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House Bill 209
Senate Judiciary Committee
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Testimony in Opposition to HB 209

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, my name is Graham Bowman and I am an attorney with the Ohio Poverty Law Center.

Our mission is to reduce poverty and increase justice by protecting the legal rights of Ohioans living, working, and raising their families in poverty. Drawing on the day-to-day experiences of the legal aid attorneys who provide civil legal services to low-income Ohioans in every county, we oppose House Bill 209.

As written, HB209 puts spouses at risk of losing their family home. Unless this issue is addressed, we ask that you not approve HB 209. Dower is an outdated and confusing law that dates to an era before when women could own property and repealing it is the right thing to do. However, the General Assembly must also replace it with more modern standards to protect non-titled spouses from financial misconduct or disinheritance.

We agree with the proponent's description of how dower operates and that it is itself of little financial value. However, it serves the role of creating a requirement that spouses consent to the sale of real marital property. Most states provide a way for "non-titled" spouses to stop the sale or mortgage of the family home or other real property without their consent. By our count there are at least 30. These protections are usually found in two different areas of law: **(1) Homestead Tax Exemptions** and **(2) Probate**. In Ohio, neither of these areas currently contain modern protections for spouses because our code still relies on dower.

Homestead Exemptions (ORC 2329.66)

While it is true that almost every state has gotten rid of dower, it is also true that nearly every state, including Ohio, provides special legal protections for the marital home against creditors. Ohio creates multiple protections at ORC 2329.66, including protections for "*one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.*" The purpose of this "homestead exemption" is to promote the virtues of home ownership and protect dependents. With these protections come some responsibilities.

Most states with homestead protections also require the non-titled spouse to consent to the sale or mortgage of the marital home. Ohio's statute does not have a separate consent requirement

because ours is in our dower statute. Ohio would not be joining the majority of states by repealing dower without retaining a spousal consent requirement. It would be joining the minority.

New Jersey provides a clear road map for how to repeal the dower statute and replace it with a clearer spousal protection law. New Jersey repealed its dower statute in 1980 and replaced it with “N.J.S.A. 3B:28-2” The effect of the new law was that “title to property acquired on or after May 28, 1980 and occupied by spouses as a principal marital residence cannot be transferred without the consent of both spouses.”¹

Probate (ORC Title XXI)

The Uniform Probate Code (UPC) was first drafted by the National Conference of Commissioners on Uniform State Laws in 1969 and has gone through multiple revisions since. The UPC has been adopted entirely by 19 states,² and partially in other states. The UPC recommends repealing dower and replacing it with a concept called the “augmented estate.” The augmented estate allows a court that is administering a will to allow the surviving spouse to collect proceeds from transactions that the deceased spouse made that were intended to hide assets. Dower fulfills a similar function – it allows spouses to claim an interest in property that their deceased spouse sold without their knowledge. Ohio uses the augmented estate concept in its Medicaid program to recover money from older adults who attempted to hide assets from long-term care providers,³ but we have never applied the concept to our probate system. Instead, we continue to use dower to protect widow(er)s whose spouses tried to hide assets. It is important to note that the “augmented estate” protections extend beyond the marital home to other kinds of real property. Similarly, dower in Ohio applies to all real property.

We have no position on whether it would be a good or bad idea to pursue the augmented estate concept in Ohio. Rather, it is important to highlight the relationship between dower and modern probate concepts.

The Ohio Poverty Law Center agrees with the Ohio Judicial Conference and other interested parties who wish to see a compromise in which reasonable protections for non-property-owning spouses are maintained. Updating Ohio’s probate or homestead exemption statutes is necessary if Ohio repeals dower. At a bare minimum, married persons should continue to be required to obtain their spouse’s consent before selling the marital home, which already enjoys substantial protections from creditors.

Thank you for the opportunity to testify and I would be happy to answer any questions members of the committee may have.

¹ Stark & Stark Attorneys at Law, <https://www.njlawblog.com/2008/05/articles/real-estate/protecting-spousal-rights-in-real-estate/>

² Uniform Law Commission, <https://www.uniformlaws.org/committees/community-home?CommunityKey=a539920d-c477-44b8-84fe-b0d7b1a4cca8>

³ ORC 5162.21