



December 2, 2021

The Honorable Dave Yost
Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, OH 43215
jacqueline.king@ohioattorneygeneral.gov

Re: Request for Opinion Regarding R.C. § 3501.054 Implementation

VIA EXPRESS MAIL AND E-MAIL

Dear Attorney General Yost:

We write on behalf of All Voting is Local, Ohio Voice, and Common Cause Ohio to urge you to issue an opinion with guidance for County Boards of Elections on what election-related activity is permitted or restricted under Revised Code § 3501.054, as requested by multiple county prosecutors.

The passage of R.C. § 3501.054 with the 2021 state budget is causing significant confusion among local election officials concerning what election activities are permissible under this new law. At its most broad, the law could be read to ban countless state and local voter education and outreach efforts reliant on election officials' and outside groups' coordination. Secretary of State LaRose has recognized that these activities are "crucial for the Secretary of State"¹ and has noted that they include "great initiatives" that further important responsibilities to "mak[e] sure that Ohioans can access the opportunity to get registered and to cast a ballot" and that prohibiting them would interfere with Ohioans

¹ Lunching with the League with Ohio Secretary of State Frank LaRose, at mins. 39-40 (Nov. 8, 2021) ("It is crucial for the Secretary of State, any Secretary of State . . . to be able to work with community groups, ideological groups, non-ideological groups, really any Ohioans they can to help get people registered to vote, to help encourage voter participation, to do poll worker recruitment. And that is something I have done very aggressively."), <https://www.youtube.com/watch?v=RptJx8jQm-k>.

fundamental right to vote.² Cooperation between election officials and civic engagement groups is essential to ensure that voters are receiving accurate and up-to-date information about when and how they can access the ballot.

This letter describes the state of confusion caused by the enactment of R.C. § 3501.054 and details the steps you can take, based upon your duty and legal authority as Ohio’s Attorney General, to protect important voter education and outreach efforts achieved through coordination between local election officials and nonprofit organizations, advocates, and other community partners.

I. Confusion Under R.C. § 3501.054

Historically, nongovernmental civic engagement organizations and voter rights advocates have worked with local and state election officials to help eligible Ohio residents register, volunteer as poll workers, and vote. Advocates and civic organizations have supported the work of county boards of elections offices through voter registration drives, voter education events, poll worker recruitment, fundraising, advertising, and circulation of job postings. The continued ability of organizations and advocates to work alongside local election officials in counties across the state is necessary to ensure successful and functioning democratic processes in Ohio.

Despite these successful partnerships throughout the state, on June 30, 2021, the Ohio legislature passed and Governor DeWine signed Ohio’s Fiscal Year 2022-2023 budget bill, H.B. 110, into law, inclusive of the following provision:

No public official that is responsible for administering or conducting an election in this state shall collaborate with, or accept or expend any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose, other than the following [three limited exceptions].³

Most of the terms in this provision—and specifically the term “collaborate”—are undefined, and the law could be broadly interpreted to prohibit election officials from working with outside individuals or groups under any circumstances. However, public comments by the Secretary of State’s office and other state legislators have indicated it was not the legislature’s intent to ban such programming.⁴

² Tyler Buchanan, *Some Voter Education Programs May Be in Jeopardy Due to New Ohio Law*, OHIO CAPITAL JOURNAL (July 16, 2021), <https://ohiocapitaljournal.com/2021/07/16/some-voter-education-programs-may-be-in-jeopardy-due-to-new-ohio-law/>.

³ Ohio Rev. Code § 3501.054(B).

⁴ See, e.g., Tyler Buchanan, *Ohio Lawmaker Seeks to Protect Voter Education Programs with New Bill*, OHIO CAPITAL JOURNAL (Aug. 2, 2021) (reporting on a statement from your office stating “surely it was not [the General Assembly’s] intent to criminalize the typical kinds of voter registration and get-out-the-vote activities that Secretaries of State of both parties have historically done over the years”),

Since R.C. § 3501.054 went into effect on September 30, 2021, there has been significant uncertainty and variation among local officials’ understanding as to what programs they can continue to run. Some local officials have already suggested that the law could go so far as to prohibit putting up a poster in a nongovernmental building or to prevent a local Board of Elections from issuing a press release to a local newspaper. The Executive Director of the Ohio Association of Election Officials has commented that R.C. § 3501.054 is “clear as mud” and that “confusion is rampant across the board right now.”⁵

It is unclear how the law will be interpreted and enforced across the state. What is clear, however, is that the law’s ambiguity has created confusion for local election officials who are attempting to lawfully plan for and implement election related activities that are critical to successful and inclusive democratic processes in Ohio. Without clear instruction from your office, county Boards of Elections—and county prosecutors—are left without any guidance as to how R.C. § 3501.054 limits their ability to work with non-governmental civic engagement groups and community partners to effectively reach voters.

II. The Attorney General Has the Authority to Issue a Clarifying Opinion

We are heartened by Secretary LaRose’s statements that he does not interpret R.C. § 3501.054 to prohibit the voter registration and other civic engagement initiatives his office has run in partnership with nongovernmental groups and organizations. We hope that Secretary LaRose has consulted with your office and that you similarly interpret the law, and additionally understand it to permit local elections offices to similarly continue working with civic engagement and voting rights advocates to conduct analogous programming. To date, however, you have not issued an opinion to that effect and confusion and concern persist.

As the state’s “chief law officer”⁶ you are tasked with advising county prosecuting attorneys when they submit a request for opinion.⁷ On October 7, 2021 Seneca County Prosecuting Attorney Derek W. DeVine submitted a request for opinion to your office seeking guidance regarding R.C. § 3501.054 and identifying eleven specific questions concerning its implementation.⁸ On the same day, Greene County Prosecuting Attorney

<https://ohiocapitaljournal.com/2021/08/02/ohio-lawmaker-seeks-to-protect-voter-education-programs-with-new-bill/>; Matt Vasilogambros, *Republicans Threaten Voter Registration Volunteers with Crimes*, PEW: STATELINE (Aug. 11, 2021) (“[S]tate Sen. Theresa Gavarone said in an emailed statement that she does not know a single member of the General Assembly who wishes to block routine voter outreach by any third-party organizations.”), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/08/11/republicans-threaten-voter-registration-volunteers-with-crimes>.

⁵ Vasilogambros, *supra* n.4.

⁶ Ohio Rev. Code § 109.02.

⁷ Ohio Rev. Code § 109.14; *Request a New Formal Opinion*, Ohio Attorney General, <https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Opinions/Request-a-New-Formal-Opinion>.

⁸ Letter from Derek W. DeVine, Seneca County Prosecuting Attorney, to Dave Yost, Ohio Attorney General (Oct. 7, 2021),

David D. Hayes similarly submitted a request for opinion to your office delineating three specific questions about R.C. § 3501.054's application to political parties.⁹

Such an opinion has been requested and is needed now. Public statements by government officials regarding how R.C. § 3501.054 relates to programming run out of Secretary of State's office offer no parallel assessment for county elections offices. Further, those statements are not legal opinions on which local election officials can confidently rely. It is apparent that many local officials remain unsure of what programming they may continue to run, and with whom they may coordinate. This uncertainty means different elections offices are reaching different conclusions about their ability to engage with civic organizations, voting rights advocates, and other community partners. As a result, while Ohioans in some parts of the state may have access to critical voter registration and engagement programming, many others will not. The ongoing confusion among local election officials, the uneven interpretation of this new law by county prosecuting attorneys, and the lack of clarity in the law itself warrants an unambiguous opinion from your office.

* * *

We believe that R.C. § 3501.054 under any interpretation represents poor public policy and should be amended to remove the limitations on coordination or repealed entirely. However, the ambiguity surrounding the law worsens its effects as different county election officials adopt varied and inconsistent interpretations. We urge you to act swiftly in issuing this opinion so that election officials throughout the state can plan for and successfully implement programming and initiatives along with their nongovernmental counterparts to effectively assist Ohioans in accessing their fundamental right to vote. We ask that you please respond to this letter no later than December 20, 2021 and look forward to working with you to fashion a resolution to this issue.

Respectfully submitted,

/s/ Danielle Lang

Danielle Lang

Alice Huling

Jonathan Diaz

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<https://www.ohioattorneygeneral.gov/Files/Legal/Opinions/Opinions-Requested/Seneca-10-21-21.aspx>.

⁹ Letter from David D. Hayes, Greene County Prosecuting Attorney, to Dave Yost, Ohio Attorney General (Oct. 7, 2021) (Attachment A).

ATTACHMENT A

61 Greene Street
Second Floor, Suite 200
Xenia, Ohio 45385



Voice: 937/562-5250
Fax: 937/562-5107

DAVID D. HAYES
Prosecuting Attorney
Greene County

Suzanne M. Schmidt
First Assistant Prosecutor

October 7, 2021

Andrew J. Hunt
Chief Trial Counsel

Ohio Attorney General Dave Yost
Via email only

Stephen K. Haller
Civil Division Chief

RE: Request for Opinion regarding O.R.C. §3501.054

Christopher A. Murray
Support Enforcement Chief

Greetings:

Nicole C. Burke
Juvenile Division Chief

Ohio Revised Code Section 3501.054 became effective on September 30, 2021. The statute reads in its entirety as follows:

Assistant Prosecutors

Section 3501.054 | Public officials and election-related activities.

Cheri L. Stout
Anu Sharma
Bethany Walker
Charles W. Morrison
Steven C. Jez
Marcy A. Vonderwell
Michele S. H. Henne
Katrina G. Merkle

(A) As used in this section, "public official" means any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

Fred E. Meadows
Criminal Investigator

(B) No public official that is responsible for administering or conducting an election in this state shall collaborate with, or accept or expend any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose, other than the following:

Teri L. LaJeunesse
Victim/Witness Director

- (1) The collection of any fee that is authorized by law;
- (2) The use of any building to conduct an election, including as a polling place;
- (3) The donation of food for precinct election officials at a polling place on election day.

Victim/Witness Advocates

Riki L. Karolyi
Amanda M. Opicka
Candice K. Purdin
Rebecca L. Walsh
Michelle L. White

(C) This section does not apply to any money to be deposited in the address confidentiality program fund established under section 111.48 of the Revised Code or the women's suffrage centennial commission fund established under Section 1 of S.B. 30 of the 132nd general assembly, as amended.

Civil/Juvenile Division
Voice: 937/562-5669
Fax: 937/562-5258

Child Support Enforcement Division
Voice: 937-562-6380
Fax: 937-562-6385

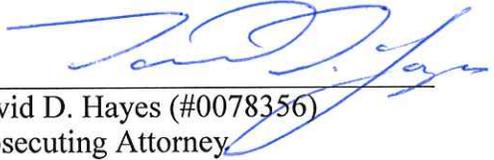
Victim/Witness Division
Voice: 937/562-5087
Fax: 937/562-5647

At the request of my client, the Greene County Board of Elections, I am requesting an opinion on the following questions:

1. Is a county political party central committee a “non-governmental person or entity” for purposes of R.C. §3501.054?
2. Does R.C. §3501.054 preclude a member of the Board of Elections from serving in a leadership role in a county political party central committee?
3. Does R.C. §3501.054 preclude a member of the Board of Elections from serving as a member of a county political party central committee?

I would respectfully request an opinion as early as is practicable as this statute could potentially have wide ranging effects across the State of Ohio.

Sincerely,


David D. Hayes (#0078356)
Prosecuting Attorney

cc: Alisha Beeler, Director of Elections, Greene County Board of Elections