

Bruce Johnson
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Judiciary Subcommittee on the Constitution
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Good Morning. My name is Bruce Johnson and I serve as Lt. Governor and State Development Director of Ohio. I am here today to talk specifically about economic development incentives, how they help grow Ohio's economy and the chilling effect a recent court case has on business.

I am blessed to be the Development Director. Ohio's access to the North American market, our skilled and dedicated workforce, and our history of innovation provide great selling points as we seek to attract new business to our state.

However, the uncertainty created by a recent federal court decision has made my job more difficult. In September, the U.S. Court of Appeals for the Sixth Circuit struck down one of Ohio's most popular incentive programs, the Ohio Manufacturing Machinery and Equipment Tax credit. The M&E tax credit, as we call it, encourages companies to invest in new machinery and equipment by offering them a break on their corporate franchise tax bill.

The case came about after a group of taxpayers opposed our involvement in a 1998 expansion of DaimlerChrysler's Jeep facility in Toledo. In order to protect more than 4,000 jobs, we offered this \$1.2 billion expansion project an incentive package that included up to \$96 million in M&E tax credits. In September 2004, in what has become known as the *Cuno* case, the Sixth Circuit Court found the M&E tax credit portion of our incentive package unconstitutional.

We live in an increasingly global market place, where a company's very survival depends on its ability to be lean and efficient. This market demands that I be able to offer incentives in order for Ohio to compete, not only with other states but also with countries like Canada and Mexico. Case in point—Ontario, which lists Ohio as a chief competitor, offers at least nine tax incentives to encourage investment.

(<http://www.2ontario.com/software/brochures/Taxation.asp>)

Last year my department completed projects with more than 193 companies committed to locating or expanding in Ohio. These companies committed to creating or retaining more than 53,000 jobs, with an average hourly wage of \$17, representing a nearly \$3.4 billion combined investment in Ohio. In all, we offered these projects more than (\$200) million in various incentives, ranging from tax credits to training grants.

We believe the flexibility to put together aggressive, customized incentive packages was critical to securing these projects. Take, for example, projects like LabOne's \$18.4 million expansion of its laboratory facilities in Cincinnati or the United States Enrichment Corporation's decision to invest \$1.1 billion to create 500 high-paying jobs in rural, Southern Ohio. And Ohio won out over facilities in Asia and Mexico when the Whirlpool Corporation chose to invest \$143 million in several Ohio facilities.

The M&E tax credit, available to ANY company investing in new manufacturing equipment in Ohio, is an important incentive. Since the credit's inception in 1995, the Ohio Department of Development has received more than 18,000 filings claiming eligibility for the credit. These filings show that companies invested \$34.2 billion in new machinery and equipment, making them eligible for more than \$2 billion in credits. These investments are critical to the economic prosperity of Ohio because, quite simply, jobs follow investments.

Is the availability of a single tax credit alone going to bring more jobs to Ohio? Probably not. But a state's right to develop incentive packages may very well be the factor that tips the scale. In addition, I believe there is concern that the court's ruling could easily lead to questions on other types of tax incentives, not only in Ohio, but elsewhere as well. Jay C. Biggins, national expert in incentives states, "the implications of *Cuno* also will spread nationwide," and also, quote "Some of our clients already have decided to eliminate jurisdictions from the 'short list' because their incentives programs could be at risk under *Cuno*."

Simply put, Ohio's ability to secure economic prosperity for our citizens is being hampered. And therein lies the bigger issue. I firmly believe that it is a state's right, and duty, to pursue prosperity for its citizens, and by striking down the M&E Tax Credit, the Sixth Circuit has infringed upon that right. I believe the court has come to the wrong conclusion in attempting to interpret Congressional silence on this matter. The good news is that this issue does not need to continue to remain dormant.

Congress has the authority to weigh in on the matter and I encourage this panel to do so. To help secure the prosperity of Ohio's citizens, and the citizens of all states, legislation must be enacted that returns the power to regulate tax credits to the states.