



March 4, 2025

Statement of Pacific Legal Foundation before the House Taxation Committee in opposition to LD 399, *An Act to Amend the Laws Regarding the Retention of Proceeds from Municipal Foreclosures*

Chair Grohoski and members of the Committee:

My name is James Manley, and I am State Policy Chief at Pacific Legal Foundation. PLF is a nonprofit public interest law firm dedicated to defending Americans' liberties when threatened by government overreach and abuse. Since our founding 50 years ago, we have been helping Americans fight for their constitutional rights in courthouses and legislatures across the country. We have won 18 cases at the United States Supreme Court, including *Tyler v. Hennepin County*, which held that equity theft—the practice of taking more than is owed when collecting property taxes—violates the U.S. Constitution.

Maine was the second state to amend its laws to comply with *Tyler*, enacting LD101 in June 2023. These reforms are some of the best in the nation, and continue to serve as a model for other states.

LD 399 would destroy a key protection enacted in 2023, allowing municipalities to reap a windfall at the expense of the most vulnerable among us. It is bad policy, and it is unconstitutional.

Under current law, municipalities may sell properties to collect a tax debt and then must notify the former owner of any surplus equity left after taxes and fees have been paid. If after “reasonable diligence” the municipality is unsuccessful in returning the surplus equity to the owner, the unclaimed equity is transferred to the Unclaimed Property Fund under Title 33, section 2141. *See* Me. Stat. tit. 36 § 943-C.

LD 399 would put the fox in charge of the hen house, allowing municipalities to capture unclaimed equity, rather than treating it as what it is: unclaimed property. The moral hazard is obvious: if a municipality is unable to locate a former owner, the municipality would gain a windfall.

Even if the system worked perfectly, it would create constitutional problems. In a 2019 PLF case, *Knick v. Township of Scott*, the Supreme Court held that the government has an affirmative duty to pay just compensation after a taking. But LD 399 ignores that duty and presumes property owners want to give their surplus equity to the government. That's absurd, and it flies in the face of *Knick*.



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Accidental waivers are not permitted by our Constitution. When the government takes property, the onus is on the government to compensate the owner, “without imposing on the owner any bur[d]en of seeking or pursuing any remedy, or leaving him exposed to any risk or expense in obtaining it.”¹ If the government wants to deem a constitutional right waived, it bears the burden of showing it. No other statutes require a property owner to formally notify the government that he wants to be compensated for taken property, or else lose the right to just compensation. Property owners may choose to waive constitutional rights, but the government may not presume such a waiver and demand that property owners affirmatively invoke their constitutional right to just compensation.

For both practical and constitutional reasons, Manie should reject LD 399. Enacting the bill will encourage litigation from PLF and others.

Thank you for the opportunity to testify. I am happy to answer any questions; my contact information is listed below.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J Manley', with a long, sweeping flourish extending to the right.

James M. Manley
State Policy Chief

¹ *Bonaparte v. Camden & AR Co.*, 3 F Cas 821, 831 (D NJ 1830).