Chair Headland, Vice Chair Steiner, and members of the Finance and Taxation Committee, my name is Daniel Dew, and I am the legal policy director at the Pacific Legal Foundation. PLF is a nonprofit law firm dedicated to individual rights and limited government. And lest the "Pacific" in our name gives you pause, PLF was founded in 1973 by then-Governor Ronald Reagan's staff to protect property, economic, speech, and other individual rights from government overreach. We have a dozen wins before the United States Supreme Court and the Court just accepted another one of our cases for argument and decision this spring.

Thank you for taking the time to address an egregious practice that we have labeled "Home Equity Theft" in House Bill 1199 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 what the bank is owed. Anything recovered beyond the debt and costs associated with collecting the debt is returned to the former property owner.

Local government is—or at least should be—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. The difference between what banks and local governments can do in North Dakota and eleven other states is that 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. Even under a retributive form of justice that demands "an eye for an eye, and a tooth for a tooth," the offended party cannot recover more than what will make him whole.

The state of Michigan earned the scorn of national headlines for its tax foreclosure law that, like North Dakota, 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. The Detroit News estimated that the Michigan Supreme Court's decision meant Michigan counties could be on the hook for one to two billion dollars in stolen equity.

Now, you are probably thinking to yourself that North Dakota is better than Michigan. And I am here to tell you that you are correct. As a native Ohioan, I would submit that pretty much anywhere is better than Michigan.

All joking aside, to the credit of North Dakota County Treasurers and Auditors, this does not seem to be as widespread a phenomenon as we've seen in other states – but home equity theft still does happen in North Dakota.

In a report we recently published on North Dakota home equity theft we highlight the story of the Juhl family. The Juhls were threatened with losing their home if they did not pay $45,000 to purchase their home back from the county after defaulting on less than $2,000 in back property taxes. Thanks to their diligence and friends, the Juhls were able to reclaim their home for the debt owed. Others are not so lucky.

In the data available for 86% of North Dakota's population, between 2013 and 2019 roughly 500 homes went through tax foreclosure for debts that were usually less than 5% (often less than 1%) of the home's value. Only about 80 of the 500 homes were sold to new owners. The data seems to confirm that, in most cases, the county sells the property back to the original owner for the taxes, fees, and interest owed.

The typical outcome is reasonable, but the data shows that as many as one out of six such homeowners are not so fortunate. During the administration of their parents' estate in Williams County in 2013, LeAnne and Kris Glasoe lost their childhood home over a tax bill of less than 4% of the home's value. LeAnne and Kris even brought a case against the county for failure to properly notify them of the tax debt, but they were unable to reclaim the house—or the equity their parents had left them.

North Dakotans should not have to rely on the uncertain benevolence of their county auditors to keep what they have rightfully inherited or earned. When county budgets get tight, new officials may feel a greater temptation to supplement revenues by selling tax-foreclosed properties to new owners and keeping the excess. With economic fallout from the pandemic and other uncertainties looming, it is not unthinkable that counties could be in a big enough pinch to succumb to such a temptation.

Constitutional rights protect individuals from government. Even one violation of rights is more than the constitution will allow. Changing laws to protect your constituents from even the threat of unconstitutional actions is not only worth your time but is your duty as an elected official who have sworn an oath to defend the constitution.

House Bill 1199 is a short bill that should have minimal impact on county officials. It allows counties to collect the tax debt along with interest, penalties, and recover any costs associated with selling the property to make the county whole. It also ensures that a lifetime of work and equity is not unconstitutionally taken by the state. I urge your support for House Bill 1199.

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