



Ohio Prosecuting Attorneys Association

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Senate Bill 4
Opponent Testimony
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Chair Roegner, Vice-Chair Gavarone, Ranking Member Blackshear and members of the Senate General Government Committee, thank you for the opportunity to provide opponent testimony on Senate Bill 4 that would create an election integrity unit with the office of the Secretary of State and most significantly for our Association strip county prosecutors of their authority to prosecute certain election fraud and voting fraud cases 12 months after a referral from this unit.

We agree with the bill sponsor that Ohio has a sterling reputation as an elections leader, that voter fraud is nevertheless real, and that no amount of voter fraud is acceptable. Voting and election fraud is an attack on our democracy that cannot be tolerated. It should be investigated and prosecuted whenever possible. But it should be investigated and prosecuted by local authorities. Local authorities are closer to the community where the crime occurred, local law enforcement is better equipped to investigate local crimes, and county prosecutors are more accountable to the voters of that community than the attorney general. We are opposed to Senate Bill 4 because it strips prosecutors of their authority based on an arbitrary twelve-month clock and then vests that authority in a state office.

The bill creates an artificial twelve-month deadline

The Secretary of State currently has a public integrity unit that makes referrals to county prosecutors regarding elections law violations. Our ability to prosecute any case is only as strong as the investigation that underlies it. Our experience with referrals from the Secretary of State has been that they often need additional and sometimes substantial additional investigation. When a prosecutor receives such a referral it is passed on to local law enforcement to conduct the investigation. It is only after this additional investigation that the prosecutor can make the decision whether to prosecute the case.

Senate Bill 4 strips prosecutors of their authority even when these referrals need additional investigation and are referred to another law enforcement agency for that purpose. These investigations can take many months given the difficulty of locating, contacting, and interviewing witnesses and tracking down suspects who often try to dodge law enforcement and who sometimes live out of state. In addition, there are other crimes that law enforcement has to attend to and prioritize. Under the bill, prosecutors would lose authority to prosecute these cases when, through no fault of their own, a referral from the Secretary of State is passed along for more investigation. Putting prosecutors on a twelve-month clock does not recognize this reality.

The twelve months is also arbitrarily applied to county prosecutors. Once the twelve months runs and the attorney general takes over there is no clock. The attorney general can take all the time that is needed (e.g. two, three, four years) to have BCI complete the investigation and then make an informed decision about whether to prosecute. County prosecutors are given no leeway.

We want investigations into crime to be thorough, to be accurate, and to be complete so that prosecutors have the fullest possible picture of the evidence before presenting a case to grand jury. In fact, our ethics require not only that we believe that charges are supported by probable cause but that we reasonably believe that there will be admissible evidence sufficient to support charges beyond a reasonable doubt. The reality is that many of the referrals from the Secretary of State do not have sufficient evidence. Senate Bill 4 is asking us to rush investigations and rush indictments in violation of our ethical obligations so that we can meet an artificial twelve-month deadline. No other type of crime receives this type of special statutory prioritization.

The bill promotes forum shopping

Senate Bill 4 permits the decisions of locally elected prosecutors to be questioned and even overturned by lawyers for the attorney general who were not elected to perform the functions of a prosecutor. This turns the attorney general into a reviewing body for prosecutor charging decisions. This promotes forum shopping.

Under Senate Bill 4 a county prosecutor cannot reasonably refer an allegation to local law enforcement for further investigation. Nor can we decide that something cannot or should not be prosecuted. The only option is to prosecute or to be stripped of our authority.

Sometimes prosecutors have to make the difficult decision not to prosecute even when they believe a crime has been committed. In some cases there simply isn't enough evidence to support the charges beyond a reasonable doubt. In others there is no justice in prosecuting an offense. Some of these elections law violations involve elderly individuals who mistakenly voted two times. Others involve individuals who misunderstood how a provisional ballot works. If a local prosecutor declines to pursue one of these cases, then the matter should end. Under Senate Bill 4 prosecutors are deprived of this authority. If a prosecutor decides that a case should not be prosecuted for whatever reason, the secretary of state can make the referral to the attorney general and hope for a different outcome. This is forum shopping and it undermines the integrity of our justice system.

The bill reduces accountability to the voters

Finally, Senate Bill 4 reduces accountability to the public. The authority to prosecute felony offenses in Ohio has always resided at the local level with the county prosecutor because the prosecutor is closer to the voters and more accountable to the community in which a crime occurs. Removing authority from the county prosecutor and placing it in the hands of a statewide official reduces accountability. It is much more difficult for the voters of a given county to hold a statewide official accountable than it is for them to hold their county prosecutor accountable.

Senate Bill 4 rests on the mistaken assumption that the attorney general will always take a tougher approach to elections fraud and voting fraud than our county prosecutors. But it is just as likely that a future attorney general could begin taking over these cases and dismissing them or agreeing to weak pleas when the elected prosecutor would be the one to pursue a felony conviction if given appropriate

time. When this happens and the voters of the county don't like that cases are being dismissed or disposed of with weak pleas, it will be much more difficult for them to hold the attorney general accountable.

Senate Bill 4 also rests on the assumption that some county prosecutors aren't taking elections law violations seriously. If that is the case, then those counties should elect a different prosecutor. The solution should not be to strip all 88 county prosecutors of their authority every time there is concern about how an individual prosecutor or handful of prosecutors are doing their job. That's why we have elections.

Conclusion and Recommendation

The core problem with Senate Bill 4 is that it allows the election integrity unit to refer incomplete investigations to the county prosecutor and then requires the prosecutor to prosecute within 12 months or lose their authority. There is simply no reason for the prosecutor to be involved before the investigation is complete. The unit should instead be required to refer allegations to local law enforcement first so that the investigation can be completed. Only then should the case go to the prosecutor for the prosecutor's review and consideration. The prosecutor should have the same options that they have in every other criminal case – prosecute, decline to prosecute, or seek a special prosecutor. Otherwise, this legislation is setting prosecutors up to fail and we encourage the committee's defeat of the bill.

I thank the committee again for its time and consideration. I would be happy to answer questions.

The ABA Standards for the Prosecution Function¹ include the following standards:

Standard 3-4.3 Minimum Requirements for Filing and Maintaining Criminal Charges

(a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.

(b) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt.

Standard 3-4.6 Quality and Scope of Evidence Before a Grand Jury

(a) A prosecutor should not seek an indictment unless the prosecutor reasonably believes the charges are supported by probable cause and that there will be admissible evidence sufficient to support the charges beyond reasonable doubt at trial. A prosecutor should advise a grand jury of the prosecutor's opinion that it should not indict if the prosecutor believes the evidence presented does not warrant an indictment.

¹ https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/