

Testimony of Daniel J. Dew
Pacific Legal Foundation
Ohio House Civil Justice Committee
House Bill 390
April 23, 2024

Chair Hillyer, Vice Chair Mathews, Ranking Member Isaacsohn, and members of the House Civil Justice Committee, my name is Daniel Dew, and I am the legal policy director at Pacific Legal Foundation. PLF is a nonprofit legal organization dedicated to individual rights and limited government. PLF was founded in 1973 by then-Governor Ronald Reagan's staff to protect individual rights from government overreach, including property, economic, and speech rights that are increasingly under assault. We have 18 wins before the United States Supreme Court, including a case that makes this bill essential to pass.

Thanks to the bill's sponsors for bringing this bill. Thanks to Chair Hillyer for his dedication to the Constitution and making this issue a priority. And thank you for taking the time to address an egregious practice that we have labeled "Home Equity Theft" in House Bill 390 and allowing me to testify in favor of the bill.

When a debt is owed, it should be paid. And an entity that is owed a debt needs a mechanism to collect that debt. For example, when a person defaults on a mortgage, the bank can foreclose, sell the property, and take from the mortgagee what it is owed. Anything recovered beyond the debt and costs associated with collecting the debt is returned to the former property owner.

Local government is no different. Local government relies on property tax revenues to operate and cannot be left without recourse when a person does not pay. Like a bank, counties can foreclose upon homes where the owner has defaulted on their property taxes. Unfortunately, in some states regardless of how small the debt or large the recovery, the county keeps it all.

A debt is a debt but collecting more than what is owed is theft. In *Tyler v. Hennepin County*, a case decided this term, the U.S. Supreme Court unanimously said, "The taxpayer must render unto Caesar what is Caesar's, but no more." In that case, Hennepin County Minnesota took a 94-year-old woman's condo over a \$2,300 missed property tax payment that ballooned to \$15,000 as the county piled on penalties and interest, sold the property for \$40,000 and left our client with nothing. All nine justices agreed that when government takes more than it is owed, it is a taking under the constitution and the original owner is due just compensation.

The state of Michigan earned the scorn of national headlines for its tax foreclosure law that allowed counties to take more than what was owed. Uri Rafaeli had his Michigan home taken over \$8.41 in underpaid property taxes. The county sold the home for \$25,000 and left our client with nothing. PLF challenged the case all the way up to the Michigan Supreme Court. The Court held that when a locality takes more than what it is owed, it is an unconstitutional taking of private property. Mr. Rafaeli wasn't the only person to lose his property.

Now, you are probably thinking to yourself that Ohio is better than Michigan. And I am here to tell you that you are correct. As a native Ohioan, I would submit that Ohio is better than Michigan in every way.

Ohio's property tax foreclosure law is generally good. In most cases the property is sold, the county collects what it is due including penalties and interest, and the remaining equity is returned to the prior owner. But there is a loophole that allows a local government to transfer a property to a political subdivision without a competitive bid. In those cases, property owners can lose the equity they have established in the property. HB 390 would still allow these transfers, but only when the property's fair market value is less than or equal to the debt owed.

In 2016, the Cincinnati Enquirer ran an article about the Port of Greater Cincinnati Development Authority taking properties over an average property tax debt of \$3,555. In 2015, it attempted to take 127 properties this way.¹

In Cuyahoga County, Elliott Feltner Inherited land and an autobody shop valued at \$144,500. Mr. Feltner inherited the shop from his father-in-law. Mr. Feltner's wife shortly thereafter passed away from cancer. Mr. Feltner discovered the property had debts that he could not pay and decided to sell the property to clear the debt. Before the property could be sold, Mr. Feltner's health declined, and he didn't get around to selling the property. The property taxes were approximately \$40,000 and penalties and interest piled on another \$25,000 for a total debt of \$65,000. Instead of foreclosing and selling the property to pay off the debt, Cuyahoga County gave the property to the land bank, which then sold it to a business for the steeply discounted price of \$15,000. Cuyahoga County used the loophole in Ohio's law to steal approximately \$80,000 from Mr. Feltner.²

Questions may arise over the applicability of the *Tyler* decision to Ohio's law. In their amicus brief in *Tyler v. Hennepin County*, the County Treasurers Association of Ohio,

¹ <https://www.cincinnati.com/story/news/politics/2017/04/26/owe-back-taxes-port-authority-might-foreclose-help-your-neighborhood/100462582/>

² <https://pacificlegal.org/wp-content/uploads/2020/10/10.23.2020-PLF-PWC-Feltner-v.-Cuyahoga-County-Board-of-Revision.pdf>

Ohio Prosecuting Attorneys Association, and Ohio Land Bank Association clearly laid out how the ruling applies to Ohio's law. The groups' brief sided with the government's ability to take our 94-year-old client's condo that sold for \$40,000 over an original debt of \$2,300. Their brief details how the statute and process in question here would be unconstitutional if the Court sided with Ms. Hennepin, which it did.³ This puts both sides of the case on the same page when it comes to how and why Ohio must deal with this problem swiftly to address this now-unconstitutional law.

Supreme Court decisions are not self-executing. It's been my sad experience that even when the Supreme Court is clear in its ruling, like it has been on this issue, governments immediately seek ways to subvert the ruling. It is vital for legislatures to change the law to comply with constitutional requirements.

HB 390 mostly leaves the property tax foreclosure process untouched and closes a loophole that otherwise allows local government subdivisions to take Ohio property owners' hard-earned equity. And the bill would bring Ohio into compliance with the recent decision in *Tyler v. Hennepin County*.

Thank you for the opportunity to testify and I am happy to answer any questions the committee may have.

³ https://www.supremecourt.gov/DocketPDF/22/22-166/262800/20230405082937533_No.%2022-166_Brief.pdf