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DATE: February 8, 2023

RE: Testimony on Senate Bill 918

TO: Members of the Senate Committee on Housing, Rural Issues, and Forestry

FROM: Senator Rob Stafsholt

Thank you Chairman Quinn and fellow members of the Senate Committee on Housing, Rural Issues, and Forestry for hearing my testimony on Senate Bill 918. This bill addresses a loophole that remains under current law related to property foreclosures.

Under current law, a county can foreclose a property for failure to pay property taxes and fees that are owed. Prior to 2021 Wisconsin Act 216, a county could keep all proceeds from the foreclosure sale, even if the proceeds exceeded the property tax debt and any fees and penalties owed. Act 216 prohibited this and required counties to return any net proceeds from the sale to the former owner of the property.

However, current law does not actually require counties to sell the property after it has been foreclosed and debts have been owed. This bill addresses this loophole by requiring counties to sell properties after the property has been foreclosed.

This bill will also align state law with a recent and unanimous decision by the United State Supreme Court in *Tyler v. Hennepin County*. This ruling stated that counties retaining net proceeds from foreclosure sales without selling the property is an unconstitutional "taking".

Again, thank you for allowing me to testify on Senate Bill 918. I would be happy to answer any questions you have, and would appreciate your support for this bill.



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February 8, 2024

Senate Committee on Housing, Rural Issues and Forestry

Testimony from Rep. William Penterman in favor of Senate Bill 918

Chair Quinn and members of Senate Committee on Housing, Rural Issues and Forestry – thank you for taking my testimony in support of Senate Bill 918 (SB 918), relating to the county sale of tax-deeded lands.

Senate Bill 918 is aimed at addressing a critical loophole in the current property tax foreclosure statutes in Wisconsin. This legislation is essential in aligning state law with the U.S. Supreme Court's unanimous decision in *Tyler v. Hennepin County*, which declared that retaining net proceeds from foreclosure sales without selling the property constitutes an unconstitutional taking.

Prior to the enactment of 2021 Wis. Act 216, counties in Wisconsin could retain all proceeds from foreclosure sales, even if the amount exceeded the property tax debt and associated fees. Act 216 corrected this practice by mandating the return of net proceeds to former owners. However, a significant gap in the law remains, allowing counties to foreclose on a property for minimal tax debt and retain it without selling it, thereby violating the principles set forth in the *Tyler* decision.

SB 918 seeks to rectify this inconsistency by mandating that counties must sell a property after foreclosing upon it. This aligns with the U.S. Supreme Court's ruling and ensures that retaining a property without selling it constitutes an unconstitutional taking, as established in the *Tyler* case. By closing the existing gap, this legislation promotes transparency, fairness, and adherence to the U.S. Supreme Court's precedent.

I urge the Senate Committee on Housing, Rural Issues and Forestry to consider and support this bill, as it represents a significant step towards aligning Wisconsin's laws with constitutional principles and protecting the property rights of its residents. Thank you for your attention to this matter and for your consideration.



PACIFIC LEGAL FOUNDATION

February 8, 2024

Statement before Wisconsin Senate in Support of SB 918 Committee on Housing, Rural Issues and Forestry

Re: Testimony—Reforming Wisconsin’s Tax Foreclosure Process
By Kileen Lindgren, Pacific Legal Foundation

To: Chair Quinn, Vice-Chair Jagler, and Members of the Committee on Housing, Rural Issues and Forestry

Thank you for your time today. My name is Kileen Lindgren, and I am the legal policy manager for Pacific Legal Foundation. The Foundation is a nonprofit, public interest law firm with 17 U.S. Supreme Court wins on behalf of Americans’ constitutional rights—including 3 last year. We are dedicated to defending and promoting property rights, proper separation of powers, and equality and opportunity under the law in courtrooms and capitols around the country.

One of the Foundation’s 2023 Supreme Court wins was in a case from Minnesota, *Tyler v. Hennepin County*, where we represented an elderly Minneapolis resident who lost her greatest asset—equity in her home—due to the state’s unconstitutional and unconscionable predatory tax foreclosure process. In this instance, a grandmother who experienced harassment on the streets near her condo began to feel unsafe and rented an apartment in a neighborhood nearby, where she felt safer.

Due to rising rent costs, Ms. Tyler fell behind on her condo’s property taxes. To collect the debt, Hennepin County seized her condo, valued at \$93,000, sold it for less than half of what it was worth, and pocketed the profits that valued \$25,000. Not only did the County deprive Ms. Tyler of the \$25,000, it did nothing to ensure a competitive auction that would likely have garnered 3 times that amount—both of which she was owed as the former owner.

I address you today in support of current Senate Bill 918, which closes a simple but significant loophole in Wisconsin law and will protect property owners as well give clear guidance to taxing authorities in how to collect delinquent taxes and related fees while protecting the proceeds that are owed to former property owners. SB 918 ensures the equity interest of Wisconsin property owners is protected by requiring



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taxing authorities to sell the property as laid out by statute, ensuring that any opportunity for preserving equity and profits is taken.

Even before the high Court's decision in Ms. Tyler's case, Wisconsin made great strides toward protecting property owners' rights with the passage and signing of SB 829 in 2022, which improved the process for distributing equity to former owners. Wisconsin also gives them preference in buying property back as long as owed taxes, fees, and administrative costs can be covered.

While the Tyler ruling sets a new precedent for individuals to fight unjust tax schemes, only states—not the Supreme Court—can change their laws. In the case of home equity theft, the Court made it clear that government processes that do not protect equity for the former owner are unconstitutional, so they must be changed. It held that the government violates the Fifth Amendment's Takings Clause when, as Chief Justice Roberts stated, it uses "the toehold of the tax debt to confiscate more than it [is] due." Fair sale and refund of proceeds to the former owner reflect other types of debt processes as well as practices common in tax foreclosure in other states.

Pacific Legal Foundation is committed to being a resource for reforming state laws in a timely and efficient manner to shield states from future lawsuits by property owners, give guidelines and support to taxing entities in carrying out their duties, and promoting equity on behalf former owners.

Thank you for your time.

Sincerely,

KILEEN LINDGREN
Legal Policy Manager
Pacific Legal Foundation



To: Senate Committee on Housing, Rural issues and Forestry

From: Tom Larson, President & CEO
Cori Lamont, Vice President of Legal and Public Affairs

Date: February 5, 2024

RE: SB 918/AB 969 – Foreclosure Equity Theft Loophole

The Wisconsin REALTORS® Association (WRA) supports requiring counties to sell property and distribute any net proceeds to the former owner after acquiring the property through a property tax foreclosure.

Background

In 2023, the U.S. Supreme Court unanimously ruled in *Tyler v. Hennepin County* that efforts by counties to retain net proceeds from foreclosure sales constitute an unconstitutional taking.

Wisconsin law is generally consistent with the Court's ruling after the passage of 2021 Wis. Act 216, which specifies that former property owners are entitled to the surplus proceeds following a sale of tax-deeded property at auction.

However, Wisconsin law contains a potential loophole because it does not expressly require the county to sell tax-deeded property. Rather, surplus proceeds are due to the former owner only if the county decides to sell the property. Otherwise, the county can keep the property and use it for any purpose without providing just compensation to the former owner.

SB 918/AB 969 is aimed at closing the potential loophole by requiring counties to sell a property after foreclosing upon it. Requiring counties to sell property after foreclosing upon it will help return any remaining equity in the property back to the former owner and ensure that counties are not engaging in an unconstitutional "taking," as established in the *Tyler* case.

Keeping property with a value greater than the tax debt owed is an unconstitutional taking.

In *Tyler v. Hennepin County*, the U.S. Supreme Court held that an unconstitutional "taking" occurs when government keeps the remaining equity in a person's property after a foreclosure. The Court's ruling is consistent with the law enacted by Wisconsin lawmakers in 2022 (2021 Wis. Act 216) which requires counties to return any net equity after a foreclosure sale to the former owner.

While Wisconsin law does not explicitly require a county to sell the property after acquiring title through foreclosure, such a practice would violate the constitutional principles recognized in *Tyler* if the value of the property exceeded the tax debt owed to the county.

Foreclosure equity theft magnifies financial hardships.

Allowing counties to keep property with a value greater than the tax debt owed would cause further financial hardship to families who lost their properties. Generally, property owners fail to pay their property taxes and go into foreclosure due to some catastrophe in their lives such as a major medical issue, divorce, job loss, or death in the family.

Keeping the equity in an owner's property makes such financial hardships even worse and could permanently prevent the owner from making a financial recovery.

Counties should not be given the option to keep someone's property.

Under current law, counties have unilateral authority to decide whether they want to sell or keep someone's property acquired through property tax foreclosure.

Property owners should not have to rely on bureaucratic goodwill to receive the compensation to which are constitutionally entitled. Moreover, allowing counties to profit by keeping property with a value greater than the tax debt owed would be a financial windfall for the county at the expense of the affected property owner.

The WRA is currently working with stakeholders to address concerns relating to procedural matters associated with the sale of the property.

We respectfully request your support for SB 918/AB 969.