

**Testimony of Daniel J. Dew**  
**Pacific Legal Foundation**  
**FY 2024 New York State Executive Budget**  
**Revenue Article VII Legislation Part M**  
**February 15, 2023**

Chair Thiele and members of the committee, my name is Daniel Dew and I am the legal policy director at Pacific Legal Foundation. PLF is a nonprofit law firm dedicated to protecting individual rights from government overreach. PLF has three cases up before the U.S. Supreme Court this term, including a case that deals with the same subject of my testimony.

I want to commend Governor Hochul for including property rights protections in her proposed budget under Part M.

Unfortunately, [New York](#) is one of about a dozen states that allows local government to consistently take more than it is owed when it forecloses on a property for failure to pay property taxes.

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 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, localities can foreclose upon homes where the owner has defaulted on their property taxes. The difference between what banks and local governments can do in New York is that regardless of how small the debt or large the recovery, the government 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 New York, 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.

In SCOTUS's last case of the current term, my PLF colleagues will argue a case called [Tyler v. Hennepin County](#) where, like New York local governments, a Minnesota county took more than it was owed from a 92-year-old homeowner.

In another recent PLF case, the U.S. Sixth Circuit Court of Appeals ruled this type of home equity theft an unconstitutional taking.

By doing away with this taking, New York has the opportunity to get out ahead of the issue and protect the property of its citizens.

I would be happy to answer any questions the committee may have about the issue. My email is [ddew@pacificlegal.org](mailto:ddew@pacificlegal.org).