

WRITTEN TESTIMONY OF KELLEY A. GORRY, ESQ.

Chairman Terhar, Vice-Chair Roegner, Ranking Member Williams and Members of the Senate Ways & Means Committee, my name is Kelley A. Gorry of Rich & Gillis Law Group, LLC. I am a real property tax attorney and represented Logan County in the Supreme Court case of *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision* and have litigated hundreds of ad valorem real property tax cases involving federally subsidized housing all throughout the State of Ohio on behalf of Counties and Boards of Education.

Today I speak as a proponent of Senate Bill 36. The purpose of this legislation is to resolve current conflicting case law regarding the valuation of federal subsidized housing and codify the equitable and constitutional valuation of subsidized housing that occurred in our State until 2009. This legislation would also codify the Supreme Court's recent decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* ("*Network Restorations III*") and reverse the inconsistent decisions that subsequently followed in *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision* and *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* ("*Network Restorations I*"). In *Notestine Manor*, the Supreme Court invited the legislature to intervene regarding the valuation of subsidized housing and this legislation responds to the invitation.

Please understand that I recognize the substantial, significant and continual need for low-income housing and do not believe this legislation will hamper the availability of subsidized housing in our State. As noted above, this legislation reinstates the historical valuation methodology that existed prior to 2009. Many subsidized housing properties were built prior to 2009 and will continue to be built if this legislation is passed. While specific economics and business models of low-income housing construction and management may change, the industry will adjust (just as it adjusts to the availability of various types of specific federal funding available to construct these properties) and the competitive industry for subsidized housing will continue to flourish. Low-income housing will be constructed and managed more efficiently, ensuring the continued beneficial use of the public federal funding dedicated to this purpose.

This legislation ensures fair and equitable valuation of subsidized housing. It eliminates the unconstitutional non-uniform valuation that is currently occurring based solely upon the specific type of federal subsidy the property receives. Subsidized housing built under any federal program will now be valued the same and no particular project or owner will receive a disproportional tax benefit not shared by other owners of subsidized housing or non-subsidized housing. Each and every owner of housing in this State will have their property valued at consistent and fair values. Uniform valuation will occur based upon traditional market characteristics including the location, age and condition of the property, and property amenities. Those traditional market forces that are crucial in determining the value of all housing properties in the State will now apply equally to subsidized housing regardless of the specific type of federal subsidy it receives or the manner in which federal regulations require rents to be determined at a specific property. Since we value only land and improvements in Ohio, and not the tenant or user who occupies or operates the property or the specific business they conduct thereon, this legislation ensures that only the "bricks and sticks" and the land that sit upon are valued regardless of the artificial diminution or inflation of value that occurs when valuing based upon the specific type of federal subsidy the property receives.

This legislation will not create an excessive valuation for subsidized housing. A critical and key component of the legislation is that it continues to affirm the historical rejection of valuation based upon the affirmative value created by the subsidy. As the Supreme Court has recognized since the 1980's, the cost approach to value will not be used to determine the value of subsidized housing and values will not be based upon the actual construction costs since these costs are not supported by the market and a typically motivated prudent real estate developer would not build the property absent the subsidy. This "affirmative benefit" will continue to be irrelevant in the valuation of subsidized housing under this legislation. Instead, and as the Supreme Court explained in *Network Restorations III*, because subsidized housing operates "atypically" in the marketplace, both the benefit and the burden of the subsidies must be adjusted out of the valuation. Current valuation based solely upon the burden of the subsidies without any consideration of the corresponding benefit is not only unconstitutional but also grossly inequitable.

The legislation will eliminate the massive tax losses to taxing entities in our State that arise when the original valuations of subsidized housing properties are reduced to next to nothing in valuation appeals. These reductions are dollar-for-dollar losses to the public taxing entities who provide critical public services in our communities such as education, police, fire and emergency services. The legislation will also eliminate the shift in the tax burden that occurs when a subsidized housing property's valuation is greatly reduced and the remaining owners of property within the taxing district must make up the loss of value and taxes each year in the future. It ensures that your local business owners are not funding subsidized housing and paying a disproportionate share of real estate taxes. The legislation does not seek that owners of subsidized housing pay more than their fair share – just their fair share and the same that their neighbors pay to enjoy the same public services that we all share.

Thank you for your anticipated consideration of this testimony and I am available to answer any questions you may have.

Respectfully,

*Kelley A. Gorry*