

Because HB 6 and its HB 6 Rider directly threaten the ecological welfare of the State of Ohio, the OEC has a vested and substantial interest in the outcome of this case. Preserving and protecting the environment is the organization’s *raison d’être*. While the Plaintiffs mention the environmental harms posed by HB 6, they primarily focus on the human impacts, specifically the negative economic impacts that will soon affect millions of ratepayers in the form of an unconstitutional tax. The OEC offers another lens through which to examine this case, a lens the Court ought to consider.

For decades, scientists have sounded the alarm: climate change is altering the way our environment and ecosystems function. The continued burning of fossil fuels damages our planet. Two years ago, scientists told us they were wrong about how much time we have to fix the

¹ David Roberts, *Ohio just passed the worst energy bill of the 21st century*, Vox (Jul. 27, 2019), <https://www.vox.com/energy-and-environment/2019/7/27/8910804/ohio-gop-nuclear-coal-plants-renewables-efficiency-hb6>.

problem—in reality, our continued reliance on fossil fuels and our failure to take significant action to reduce greenhouse gas emissions has created even more dire circumstances than they originally predicted. The Intergovernmental Panel on Climate Change (IPCC), the top scientific body studying climate change, released a Special Report in October 2018 (“IPCC Special Report”), indicating that nations must take “unprecedented” action to cut carbon emissions over the next decade. IPCC, *GLOBAL WARMING OF 1.5°C* (V. Masson-Delmotte, *et al.* eds., 2018), <https://www.ipcc.ch/sr15/> (accessed Dec. 3, 2020). The IPCC Special Report determined the world must hold warming below 1.5 degrees Celsius to prevent the most damaging impacts of climate change. *Id.* The world’s annual carbon dioxide emissions (more than 40 billion tons per year) must be on an extreme downward slope by 2030 to prevent those impacts from materializing. *Id.* Simply put: we have ten years to act on climate change in our local communities, in Ohio, in the United States, and at the global level. Yet, global emissions are still rising. We continue to burn fossil fuels, all while knowing a dramatic shift to carbon-free energy sources, like renewable wind and solar energy, are necessary for a sustainable future.²

Additionally, the United States’ Fourth National Climate Assessment, released in November 2018, explicitly details future climate impacts to the Midwest and Ohio. U.S. Global Change Research Program, *FOURTH NATIONAL CLIMATE ASSESSMENT, VOL. II: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES*, Ch. 21: *Midwest* (2018), <https://www.globalchange.gov/nca4>. Importantly, climate change risks putting the Midwest’s regional identity as an agricultural hub in the United States in jeopardy and threatens a major source of our food supply unless we take action to protect it from the effects of climate change.

² The IPCC Report calls for human-caused emissions of carbon dioxide to be reduced by about 45 percent from 2010 levels by 2030, reaching net zero by 2050 in order to prevent the most damaging aspects of climate change from materializing. IPCC, *Summary for Policymakers*, *GLOBAL WARMING OF 1.5°C* (2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/SR15_SPM_High_Res.pdf (accessed Dec. 3, 2020).

Id. The regional trend toward higher temperatures, more rain and more humid conditions will challenge fieldwork and disease and pest control while heightening the potential for reduced harvests. *Id.* at 878. The shift toward increased precipitation and heightened late season moisture increases potential for and exacerbates the effects of invasive species, pests, and plant disease, but we can only partially overcome these issues through technological advances - not subsidizing antiquated technology. *Id.* at 880-882.

We must reduce greenhouse gas emissions quickly and efficiently to mitigate the worst impacts from climate change. HB 6, and the HB 6 Rider, run counter to this goal and against the public interest. HB 6 enshrined archaic forms of energy generation, entrenching non-renewable fuel sources and eviscerating future opportunities for renewable energy deployment in Ohio. But Ohio must end its old reliance on coal and nuclear power plants in order to move forward with renewable energy technology capable of creating a modern, resilient grid ready to mitigate the causes of climate change and survive its worst impacts. HB 6 and the HB 6 Rider pose a direct threat to renewable energy efforts, since they “further undercut Ohio’s already weak incentive structure for renewable energy” and “will remove any requirements and incentives to increase energy efficiency standards.” Compl. ¶ 32. And since HB 6’s passage and enactment were the products of fraud and corruption, the potential environmental impacts of the legislation are even more insidious. The OEC provides these considerations, both environmental and the interest of Ohio’s ratepayers, in this amicus brief in support of the Plaintiffs’ Motion for Preliminary Injunction.

STATEMENT OF FACTS

Amicus Curiae accepts, and hereby incorporates Plaintiffs’ statement of relevant facts as set forth in Plaintiffs’ Complaint and Motion for Preliminary Injunction.

STANDARD OF REVIEW

When a court considers a Motion for Preliminary Injunction pursuant to Civil Rule 65(B) a court must look at: 1) whether there is a substantial likelihood that plaintiff will prevail on the merits; 2) whether plaintiff will suffer irreparable injury if the injunction is not granted; 3) whether third parties will be unjustifiably harmed if the injunction is granted; and 4) whether the public interest will be served by the injunction. *Vanguard Transp. Sys. v. Edwards Transfer & Storage Co. Gen. Commodities Div.*, 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist.1996). Further, the party seeking the preliminary injunction must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim. *Mead Corp. v. Lane*, 54 Ohio App. 3d 59, 560 N.E.2d 1319 (4th Dist.1988).

What is more, the Ohio Corrupt Practices Act (R.C. 2923.31 *et seq.*) allows the court to issue a preliminary injunction “upon a showing of immediate danger or significant injury to the plaintiff, including the possibility that any judgement for money damages might be difficult to execute.” R.C. 2923.34(D).

ARGUMENT

The Plaintiffs’ Motion for Preliminary Injunction satisfies the four prongs necessary to establish the need for a preliminary injunction. The Plaintiffs have established sufficient evidence to prove the HB 6 Rider is an unconstitutional tax—and that FirstEnergy’s scheme violated the Ohio Corrupt Practices Act. The Plaintiffs have similarly shown how they will experience irreparable harm. Furthermore, the only party slated to experience “harm” from a preliminary injunction is FirstEnergy itself, and its former subsidiary, EnergyHarbor. And the Plaintiffs’ arguments run directly against the idea that either company should benefit from legislation born from corruption. Finally, a preliminary injunction serves the public interest,

sending a strong signal against corporate bribery in pursuit of legislation and in favor of retaining unjust rewards in the hands of the people, rather than the perpetrators and financiers of the crime.

I. Substantial Likelihood to Prevail and Irreparable Harm.

Through both their Complaint and Motion for Preliminary Injunction, Plaintiffs established sufficient evidence proving that the HB 6 Rider (“Rider”) is an unconstitutional tax and that FirstEnergy violated the Ohio Corrupt Practices Act (OCPA). R.C. § 2929.31 *et seq.* Plaintiffs’ claims demonstrate both a substantial likelihood they will prevail on the merits and that they will suffer irreparable harm if the injunction is not granted.

A. The HB 6 Rider constitutes an unconstitutional tax.

Normally, “*duly* enacted laws” receive a strong presumption of constitutionality; overcoming the presumption requires proving the law unconstitutional beyond a reasonable doubt. *Vill. of Put-In-Bay v. Mathys*, 2020-Ohio-4421, ¶ 11 (emphasis added). However, HB 6 is not a *duly* enacted law. It was created by FirstEnergy and a cabal of corrupt politicians, advanced using political strong-arm tactics, and enacted after former-Speaker Householder effectively held Ohio’s budget bill hostage. *See* Compl. Factual Background. These unsavory origins inherently casts doubt on HB 6’s constitutionality. Yet even if HB 6 were legitimate law, the Rider is still an unconstitutional tax. First, the Rider is a tax, not a fee, making it subject to Art. VIII, Sec. 4 of Ohio’s Constitution. Second, the Rider violates that provision of the State Constitution.

1. The HB 6 Rider constitutes a tax under Ohio law.

The Rider’s substance makes it a tax, rather than a fee. *See State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow*, 62 Ohio St.3d 111, 579 N.E.2d 705 (1991). Four factors generally govern whether an assessment is a tax or fee: (1) the entity imposing the assessment; (2) the parties paying it; (3) its ultimate use; and (4) whether it was

collected in exchange for a government-provided service. *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916, ¶¶ 15, 23, 27 (citation omitted).

In *Drees*, Hamilton Township’s “impact fees operated as taxes.” *Id.* at ¶ 1. First, a legislative body imposed the “fee,” which favored deeming the assessment a tax. *Id.* at ¶ 32. Second, the “fee” did not apply to everyone, making it less like a tax but not necessarily a fee. *Id.* Third, revenues benefitted the general public, placing the “fee” “solidly in the realm of taxation.” *Id.* And fourth, the government offered no particular service or benefit in exchange for the “fee.” *Id.* at ¶ 23. Given these factors, the court held that the fees were actually taxes. *Id.* at ¶ 41.

Here, the Rider is a tax. First, the Ohio legislature imposed it via HB 6, which favors deeming it a tax. Compl. ¶ 31. Second, it applies to *all* Ohio ratepayers, making it even more like a tax than the “fee” in *Drees*. *Id.* at ¶ 2. Third, revenues will ostensibly benefit the general public. *Id.* at ¶ 49. While the Rider will only really benefit FirstEnergy’s former subsidiary, EnergyHarbor, Ohio’s nuclear generation fund receives the funds first. *Id.* at ¶ 48.³ Potentially, those funds *could* benefit the public, and HB 6 proponents claimed the funds *would* benefit the public. *Id.* at ¶ 55. This should place the Rider “solidly in the realm of taxation.” And fourth, the government offers no service in exchange for people’s additional money. *Id.* at ¶ 50–51. FirstEnergy also offers no additional services beyond those currently provided, since the Rider’s sole purpose is bailing out failing power plants. *Id.*

Given these factors, the Rider constitutes a tax on the Ohio people and violates Art. VIII, Sec. 4 of Ohio’s Constitution.

³ Importantly, FirstEnergy benefited from the HB 6 Rider because the guarantee of funds from the Rider allowed FirstEnergy to ensure the subsidiary had the financial support necessary to incentivize investors to fully acquire the corporation.

2. The HB 6 Rider violates Article VIII, Section 4 of the Ohio Constitution.

Ohio's Constitution prohibits the State from giving its credit to "any individual . . . corporation." Ohio Constitution, Article VIII, Section 4. Yet the Rider does exactly that since FirstEnergy's former subsidiary, EnergyHarbor, must receive any and all revenues collected. Compl. ¶ 56. Fear of "placing public tax dollars at risk to aid private enterprise" lies at Art. VIII's heart, especially when those dollars are risked "in what may be unwise investments." *Petroleum* at 114.

HB 6 and the conspiracy behind it epitomize risking public tax dollars to aid private enterprise. FirstEnergy, a private enterprise that will otherwise go under, is the *only* entity benefitting from the *millions* of tax dollars generated by the Rider. FirstEnergy was hemorrhaging money and on the brink of collapse when HB 6 was devised. *See* Yost Compl. ¶ 33. HB 6 does nothing aside from saving FirstEnergy's dying industry in exchange for political favors. Compl. ¶ 56. Therefore, not only does HB 6 risk public tax dollars, it specifically risks those dollars on an unwise investment. FirstEnergy represents the past of energy generation and electric utilities, a past that should be allowed to die quietly to make way for the cleaner future.

Accordingly, Plaintiffs have established sufficient evidence proving the HB 6 Rider is an unconstitutional tax.

B. Plaintiffs have sufficiently established a claim under the Ohio Corrupt Practices Act ("OCPA").

To "state a civil claim under the OCPA, a plaintiff must establish: (1) that the defendant committed two or more specifically prohibited state or federal criminal offenses; (2) that the defendant's prohibited criminal conduct constitutes a pattern; and (3) that the defendant has participated in the affairs of an enterprise." *Morrow v. Reminger & Reminger Co. LPA*, 183 Ohio

App. 3d 40, 2009-Ohio-2665, 915 N.E.2d 696, ¶ 27 (citation omitted). Plaintiffs can establish all three of these elements.

1. FirstEnergy’s conduct involved committing two or more specifically prohibited state or federal criminal offenses.

The Plaintiffs allege that FirstEnergy engaged in racketeering activity, wire fraud, money laundering, extortion, bribery, and tampering with evidence. *See* Compl. These offenses are all specifically prohibited by federal and state laws, so Plaintiffs satisfy the first element of an OCPA civil claim.

The co-conspirators’ racketeering activity and wire fraud violated the Organized Crime Control Act of 1970. 18 U.S.C. § 1961(1)(B); 18 U.S.C. § 1343. The conspiracy behind HB 6 and electing Householder to the Speakership constitutes a scheme to defraud because it deprived Ohio citizens of their right to honest legislative and political services. 18 U.S.C. § 1346. Federal law specifically prohibits these offenses and actions.

In addition to flagrantly violating federal laws, the co-conspirators violated several Ohio criminal statutes. Since 2017, FirstEnergy has routed millions of dollars of “dark money” through 501(c)(4) organizations and PACs to influence election outcomes without the public knowing. Compl. ¶ 26. Such activities violate Ohio’s money laundering statute. R.C. § 1315.55. When pushing HB 6 through the House, Householder and his cohorts threatened legislators with losing committee assignments and having their own bills slowed or terminated. *Id.* at ¶¶ 28-29. Such political strong-arm tactics are extortion under Ohio law. R.C. § 2905.11.

When citizens tried repealing HB 6, FirstEnergy interfered in several ways, including by bribing *fifteen* different signature collection operations to stay out of the referendum efforts, violating Ohio’s bribery statute. Compl. ¶ 39; R.C. § 2921.02. When the conspiracy began

unraveling and coming to light, participating parties were encouraged to tamper with, obfuscate, and destroy evidence to avoid arrest and prosecution. Compl. ¶ 67; R.C. § 2921.12.

2. Co-Conspirators' prohibited criminal conduct constitutes a pattern.

The Ohio Revised Code (“ORC”) defines a pattern of corrupt activity as “[1] two or more incidents of corrupt activity . . . [2] that are related to the affairs of the same enterprise, [3] are not isolated, and [4] are not so closely related to each other and connected in time and place that they constitute a single event.” R.C. § 2923.31(E). The crimes outlined by the Plaintiffs constitute multiple instances of corrupt activity. The crimes all furthered and related to FirstEnergy’s primary goal of obtaining a “Legislative Solution” that would provide a continued, annual cash flow. Compl. ¶ 18. And the crimes were not isolated events since they occurred over a series of years. Moreover, each individual crime was committed more than once during the course of the conspiracy.

Although the crimes all served the same purpose, they were distinct from one another and contributed to different parts of the conspiracy. The money laundering elected Householder and his cohorts, the extortion passed HB 6, the bribery stymied repeal efforts, and the evidence tampering hindered investigations. Significantly, FirstEnergy hatched its scheme around 2016, and criminal activities furthering the scheme began around January 2017. *Id.* at ¶¶ 17-19, 24. The activities continued for three years until the conspiracy was exposed. *See id.* The crimes occurred in a variety of places, from the statehouse to home offices. *See id.* The crimes were not so closely related to each other or connected in time or place as to constitute a single event.

3. FirstEnergy participated in the affairs of an enterprise.

FirstEnergy perpetuated massive and wide-scale fraud by colluding with multiple other companies and individuals. Compl. ¶ 64. The collusion makes FirstEnergy part of an Enterprise in fact. *Id.* The ORC defines enterprise as “any individual, . . . partnership, limited partnership,

corporation, . . . or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity.” R.C. § 2923.31(C).

Over the course of its multi-year scheme, FirstEnergy Corp.—a corporation in the FirstEnergy family—worked directly with FirstEnergy Service Company, FirstEnergy Solutions Corp., Energy Harbor Corp., former-Speaker Larry Householder, Friends of Larry Householder, Generation Now, Inc., Partners for Progress, Jeff Longstreth, JPL & Associates LLC, Constant Content Co., Neil Clark, Matt Borges, 17 Consulting Group LLC, and Juan Cespedes. Compl. ¶ 64.

These parties were all associated in fact and colluded to enact HB 6 and thwart repeal efforts. While each party had a distinct role in the conspiracy, they all worked to implement HB 6 and the Rider. However, the individual Enterprise members did not collectively form a legal entity, and they are each separate and distinct from the Enterprise as a whole.

FirstEnergy both participated in the Enterprise’s affairs via money and other activities, and maintained control over the Enterprise. As the primary organizer and original conspirator, FirstEnergy directed the Enterprise’s efforts and benefited most from its corrupt activities. Since FirstEnergy’s association in fact with these other individuals, corporations, and groups constitutes an enterprise, Plaintiffs can establish the third and final element of their OCPA claim.

II. Effects on Third Parties and the Public Interest.

Concerning the final two prongs of the analysis of a motion for preliminary injunction, whether third parties will be unjustifiably harmed if the injunction is granted and whether the public interest will be served by the injunction.

As Plaintiffs contend in their Motion, the only third party possibly harmed by a preliminary injunction are the recipients of the ill gotten fruit from HB 6’s poisonous tree. *See Plaintiffs’ Motion for Preliminary Injunction* at 15. We further offer that many third parties have

been injured and stand only further injury if the injunction is **not** granted. The disastrous legislation dismantled our renewable energy and energy efficiency standards, bailed out two antiquated nuclear plants and two polluting coal plants, and stuck Ohioans with dirtier air and higher utility bills.

HB 6 has always been a bad deal for Ohioans, sticking us with dirtier air and higher utility bills while gutting our renewable energy future. As we've suspected all along, the billion-dollar bailout, strong-armed through the General Assembly by Speaker Householder, appears to have been fueled by corrupt pay-to-play dealings with corporate utilities. Even while Ohioans overwhelmingly opposed HB 6, the disastrous legislation passed, ensuring FirstEnergy and its corporate investors benefited on the backs of Ohio taxpayers. When Ohioans fought back against the bad bill, they experienced outrageous, unprecedented attacks that interfered with their democratic right to pursue a referendum at the ballot to repeal the bill. Even worse, the attacks were funded by the same interests caught red-handed funding HB 6 via criminal enterprise.

The people of Ohio not only are in imminent threat of monetary and environmental harm, but many are well aware that HB6 is bad policy. Recently, nearly 75 individuals—representing organizations, businesses, and concerned Ohioans—shared their powerful testimony in opposition to this bad bill in a series of three virtual hearings on the need to repeal HB6. The hearings were organized in direct response to the lack of leadership shown by the Ohio House Select Committee on Energy Policy and Oversight on HB 6 repeal efforts, having not yet invited the public an opportunity to testify on this corrupt legislation.

A preliminary injunction against the HB 6 Rider also directly serves the public interest in the fight to mitigate the causes of climate change. Through the concerted efforts of FirstEnergy's enterprise in concert with former Speaker Larry Householder, the bill eviscerated Ohio's only

statewide policy designed to transition the state toward a renewable energy future capable of mitigating Ohio's contribution to the anthropogenic causes of climate change. HB 6 builds on a pattern of legislation in Ohio restricting the expansion of renewable energy, whether its wind or solar. Ohio is ranked sixth highest in the country for carbon emissions, emitting 204 million metric tons—in part due to heavy reliance on coal and natural gas. *Rankings: Carbon Dioxide Emissions 2017*, U.S. ENERGY INFORMATION ADMINISTRATION, <https://www.eia.gov/state/rankings/?sid=OH#series/226>.

A potentially more pressing public interest served by a preliminary injunction, however, stems from the need to protect fundamental principles of our democratic institutions. Corporations must face consequences for bribing and scheming to undermine the independence of the legislative process. At the very least, they must not see the benefit of their corrupt and illegal actions. Each branch of Ohio's government needs to send an unequivocal signal: FirstEnergy will not benefit from Larry Householder's criminal activities. If only a few individuals go to prison, but FirstEnergy and its shareholders still benefit from the unjust fruits of the enterprise's labor, only the citizens and ratepayers of Ohio lose.

If a man robs a bank, gives the money to their employer, and is then arrested for bank robbery, we do not leave the funds in the hands of the employer. We return the funds to the bank. Likewise, when Larry Householder defrauded Ohioans and the legislature through bribes and intimidation tactics then handed the benefit to FirstEnergy, we must not let FirstEnergy benefit. The dollars must stay with the people, and with Ohio. We must send a signal to all other corporations: they cannot bribe legislators, pass legislation, let a few employees or politicians fall to FBI investigation—yet still receive the benefits of the corrupted legislation. Any other conclusion will lead to a free-for-all approach to lobbying, campaign finance, and political

organizing. Ohio's courts have an obligation to protect the public interest in the integrity of our democratic process, from the ballot to the chambers of the General Assembly.

CONCLUSION

Ohioans' faith in their legislature and the political process was deeply shaken the day FirstEnergy's scheme came to light. FirstEnergy and its co-conspirators thoroughly subverted the political, electoral, and legislative processes in order to enact House Bill 6. Such actions cannot go unpunished, and we have faith in the federal authorities. However, the citizens of Ohio, through their pocketbooks and the air they breathe, should not be forced to suffer simply because a cabal of people with ill intent managed to force HB 6 into being. HB 6 and the HB 6 Rider pose a direct threat to Ohioans economically and environmentally, and an indirect threat to Ohioans' health and future well-being.

During this pandemic, a time of uncertainty and upheaval, the people of Ohio should not have to suffer further blows to themselves or their financial well-being. The Cities have properly established the necessity of a preliminary injunction, especially given the immediacy of the upcoming charges on ratepayer bills and the looming specter of climate change. Therefore, the OEC respectfully urges the Court to grant Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

/s/Trent Dougherty

Trent Dougherty (0079817)

Chris Tavenor (0096642)

The Ohio Environmental Council

1145 Chesapeake Ave., Suite I

Columbus, OH 43212

(614) 487-7506 - Telephone

tdougherty@theoec.org

ctavenor@theoec.org

(614) 487-7510 - Fax