

**TESTIMONY TO THE
SENATE AGRICULTURE & NATURAL RESOURCES COMMITTEE
SENATOR TIM SCHAFFER, CHAIR
APRIL 30, 2025**

Chair Schaffer and members of the Agriculture & Natural Resources Committee of the Ohio Senate, good morning. I am Philip C. Richter, Executive Director of the Ohio Elections Commission, and am giving testimony on behalf of the Commission regarding the budget for the next biennium. Thank you for allowing me this opportunity to address the Committee on behalf of the Commission.

Since the Ohio Elections Commission commenced operations as an independent state agency on January 1, 1996, over 23,000 cases have been filed with the Commission. In addition, the Commission has issued 80 advisory opinions. The Commission carries out its mission with only 1 very capable full-time administrative assistant, along with a recently rehired part-time employee, that serve as additional staff along with me as Executive Director and Staff Attorney. Along with the 10 Commission members, comprised of three (3) regular Democrats, three (3) regular Republicans and one (1) independent, as well as the recently created positions of Alternate Members, who serve as replacements for the regular members when they cannot participate in a particular case or meeting, the Commission's now has twelve and one-half persons on the Commission's payroll.

What I have just stated is the normal beginning of the testimony that I have historically provided when I speak in support of the Commission's budget. But the current situation is nowhere near the normal situation for the budget of the Ohio Elections Commission.

As I'm certain you are all aware, the current version of the state budget for which I am addressing you includes the abolishment of the Ohio Elections Commission. Not only is there no funding in the budget as of July 1, a mere 2 months from now, but there is additionally a 6-month transition period for which there is no funding allotted. Commencing on July 1 the responsibilities of the Commission will be transferred to the 88 county Boards of Elections or the office of the Secretary of State, dispensing with the Commission's bipartisan, centralized oversight of Ohio's campaign finance laws. This arrangement creates the very real possibility of 89 separate enforcement authorities with a potential partisan bias, erasing one of the main elements of the Commission's formation as an independent agency: fair, equitable, non-partisan, unbiased, independent enforcement of Ohio's campaign finance laws within a partisan political environment.

That, honorable members of the Senate Agriculture and Natural Resources Committee, will create absolute chaos for the enforcement of Ohio's campaign finance laws, but could also

prove to be much more costly to the taxpayers in this state. It is not an exaggeration to believe that the following may occur within this framework:

- Instead of 1 statewide decision-making body, there will be 89 separate applications of Ohio's campaign finance laws;
- Instead of one bi-partisan, collegial panel, there could be 89 separate decisions made along party lines;
- Instead of an identified, centralized location for reviewing alleged violations, you will have 89 separate filing offices for citizens to submit their allegations;
- Instead of an identified, centralized location for reviewing alleged violations, there is the real possibility that no enforcement of the statutes will occur in some jurisdictions;
- Instead of an experienced state agency, you will have local, inexperienced offices gearing up to handle the matters for which the Commission is already established;
- Instead of a centralized agency to handle the administrative functions of enforcement, this system will necessitate that 89 separate administrative systems be created;
- Instead of a centralized agency with a handful of personnel, this system creates the possibility of each Board of Elections having to hire 2 or more persons to handle these adjudications;
- Instead of a panel of persons experienced in reviewing allegations of violations, you could see a variety of persons with no experience in reviewing campaign finance laws making inconsistent recommendations in different venues;
- Instead of a Board of Elections being properly focused on conducting a fair election at a critical time, you could have Board personnel engaged in partisan campaign finance squabbles during their busiest times ... the days leading up to an election;
- This unproven system creates the possibility of a real, unfunded mandate for each of the 88 county Boards of Elections when county funds are already stretched tightly;
- This unproven system creates an inherent conflict of interest within the Board and Secretary's offices between the campaign finance auditors in each office and the persons having to determine an alleged violation;
- This unproven system creates the possibility for much greater costs to the citizens of Ohio between added personnel in the county and state offices and duplicative administrative costs that each office will have to bear;
- This unproven system removes a central source of valuable campaign finance advice and information that the Commission staff provides in responding to questions from the staff at the Board of Elections, the Secretary's office, the citizens of Ohio, various interested parties, other agencies and state offices and legal counsel for people with campaign finance issues.

Understand, the Commission was initially established in 1974 in response to the political climate surrounding the Watergate affair of the early 1970s. Initially, the Commission was composed of five members appointed by the Secretary of State upon the recommendations from the Chairmen of the State Democratic and Republican parties. This structure, however, was not without some controversy. Concerns about partisan bias and conflicts of interest led to the significant bipartisan reforms in 1995 that established the Ohio Elections Commission as an independent state agency. The Ohio Election Commission now includes a member who is unaffiliated with a political party. This nonpartisan member plays a critical role in maintaining neutrality and balance within the Commission and assuring that there is no partisan leaning and to ensure fair and equitable enforcement of Ohio's campaign finance laws. The perception of partisan influence has been greatly reduced. I believe that the Commission has fulfilled this anticipated role regardless of what has otherwise been stated.

I understand and greatly respect the questions and concerns that have been raised regarding the operations and effectiveness of the Commission. I am fully open to discussing any suggestions for improvement, as I believe in continuous growth and adaptation in the Commission's operations to better serve Ohio's citizens. However, I strongly believe that disbanding the Ohio Elections Commission would compromise the consistency and impartiality essential to fair campaign finance law enforcement throughout the state. Another important factor that has been overlooked. Unlike a court of law, where lawyers appear and make their arguments on behalf of a client, and there is a strict application of the rules of evidence or the civil or criminal rules of procedure, as an administrative agency in the state of Ohio, the Elections Commission regularly deals with non-lawyers. This requires the Commission to be flexible in its operations and decision making. Expecting the Commission to strictly adhere to court procedures and practices would greatly confuse, and create extreme bias against, any non-lawyer appearing before the Commission.

From having worked with them for as long as I have, I have incredible respect for the members of the Board of Elections and the staff at the County Boards. They do an incredible job for the citizens of their counties in coordinating voter registration, reviewing petition signatures, filing and auditing campaign finance reports and most importantly coordinating and conducting an election. And all this is done without having any real questions or concerns about the integrity of elections in this state. But asking each of the 88 counties to try to adjudicate the matters that the Commission currently handles would be an enormous undertaking. Further, some of the language in this bill would obligate these hardworking officers to expedite matters and try to handle these decisions while they are setting up for the main task for which they were created – conducting a primary or general election.

In research done by the Legislative Service Commission, as well as some research received from the National Conference of State Legislatures (attached to this testimony), the Commission's budget was at the lower end of budgets for states of similar size to Ohio. The budget introduced by the Governor's office increased the Commission's allotments but certainly did not put the Commission's budget at the high end of the states that were reviewed.

The operational needs of the Commission continue to be fairly consistent, increasing only because of rising prices, such as higher postage costs, increased health insurance premiums and increases in charges imposed on agencies like the Commission from DAS, which are all beyond the control of Commission personnel. My staff and I have worked diligently to limit the Commission's expenditure levels. I have heard that vaporizing the Commission will save the state money. This is certainly true if this budget is passed as currently proposed. However, the savings would amount to a measly .000008% based on the current budget projection.

For emphasis, I have to repeat the previous sentence. The Commission's budget represents a measly .000008%. There are 5 zeros before the 8. Yet, it is most likely that this will not save the citizens of Ohio a single penny, and most likely will cost more as each of the counties, along with the Secretary, will be required to create a similar administrative framework

and infrastructure which the Commission already has in place. It is very likely that the overall cost to taxpayers will increase significantly.

While I am certainly requesting and hopeful that the Senate will return the entire amount originally proposed by the Governor on behalf of the Ohio Elections Commission back into its version of the budget so that the Commission can continue its important work, it is unconscionable to me that the current budget document maintains the Commission through January 1, 2026 without any funding. Should the Senate determine to adopt this current proposed change to the enforcement of Ohio's campaign finance laws, and yet expect the Commission to continue some sort of operation until January 1 of next year, funding for those 6 months is imperative.

The Commission has served the people of the state of Ohio for over 50 years and I believe that it should continue to serve because of its critical role in the enforcement of Ohio's campaign finance laws.

On behalf of the members of the Elections Commission, I again want to thank you for the opportunity to address this honorable Committee. I will do my best to answer any additional questions that you may have regarding the Commission, its current zero budget, the actual budget request, as well as our overall operations.

Thank you very much.

State	Appropriations Bill	Budget Info	Fiscal Year or Biennium	Staffing Info	Campaign Finance Jurisdiction	Other
Alabama	HB 309 (2021)	\$ 2,088,399	Fiscal	Ethics Commission: Full time director appointed by commissioners. Director may appoint part-time stenographers, commission counsel/attorneys who become the equivalent of a deputy/assistant AG, and chief investigator and up to 8 full-time investigators. Various other staff. Ala. Code § 36-25-3		Director and counsel are separate positions.
Arkansas	SB 44 (2021)	\$ 976,863	Fiscal	Ethics Commission: Director, Staff Attorneys, and others. Fair Political Practices Commission: Executive director, various officers, counsel, employees. Cal. Gov. Code § 83100	TRUE	Director and Staff Attorneys are separate positions. No General Counsel position title specified.
California	SB 154 (2022)	\$ 8,973,000	Fiscal	Office of State Ethics: executive director, general counsel, ethics enforcement officer, various other staff. Conn. Gen. Stat. § 1-80	TRUE	Director and counsel are separate positions.
Connecticut				State Public Integrity Commission: Commission Counsel. Various other staff. Del. Code Ann. tit. 29, § 5808		Director and counsel are separate positions.
Delaware				Commission on Ethics: Director oversees a variety of unspecified staff. No counsel position specified in statute. Fla. Stat. § 112.320		No director position found in statute. Commission Counsel is only listed staff. Commission Counsel position duties may be similar to director duties in other states. Potential example of director and counsel being the same position. Del. Code Ann. tit. 29, § 5808A
Florida				Ethics Commission: Executive Secretary, Deputy Executive Secretary/General Counsel, various other staff.	TRUE	Deputy Executive Secretary also serves as the General Counsel.
Georgia	HB 19 (2024)	\$ 2,982,449	Fiscal	Legislative Ethics Commission: executive director, who may employ various other staff. Ill. Rev. Stat. ch. 5, § 430/25-5		Budget amount for the Legislative Ethics Commission. Legislative Ethics Commission executive director and Legislative Inspector General are separate positions. Unsure if Legislative IG position parallels a typical commission general counsel.
Illinois	SB 2800 (2022)	\$ 200,000	Fiscal	Various staff. Ind. Code § 4-2-6-2		Inspector General provides commission with staff assistance. Suggests some shared responsibility for staffing the commission from elsewhere in the executive branch.
Indiana	HEA 1001 (2023)	\$ 1,572,201	Fiscal	Ethics and Campaign Disclosure Board: Executive Director/Legal Counsel; Executive Secretary, Assistant Legal Counsel		Executive Director also serves as Legal Counsel
Iowa	SF 2433 (2024)	\$ 773,554	Fiscal	Ethics Commission: Executive Director, staff Attorney, various other staff.	TRUE	Executive Director and Attorney are separate positions.
Kansas	HB 2007 (2021)	\$ 450,388	Fiscal		TRUE	

Louisiana				Board of Ethics: Deputy Ethics Administrator, Executive Secretary. No counsel position specified.	TRUE		
Maine				Campaign Finance Board: Executive Director, Assistant Executive Director, various other staff. No counsel position specified.	TRUE	Executive Director is listed as primary contact for legal information. May suggest some overlap in Executive Director position and legal duties.	
Minnesota				2021 budget: 6 positions. Miss. Code Ann. § 25-4-5. Ethics Commission: Executive Director. No specific mention of counsel.	TRUE		
Mississippi	SB 2920 (2021)	\$	614,890	Fiscal	Executive Director, General Counsel, various other staff.	TRUE	Director and counsel are separate positions.
Missouri	HB 5 (2021)	\$	1,572,529	Fiscal	Staff Attorney, various other staff. No Executive Director position specified.	TRUE	Director and counsel are separate positions.
Montana				Executive Director Deputy Director, General Counsel, various other staff.	TRUE	Director and counsel are separate positions.	
Nebraska				Executive Director, Deputy Director, General Counsel, Compliance Counsel, various other staff.	TRUE	Director and counsel are separate positions.	
New Mexico	HB 2 (2019)	\$	500,000	Fiscal	Executive Director, General Counsel, Compliance Counsel, various other staff.	TRUE	Director and counsel are separate positions.
North Dakota	HB 1024 (2021)	\$	623,984	Biennium	2 positions. N.D. Const. Art. 14, § 3		
Ohio	HB 110 (2021)	\$	2,120,515	Biennium	Executive Director, General Counsel, various other staff.		Director and counsel are separate positions.
Oklahoma	SB 1040 (2022)	\$	687,957	Fiscal	Executive Director, Deputy Director, General Counsel, Compliance Officers, various other staff.	TRUE	Director and counsel are separate positions.
Pennsylvania	SB 1100 (2022)	\$	3,197,000	Fiscal	Executive Director, Chief Counsel, various other staff.		Director and counsel are separate positions.
Rhode Island	HB 7123 (2022)	\$	2,035,145	Fiscal	12 positions, including Executive Director/Chief Prosecutor, Senior Staff Attorney, Legal Counsel, various other staff. R.I. Const. Art. 3 § 8		Director and Legal Counsel are separate positions, but Director has some legal responsibilities regarding investigation and enforcement.
South Carolina	HB 5150 (2022)	\$	2,322,050	Fiscal	Typically budgeted for 20+ positions, including Executive Director and General Counsel.	TRUE	Executive director and General Counsel are separate positions.
Tennessee				Executive Director, General Counsel, various other staff.	TRUE		
Texas	SB 1 (2022)	\$	3,175,558	Biennium	Each of Utah's ethics commissions generally includes an executive director and various other staff. Utah Code Ann. § 63A-14-202	TRUE	Director and counsel are separate positions.
Utah				Executive Ethics Board: Executive Director, various other staff. No counsel position specified. Legislative Ethics Board: Counsel, unsure about other staff.	TRUE	Executive Ethics Board staff is funded by Attorney General's Office.	
Washington					TRUE		
Wisconsin	AB 68 (2021)	\$	1,514,000	Fiscal		TRUE	



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OHIO LEGISLATIVE SERVICE COMMISSION

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R-135-4336

To: The Honorable William J. Seitz
Ohio House of Representatives

From: S. Ben Fogle, Attorney *SBF*

Date: August 23, 2024

Subject: Legal Counsel for Commissions

You sent LSC a series of questions regarding legal counsel for boards and commissions: Which ones have their own legal counsel? What are their budgets? Are there opportunities for shared legal counsel to reduce costs? What about Elections Commissions in other states? What are their budgets?

First, we will address the questions about legal counsel. Then, we will discuss other states' election commissions, and in the last section tackle your questions about budgets.

Legal counsel on boards and commissions in Ohio

In Ohio, the general rule is that the Attorney General's (AG's) office represents the state and all its departments, and that "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."¹ There are three exceptions to this rule:

- Public defenders appointed by the court;²
- Special counsel employed by the Speaker of the House, the President of the Senate, or the Governor to represent the House, Senate, or Governor in "any judicial proceeding that involves a challenge to the constitution or laws of this state and that is an important matter of statewide concern";³
- The full-time attorney that must be employed, and the investigatory and other attorneys that may be employed as needed, by the Ohio Elections Commission.⁴

¹ R.C. 109.02.

² R.C. 120.06.

³ R.C. 101.55 and 107.13.

⁴ R.C. 3517.152(H).

Because no other boards or commissions have their own legal counsel, there is no provision for the Ohio Elections Commission to share legal counsel with another board or commission. You also asked: “Are there shared legal services within the Department of Administrative Services or other agencies, boards or commissions?” and “Are there other Boards or Commissions who have an individual serve as both legal counsel and Executive Director?”

The answer to the former question is no, except to the extent that the AG’s blanket representation of the state and almost all its agencies is “shared legal services.” The answer to the latter question is also no, because there are no other boards or commissions that have their own legal counsel other than the Elections Commission.

Elections Commissions in other states and their budgets

Each state is different. Most do not have a separate Elections Commission like Ohio does, but rather delegate elections law duties to their general ethics commissions or to a patchwork of commissions, or have no ethics/elections commission at all. Regarding attorneys, some states are silent on the matter, some permit ethics commissions to appoint an attorney, and some require it.⁵ We have looked at a sampling of states that have ethics commissions that have election law duties. Included with these summaries are the budgets and staffing levels of each of these state entities with election law oversight responsibilities. As a point of comparison, Ohio’s Elections Commission spent \$700,000 in FY 2024 and is budgeted for \$642,000 in FY 2025.

Alabama

Alabama’s State Ethics Commission permits (but does not require) the Director, with the Attorney General’s approval, to appoint competent attorneys as legal counsel for the Commission.⁶ The Commission was funded at \$2,889,553 in FY 2024 and \$2,339,323 in FY 2025. The Commission consists of nine employees.

Georgia

The Georgia Government Transparency and Campaign Finance Commission requires a staff attorney of the Commission to investigate violations of Georgia’s election laws.⁷ Its budget was \$3,035,750 in FY 2024 and is \$3,156,312 for FY 2025. The Commission consists of five employees.

Iowa

Iowa is similar to Ohio in that the state has a separate authority for elections offenses: the Iowa Ethics and Campaign Disclosure Board. Like Ohio, they require the Board to appoint a chief legal counsel, as an exception to a general prohibition on agencies appointing their own

⁵ See the National Conference of State Legislatures’ page “[State Ethics Commissions](https://ncsl.org/ethics/state-ethics-commissions)” at ncsl.org/ethics/state-ethics-commissions.

⁶ AL Code § 36-25-3.

⁷ GA Code § 21-5-6.

legal counsel in Iowa.⁸ The Board's budget was \$866,342 in FY 2024 and is \$902,202 for FY 2025. The Board consists of seven employees.

Maine

The Maine Commission on Governmental Ethics and Election Practices must retain either a general counsel or a computer analyst as an employee of the Commission, based on the staffing needs of the executive director.⁹ The Commission's budget is \$1,095,867 over the FY 2024–FY 2025 biennium. It consists of five commissioners and one other employee.

Massachusetts

The Massachusetts State Ethics Commission also must employ a general counsel.¹⁰ The Commission's budget was \$3,485,031 in FY 2024 and is \$3,664,121 for FY 2025. Its headcount was the largest among the entities surveyed, consisting of 31 employees.

Missouri

The Missouri Ethics Commission must employ legal counsel “within the limits of its appropriation, as it deems necessary,” provided that the counsel “represents the Missouri ethics commission before any state agency or before the courts at the request of the Missouri ethics commission.”¹¹ The Commission's budget was \$1,777,786 in FY 2024 and is \$1,825,194 for FY 2025. The Commission, outside of Commission members, consists of 24 employees.

Minnesota

The Minnesota Campaign Finance and Disclosure Board does not have its own attorney. Rather, like other Minnesota boards, they receive legal counsel from the AG's office. However, they are exempt from being assessed the cost of legal services rendered by the AG's office. In Minnesota, the AG may “enter into agreements with executive branch agencies, political subdivisions, or quasi-state agencies to provide legal services for the benefit of the citizens of Minnesota” – in other words, a cost-sharing agreement with agencies. The AG, however, may not assess costs against the Board.¹² The Board's budget is \$10,700,000 for the FY 2024-FY 2025 biennium. However, this funding includes various lobbying fees that may be subsequently remitted or returned. The operating costs of the Board are roughly \$1.2 million each fiscal year. The Board consists of eight staff members.

⁸ IA Code 68B.32.

⁹ Me. Rev. Stat. Ann. tit. 1, § 1002.

¹⁰ Mass. Gen. Laws Ann. ch. 268B, § 2.

¹¹ Mo. Rev. Stat. § 105.955.

¹² Minn. Stat. §§ 10A.02, 15.0575, and § 8.15.

Nebraska

The Nebraska Accountability and Disclosure Commission may employ a general counsel as necessary to carry out its duties.¹³ The Commission's budget was \$653,612 in FY 2024 and is \$673,169 for FY 2025. It consists of eight employees.

Nevada

The Nevada Commission on Ethics has a Commission Counsel.¹⁴ The Commission's budget was \$1,169,041 in FY 2024 and is \$1,181,418 for FY 2025. There are seven employees.

South Carolina

South Carolina has an "Elections Commission," but this Commission has executive and administrative responsibilities, analogous to Ohio's Secretary of State. It seems ethics complaints regarding elections are handled by the South Carolina Ethics Commission. The Ethics Commission Law is silent on the Commission's ability to appoint counsel, but it seems that legal representation is delegated to the South Carolina AG's office.¹⁵ Because the Commission's wider duties resemble those of Ohio's Secretary of State, we have not listed budget figures for it as they would be unhelpful as a point of comparison to the Ohio Elections Commission.

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¹³ NE Revised Statute 49-14,121.

¹⁴ NRS 281A.260.

¹⁵ S.C. Code Ann. § 7-3-10; 8-13-310 to 320.