

Testimony of Daniel Dew, Pacific Legal Foundation, on SB 1267
North Dakota House Judiciary Committee
March 27, 2023

Chair Kannianen and members of the Finance and Taxation Committee, thank you for the opportunity to testify today in opposition to HB 1267. My name is Daniel Dew and I'm the legal policy director at Pacific Legal Foundation. PLF is a nonprofit law firm that defends people from government overreach. We were founded 50 years ago by staffers for then-Governor Ronald Reagan. We had our thirteenth and fourteenth win in the U.S. Supreme Court last year and we have three more cases pending before the Court this term.

Our Supreme Court case that is most applicable to this hearing is [Tyler v. Hennepin County](#) which will be heard on April 26 dealing with this exact issue. This is a case out of Minnesota where the government took a 94-year-old woman's home because of unpaid property taxes. Ms. Tyler owed \$15,000 in property taxes, fees, and interest. The government sold her home for \$40,000 and left her with nothing.

The Supreme Court will look at two issues in that case: 1. Whether seizing more than is owed is a taking without just compensation under the Fifth Amendment; and 2. Whether, if characterized as a penalty, it is an excessive fine or fee prohibited by the Eighth Amendment.

Groups across the political spectrum have filed amicus briefs in support of Ms. Tyler. Groups like ACLU, Americans for Prosperity, The Cato Institute, AARP, NFIB, and the National Association of Realtors all filed amicus briefs in favor of our client. The United States Government filed a brief arguing that it was an unconstitutional taking. Of most interest to this committee, North Dakota Attorney General Drew Wrigley joined 12 other states to submit an [amicus brief](#) urging the court to rule in our client's favor because the scheme is unconstitutional.

The system being challenged in Minnesota is the same system North Dakota had until last session when the North Dakota legislature unanimously passed a bill to end this home equity theft.

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 value of the home. 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.

A Michigan family had a home taken over \$8.41 in underpaid property taxes that the county sold for \$24,500 and left the family with nothing. Fortunately, the Michigan Supreme Court held that the law there violated the Takings Clause of the Michigan Constitution.

The North Dakota Counties may claim that they wouldn't do such things, but they cannot deny that they have taken more than what they were owed in the past, and that the bill as written would make it possible for the county to take a home or property of any value over a debt of any size.

The Counties may provide lots of notice to people before they take the homes and keep all of the equity, but no amount of notice allows the government to violate constitutional rights.

The Counties may also argue that they need this bill to even out losses, but that isn't how constitutional rights work. Constitutional rights are individual rights and Counties cannot violate the rights of some to balance their spreadsheets.

The current law allows counties, lienholders, and citizens to be made whole.

If this law is passed, you will be forced to take this up for a third session in a row, but that time with a mandate from the U.S. Supreme Court.

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