

Co-Chair Roemer, Co-Chair Blessing, and members of the Joint Committee on Property Tax Review and Reform, my name is Kieran Jennings. I am the Managing Partner at Siegel Jennings, a law firm specializing in property tax law.

Good Tax Policy requires four things: predictability, fairness, it needs to properly and consistently fund government needs, and it needs to be clear to the public.

Predictability and ensuring proper funding are comingled because without one the other cannot exist. Currently, Ohio's system is not as bad as some might think. Because our firm works in all 50 states and Canada, I have the opportunity to see how many state property tax systems work. Although there is always room for improvement, we need to be cautious not to throw out the good with the bad.

What works well in Ohio. Predictability, our triennial system is likely the best in the country. Some states have instituted reappraisals every year. That does not work because of the wasted money on annual revaluations, but also because there is not time to do a good job. Two years seems too short of a period as Ohio does not normally have wildly fluctuating markets. Three is the right amount of time. What else works well in Ohio is that the schools provide oversight. Oversight at the board level and in bringing under-assessed properties forward to the board of revision with certain boundaries.

HB126 is helping to create better predictability. Taxpayers are no longer at the whim of taxing authorities that are not part of the valuation process. There has also been fallout from HB126, creating certain issues for commercial taxpayers, county auditors, and school boards. These issues are working their way through the court system and the legislature and will not be resolved for likely another one to two years. As I'll discuss in more detail below. Uniformity would have helped to resolve many of these issues. It would help all parties involved in the property tax system from continually needing to address changes to the framework that they operate under.

Additionally, some issues regarding predictability still need to be resolved. We need to help the Board of Tax Appeals become more efficient. It sometimes takes several years from a hearing until a decision is written. Our firm has cases that have been waiting over 2 years for a decision. Some of the problems likely involve inadequate funding, and therefore inadequate staffing, of the Board of Tax Appeals. Another solution could be to prescribe a standardized form for written decisions that simply highlight the findings of fact, the conclusions of law, and a final finding of the value for the years in question. Additionally, we should look at the hearing examiners as the ones that establish that decision. They are the ones who have seen the demeanor of the witnesses. If parties desire to appeal further, a written decision would be made by the board members.

The flow of funds to schools and other tax recipients is fairly predictable. HB 920 does a good job of leveling the highs and lows of assessments and taxes. However, that could be improved by tweaking how and when tax rates are established. In many states, assessments, informal reviews, and the great majority of all appeals are final before tax bills are established. This would help to lessen the impact of appeals and in many cases

would render the tax districts unharmed. However, for taxing authorities to be predictably funded, the system must not be duly burdened with appeals that take longer than appropriate to resolve.

Proper funding and timely decisions bring us to fairness, which is protected in the Constitutions of the United States and the state of Ohio. Ohio lacks this fairness. Property tax is the only tax that is fully within the government's control. As a result, it is unfair that the burden of proof should always be on the taxpayer. It was the government that first established the assessment. It is the government that serves as judge and jury. No other tax works this way. In fact, in every other instance, sales receipts, net income, adjusted income, or any other self-reporting method has been used. Only in real property tax does the government hold all the cards. This is a burden that is significantly high.

Two things should be adopted in Ohio. The first is shifting the burden to the government upon submission of probative evidence by a taxpayer. At that point, the government, in this case, the auditor, must prove that it is correct and has uniformly assessed the property. The weight of the evidence should be that the taxpayer only needs to prove that the evidence favors the taxpayer by 51%. Again, this is a tax that is imposed and not self-reported.

The second and most important part is based in the Constitutional mandate of uniformity. Non-uniform taxation and the dismissal of those claims happen so often that the boards of revision are not even remotely phased by it. Every year boards hear from residential taxpayers that their neighbor's taxes are less for the same home. Time and again they are told that is not a good argument, and that this board can only decide on the fair market value. Our taxpayers know just like children know when something is not fair. "His piece is bigger than mine." The mother looks down. She had tried to cut them the same but clearly the one child was correct his piece was smaller. It was not fair and it was not intentional. But in Ohio our system is intentional and we have deemed certain taxpayers are not afforded uniformity. Specifically those who are assessed at market value, but all the other property around them is undervalued. What recourse do they have?

Uniformity is not a quaint word. It is the basis surrounding our core principles. It is simply that we share an equal portion of the tax load. The assessing community in our state and others generally tries to provide equal and uniform taxation. The first part is finding for a common measure of value. In Ohio, we have done that by defining our assessment as the fair market value of the fee simple interest as if it were unencumbered. However, the most important part is that we need a process that ensures that even with our best efforts, similarly situated taxpayers are treated and taxed similarly.

- The United States Supreme Court in *Cumberland Coal v. Greene County, Pennsylvania*
 - *"This Court holds that HN3[] the [***11] right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. (the requirement*

of the statute was to find of fair market value) The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

- *The decision rested on the uniformity requirement in the Pennsylvania Constitution and the 14th Amendment to the United States Constitution. This is directly on point with how Ohio's system would / should work*

It is important to point out that at the time of the United States Supreme Court decision, Greene County followed a triennial system, based on finding fair market value. The system was not significantly different from Ohio's current statutes. Right now, our system is not consistent with the United States Constitution. The tool that would ensure constitutional uniformity has already been drafted and is attached to this testimony. It is patterned after a Texas statute that has been in place for a number of years that ensures equal and uniform treatment of taxpayers.

This body has been trying to make the system fair with a variety of tools. But the ultimate tool is simple, and would solve all problems with a statute that incorporates the tenets of the 14th amendment of the United States Constitution and the Uniformity Clause within the Ohio Constitution. Try to think about any situation that the prior bills were meant to solve that would not be solved by equal and uniform. Chasing sales, blind increase cases, the ongoing litigation of appeals. All of them are resolved by merely finding equal and uniform values. And there would be little time necessary for the decisions. It is mere math. The only places where reasonable minds may differ are the choices and adjustments of comparable sales and when a taxpayer seeking a value below the median, seeks to have a new fair market value established. This simple change solves all the major problems from the time it takes for a decision, to the endless appeals, and most importantly, fundamental fairness.

Clarity is the final concern, and it is not a very substantial lift. We currently assess at a rate of 35% of the fair market value of the fee, simple as if unencumbered interest. All of our tax rates are based on that premise. However, taxing on that basis leads to confusion. A simple first step toward additional clarity would be to assess at 100% of fair market value and adjust the rates accordingly.

Thank you for the opportunity to provide testimony and I'll be happy to answer any questions.