

April 27, 2023

# **FirstEnergy & Ohio House Bill 6:** The Worst Corruption Scandal in Ohio History\*

*\*Also referred to as the Worst Energy Bill of the 21st Century*

Miranda Leppla  
Case Western Reserve University School of Law  
Stanley & Hope Adelstein Director,  
Environmental Law Clinic



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

# Setting the Stage: Monopoly Power & Investor-Owned Utilities

- “Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good...” -US Supreme Court, *Munn v. Illinois*, 94 U.S. 113, 126 (1877)
- 75% of the US population is served by an investor-owned utility, or IOU
  - Private companies, subject to state regulation and financed by a combination of shareholder equity and bondholder debt.
  - In Ohio, we are “restructured” or “deregulated”, so our IOUs are just “poles and wires” distribution utilities—however, in Ohio we allowed them to have subsidiaries who still own generation assets.



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

# The Nuclear & Coal Bailout Saga in Ohio

- Since 2014, four failed nuclear and coal bailout schemes.
  - Public Utilities Commission of Ohio & Ohio legislature
- April 2018: Two nuclear plants owned by FirstEnergy, filed for bankruptcy and threatened to cease operations if not bailed out.
  - Federal & State efforts by FirstEnergy & subsidiaries
  - Rep. Larry Householder was co-sponsor of one of the stalled attempts in 2018 to bailout FE's nuclear plants
- 2018 Election Cycle: Lots \$\$ spent to elect favorable politicians
  - Larry Householder was elected & became Speaker of the House
  - Lots of utility \$ in Governor's race



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

# HB6: The “Ohio Clean Air Program”

## As introduced...

- FirstEnergy “goodies”
  - Bailout for two nuclear plants, at a cost of \$900 million over six years (\$150 million per year)
  - Decoupling: Ratemaking mechanism resulting in a windfall for FirstEnergy – guaranteed revenue based on a specific, and unusually lucrative, year (2018)
- Gutted Ohio’s clean energy standards
  - Elimination of a successful energy efficiency program, costing ratepayers ~\$312 million per year in foregone savings
  - Reduced renewable portfolio standard (RPS) to 8.5%, and ends it in 2026

## Amended to include:

- Bailout for two coal plants—one of which is in Indiana— costing ratepayers up to \$450 million over 10 years (\$45 million per year)
  - Co-owners benefiting included AEP Ohio, AES Ohio (formerly DP&L), and Duke Energy Ohio, all the other electric distribution utilities in Ohio.



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

**Timeline:**

- Introduced April 12, 2019
- Passed July 23, 2019
- Signed by Gov. DeWine same day
- HB6 Referendum Effort ➡

Ohioans Against Corporate Bailouts worked to put HB6 on the ballot for referendum

- August to October 22nd to gather signatures
- Supporters spent <\$16.5 million on ads to get the bill passed and oppose the referendum.
- Opponents of the bill spent more than \$4 million.

**With millions at stake, fight over Ohio energy bill takes ugly turn**

PAID FOR BY OHIOANS FOR ENERGY SECURITY

**WHO'S KNOCKING ON YOUR DOOR?**

FOREIGN ENTITIES HAVE INFILTRATED OUR ENERGY

They want to kill our jobs and raise our rates so they can make more money. Now, their front group has out-of-staters to roam our neighborhoods and steal your personal information for their petition.

**TELL THEM NO! DECLINE TO SIGN!**

1094811BACIN T1865 P1 658717  
OR CURRENT RESIDENT  
DAYTON OH 45402-6372

LOCAL NEWS  
By Laura A. Bischoff

**WARNING! DON'T GIVE YOUR PERSONAL INFORMATION TO THE CHINESE GOVERNMENT.**

**DON'T SIGN THEIR PETITION ATTACKING HOUSE BILL 6!**

- House Bill 6 protects over 4,000 good-paying energy jobs and saves the state tens of millions of dollars that nuclear plants pay in state and local taxes.
- Ohio's nuclear power plants are carbon-free and create no air pollution. House Bill 6 saves those power plants, helping to preserve our environment.
- House Bill 6 helps Ohio become energy independent by implementing an "all of the above" energy strategy with a combination of natural gas, coal, nuclear, solar and wind power for its energy needs.

**DECLINE TO SIGN! SAVE OUR JOBS!**

**IF YOU SEE A CIRCULATOR, REPORT THEM TO OUR HOTLINE:**

CALL: 888-308-2606 | TEXT: 614-591-4141  
VISIT: OHIOANSFORENERGYSECURITY.COM



# Equity Impacts of House Bill 6

- Bill savings: Energy efficiency standards were cost effective
  - In 2017, every \$1 spent on EE programs created \$2.65 in benefits for Ohio residents and businesses.<sup>1</sup>
  - Total bill savings from 2009 to 2017 as a result of Ohio's EERS: \$5.1 billion<sup>2</sup>
- Carbon Reductions → Cleaner Air, Healthier Ohioans
  - RPS/EERS would have reduced annual carbon pollution by ~10 million tons from 2017 - 2029 = emissions of 1 mil homes
  - Forgoes projected health benefits: prevention of over 44,000 asthma attacks, 2,400 asthma-related emergency room visits, 4,400 heart attacks and over 2,800 premature deaths attributable to coal-plant pollution
    - All of which hit environmental justice communities harder.

John Oliver on FirstEnergy & HB6  
(*very* worth watching) →



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

# HB6 Referendum Effort

Despite being enormously unpopular, the ballot measure still wasn't able to succeed, and HB6 never made it to the ballot for Ohioans to vote on.

## New Poll Shows Majority of Ohio Voters Oppose HB 6

### *9 in 10 Ohio Voters Call on FirstEnergy to Open Their Books for Financial Review*

COLUMBUS, June 18, 2019—API Ohio today released a new [public poll](#) of registered Ohio voters showing widespread, bipartisan opposition to House Bill 6 (HB 6), a bill that would charge all Ohio ratepayers a fee on their monthly bill to bail out two [already profitable](#) nuclear power plants.

"The taxpayers of Ohio should not be paying their hard-earned money to bail out two profitable nuclear plants. This poll solidifies that Ohioans reject this bailout and expect FirstEnergy to be transparent and open their financial books instead of having this bill rushed through the legislative process," said Chris Zeigler, executive director of API Ohio. "Ohio lawmakers should not be playing politics with electricity bills at the expense of Ohio families."

Key takeaways from the poll include:

- **88 percent** of respondents believe that FirstEnergy Solutions should be subject to review of their financial records by the state legislature before another vote on the bill, with 75 percent of respondents in strong agreement.
- **82 percent** of respondents believe the bill, that would add a surcharge to utility bills of all ratepayers in Ohio, would hurt senior citizens and families living on fixed incomes.
- **82 percent** of respondents oppose allowing money from the fund going to help bail out a plant in Indiana, with 63 percent of voters strongly opposed.
- **70 percent of voters oppose the bill**, and the opposition is overwhelmingly bipartisan (73 percent of Republicans, 67 percent of Democrats, and 73 percent of Independents oppose).
- **62 percent** of respondents believe new utility costs could hurt manufacturers across the state, also impacting jobs.

<https://www.api.org/news-policy-and-issues/news/2019/06/18/new-poll-shows-majority-of-ohio-voters-oppose-hb-6>

## HB 6 then took effect October 22, 2019



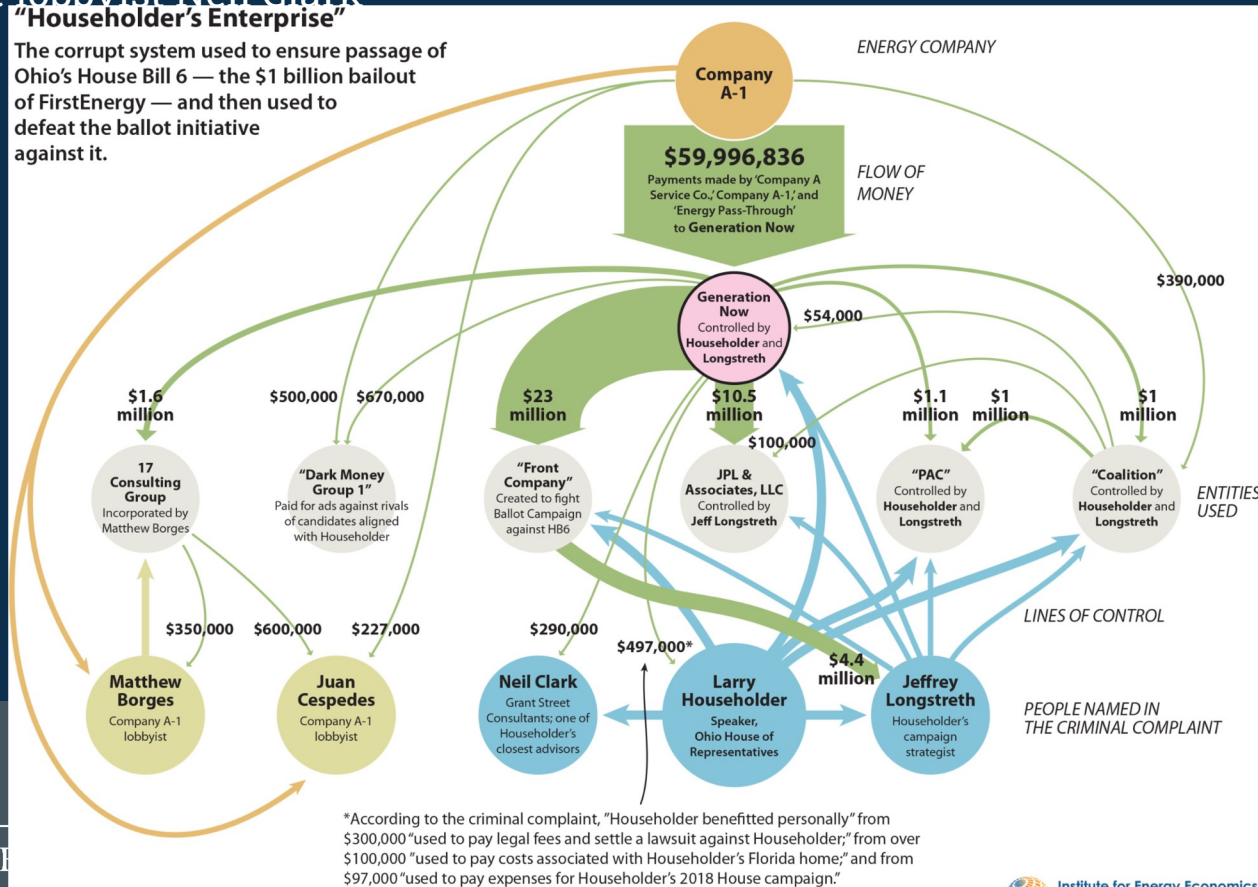
SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

# But, it was too good to be true...

- July 21, 2020: Arrests made, charges on conspiracy & racketeering
  - (Now) former Speaker of the House Larry Householder
  - Former Ohio Republican Party Chairman Matthew Borges: <https://borgesldf.com/>
  - Juan Cespedes, co-founder of The Oxley Group, a Columbus-based consulting firm
  - Householder adviser Jeffrey Longstreth
  - Longtime Statehouse lobbyist Neil Clark

## Householder's Enterprise: *From FBI criminal complaint filed July 17, 2020*



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY



# HB 6 Fall Out:

- Feb 2021: Generation Now 501(c)(4) pleaded guilty
- July 2021: Deferred prosecution agreement signed by  
—FirstEnergy - \$230M fine from DOJ & requirements to “do better”
  - Admitted it paid \$4.3M to Sam Randazzo’s company shortly before he was named Chair of PUCO, which regulates electric utilities.
- Feb 2022: Shareholder derivative suits settled - \$180M
- January 2023: Householder/Borges trial begins
  - March 9, 2023: Verdict handed down - guilty on all charges
- Ongoing: Four PUCO cases stayed since August 2022 due to ongoing criminal investigations
- Rumors related to additional indictments, possibly former Chair, FirstEnergy employees?



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

## Possibly more indictments?



July 23, 2019: FE Exec photoshops PUCO Chair Sam Randazzo's face onto Mt. Rushmore alongside Chuck Jones, CEO, and two other FE executives, and texts it to the group with a note.

About a week later, on July 23, 2019, House Bill 6 passed the legislature with the decoupling provision advocated by FirstEnergy Corp. That day, Executive 1 sent to Public Official B a photo-shopped image of Mount Rushmore with the face of Public Official B, alongside Executive 2, Ohio Director of State Affairs, and Company C Executive, imposed over the four presidential faces with the caption, "*HB 6 FUCK ANYBODY WHO AINT US.*" Public Official B commented that his picture was smaller than the others and then responded, "*funny.*"

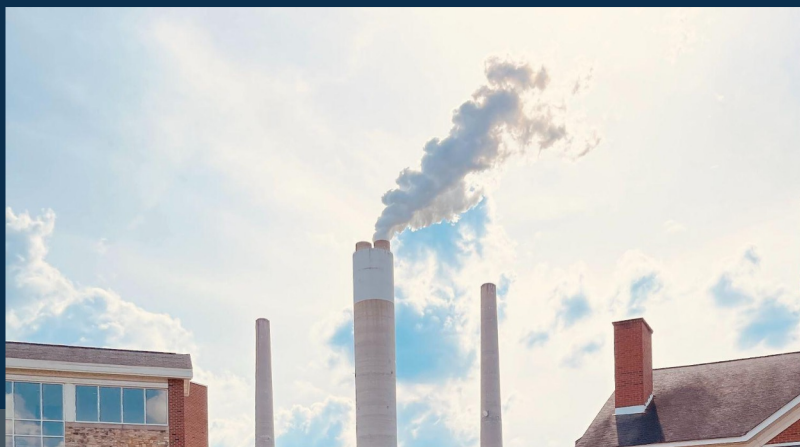


SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

## Where does Ohio energy policy stand now?

- FirstEnergy “goodies” (March 2021)
  - HB 128 (2020) repealed the FirstEnergy nuclear bailouts and decoupling provisions.
- Coal bailouts: Still in effect, benefitting AEP Ohio, AES Ohio, Duke Ohio and now also FirstEnergy – costing Ohioans millions of dollars per year



- Ohio Clean Energy Standards: Still repealed
  - Energy efficiency: Legislation to revive efficiency, or energy waste reduction, programs:
    - House Bill 79
  - Renewable Portfolio Standards: Only conversations about RPS were included in Energy Jobs & Justice Act, HB 429 ([www.energyjobsandjustice.org](http://www.energyjobsandjustice.org)) from 134th GA



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

# What's next for Ohio?

- Cut energy efficiency while simultaneously bailing out 1950s era coal plants.
- Bailed out nuclear generation that didn't need it.
- Ongoing treatment of fossil and legacy generation very differently than renewable energy  
(*See e.g., SB 52 versus HB 201 (2021), 134th GA*)
- Recent PJM reports highlighting concerns about legacy generation retiring without adequate renewable energy coming online to replace it.

Truly open up the marketplace to competition? Pricing is dropping rapidly thanks to new technologies coming online.

Reregulate? IOUs are already talking about this publicly, AEP Ohio seeking to sell its competitive business in PJM.



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

Thank you!

[miranda.leppla@case.edu](mailto:miranda.leppla@case.edu)



SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY