



GOVERNANCE

Ending the government’s “home equity theft” scheme

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MOUNTAIN STATES
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Home equity theft (HET) is a method by which governments can remediate property tax debt by acquiring a person's home, selling it to a third party, and keeping all the money, including any excess above the debt.

Most states already recognize the unconstitutional nature of home equity theft, prohibiting the sinister funding method.

Introduction

If someone were to borrow a cup of sugar to make a cake and doesn't return a similar amount, is the lender entitled to the cake? The lender would be viewed as excessively greedy to acquire so much in recompense. A fairer outcome would be for the borrower to offer a slice deemed equivalent to the value of the sugar. Yet, prior to the Supreme Court Ruling for *Tyler v. Hennepin County* in May 2023, governments were allowed to "take the cake" from many citizens through an unfair scheme commonly referred to as home equity theft.

What is home equity theft?

Home equity theft (HET) is a method by which governments can remediate property tax debt by acquiring a person's home, selling it to a third party, and keeping all the money, including any excess above the debt. It's the equivalent of taking the cake in payment for one cup of sugar. Home equity theft routinely occurs in 10 states and the District of Columbia, and another nine states have more limited use of the scheme.¹ Elderly, infirmed, impoverished, and minority citizens are more likely to be affected, and some governments fund their budgets through this unconstitutional process.

Home equity theft violates the Fifth Amendment's "takings clause."² Legal traditions of our nation and state laws recognize home equity as private property. When a government confiscates this type of private property and keeps the surplus for the public use without compensation, a "taking" occurs. These takings can and do happen for tax bills of only a few dollars, with many states delivering poor notification to the debtor.³

Most states already recognize the unconstitutional nature of home equity theft, prohibiting the sinister funding method. These states recognize that permitting home equity theft creates a double standard for government and private creditors. In every state, private creditors are required by law to return excess value to debtors after seizure and debt satisfaction have occurred. However, for the twelve states with home equity theft and the nine with loopholes, there is an exception for government debt.

Home equity theft allows and encourages government budgets to be funded annually through millions of dollars taken above the tax liability owed from thousands of property owners. Thankfully, this unfair practice is meeting its end thanks to the Supreme Court and the future actions of state legislatures.

¹ "SCOTUS ruled home equity theft unconstitutional... what comes next?," by Jim Manley, Pacific Legal Foundation, June 1, 2023, available at <https://pacificlegal.org/scotus-home-equity-theft-unconstitutional-comes-next/#:~:text=For%20years%2C%20Pacific%20Legal%20Foundation,on%20taking%20property%20without%20compensation.>>

² Geraldine Tyler v. Hennepin County, Brief for Petitioner, In the Supreme Court of the United States, No. 22-166, available at <https://pacificlegal.org/wp-content/uploads/2021/03/2023.02.27-Tyler-v.-Hennepin-County-PLF-Brief-for-Petitioner.pdf>

³ "Home Equity Theft: How a Man's Home Was Seized Over \$8.41 in Unpaid Taxes," by Brittany Hunter, July 24, 2019, available at <https://fee.org/articles/home-equity-theft-how-a-man-s-home-was-seized-over-841-in-unpaid-taxes/>

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On May 25, 2023, the Supreme Court ruled unanimously, stating that home equity theft violates the Takings Clause of the Fifth Amendment.

Tyler v. Hennepin rules HET Unconstitutional

Pacific Legal Foundation brought *Tyler v. Hennepin County* before the United States Supreme Court in 2023, arguing that Hennepin County, Minnesota violated the Fifth Amendment by taking property without compensation.

Geraldine Tyler was an elderly woman living alone in her one-bedroom condo in Minneapolis. In 2010, the neighborhood crime rates and worrying events near her home encouraged her to move to a senior community rented apartment.⁴ But the property taxes on her one-bedroom condo began accumulating – reaching \$2,300 – with interest, fees and penalties totaling \$15,000 by 2015. Hennepin County acquired Tyler’s condo and sold it in 2016 for \$40,000, keeping the \$15,000 owed to them in property taxes in addition to the \$25,000 surplus.

Tyler’s court battle started in 2019 and reached Supreme Court justices in January of 2023. On May 25, 2023, the Supreme Court ruled unanimously in favor of Geraldine, stating that home equity theft violates the Takings Clause of the Fifth Amendment.⁵ Chief Justice Roberts stated:

“The Takings Clause ‘was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’ Armstrong, 364 U. S., at 49. A taxpayer who loses her \$40,000 house to the State to fulfill a \$15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar’s, but no more.”

However, the court ruling does not end home equity theft outright, only declaring it *unconstitutional*. Now, Tyler and many property owners victimized by HET have the means to return to lower courts and assert their rights for just compensation under the Takings Clause. Victims of home equity theft have a monumental task ahead of them to fight for their just compensation, but thanks to Tyler, that fight is smaller and now possible. Additionally, state legislatures need to take aim at home equity theft and abolish its existence entirely, protecting property owners from this unconstitutional scheme.

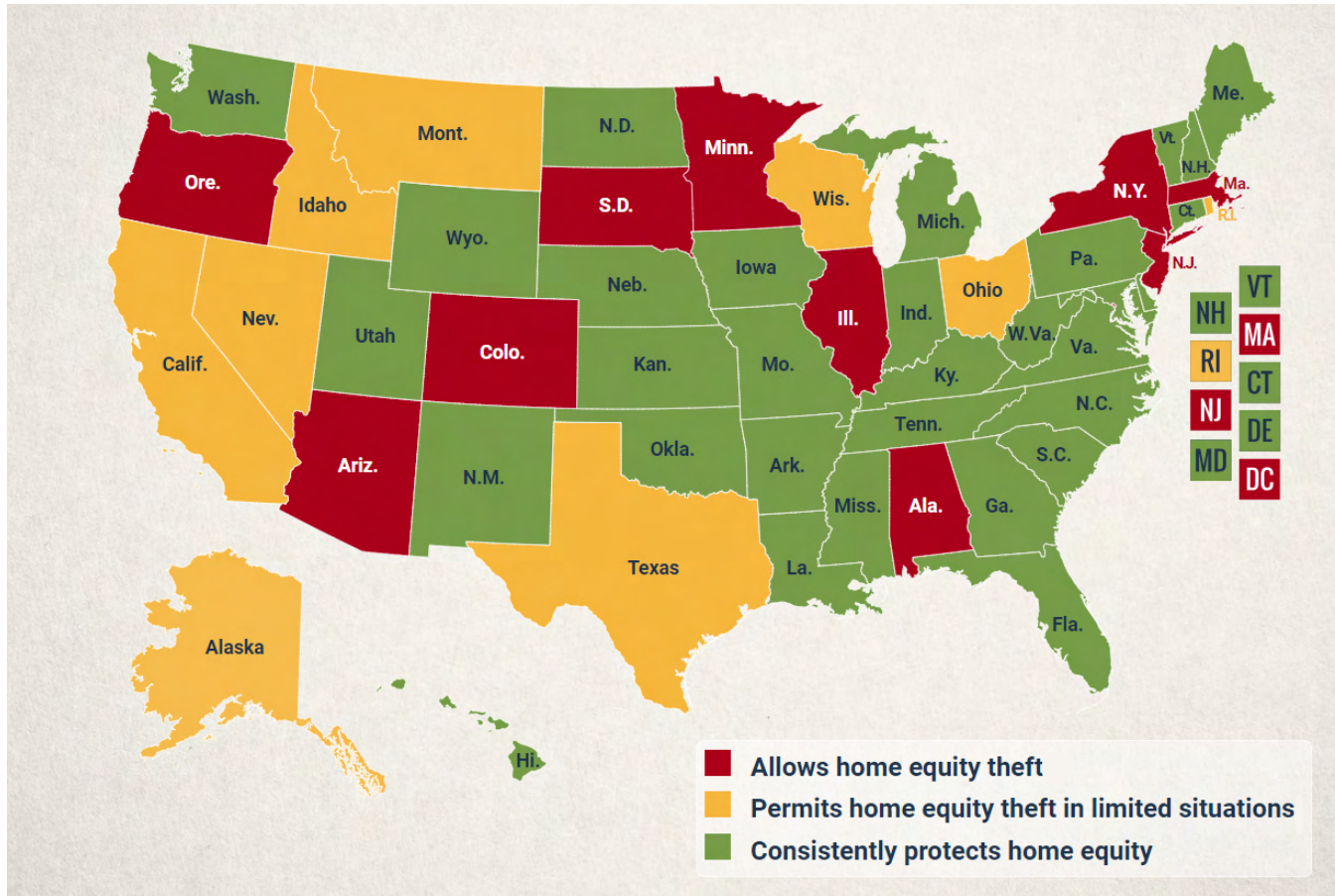
Geraldine Tyler is not the only property owner affected. From 2014 to 2020, Minnesota Counties seized 1,200 homes, keeping all of the surplus equity, for debts that averaged 8% of the home’s value and Minnesota is not alone in its

⁴ “Victory! Supreme Court declares home equity theft unconstitutional,” Tyler v. Hennepin County, Pacific Legal Foundation, available at https://pacificlegal.org/case/mn_home_equity_theft/

⁵ Tyler v. Hennepin County, Minnesota, et al. Supreme Court of the United States, October Term 2022, No 22-166, argued April 26, 2023, Decided May 25, 2023, available at <https://pacificlegal.org/wp-content/uploads/2023/05/05.25.23-Tyler-v.-Hennepin-County-PLF-Opinion.pdf>

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abuse of property owners. Home equity theft is the most lucrative in Illinois, New Jersey, Minnesota, New York, Massachusetts, Colorado, and Oregon, with income from \$30 million to \$300 million from 2014 to 2020.⁶



Letting home equity theft go unaddressed by state legislatures is a problem for citizens and governments.

Letting home equity theft go unaddressed by state legislatures is a problem for citizens and governments. As home values increase, so does the incentive for equity theft. Property owners already encumbered by rising inflation, high housing costs, and poor wage growth are more at risk for governments to target their equity to fund public budgets. Governments are also at risk if their budgets use home equity theft dollars. Budgets will be exceeded when court fees and repayments come due, to compensate home equity theft victims. It is better for both property owners and governments to abolish the existence of home equity theft laws quickly.

Home equity theft in the Mountain States

Home equity theft exists in some of the Mountain States, permitting a few government budgets to be padded by unconstitutionally sourced funds.

⁶ End Home Equity Theft, Pacific Legal Foundation, <https://homeequitytheft.org/>

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In 2019, the Montana legislature passed Senate Bill 253 to protect residential, agricultural, and forest property containing a dwelling.

Idaho is referred to as a loophole home equity theft state. Home equity theft is not permitted within the state unless a government entity gifts the property to another government body.

Montana, Idaho, and Oregon need to address home equity theft and make it impossible for local governments to take private property without just compensation. These three states vary in the severity of home equity theft permitted within their laws. Montana is halfway through fixing home equity theft and has recently remediated some of the problems. Idaho has a rarely used loophole that could hurt individuals severely if it remains unfixed. Finally, Oregon has a traditional home equity theft law, robbing millions of dollars from property owners.

Montana

Montana is one of a few states to recently work on protecting property owners from home equity theft. In 2019, the Montana legislature passed Senate Bill 253 to protect residential, agricultural, and forest property containing a dwelling.⁷ Montana governments were in the business of issuing liens and selling the liens to well-connected private entities for pennies on the dollar. These private entities would then turn around and sell the property for thousands more than they paid, leaving the debtor with no compensation.

Montana is a peculiar case, because it wholly protects residential property equity but leaves all other classes of property unprotected. As the state law leaves all non-residential property open to home equity theft, the law still violates the takings clause. The Montana legislature should amend the statutes addressed in SB 253 regarding classes of property subject to the home equity theft provisions. Montana Code Title 15 Taxation - Chapter 6 Property Subject to Taxation – Part 1 Classification identifies the various types of property recognized in Montana statutes.⁸ To become compliant with the takings clause, all property, including commercial should be recognized as exempt from home equity theft.

Idaho

Idaho is referred to as a loophole home equity theft state. Home equity theft is not permitted within the state unless a government entity gifts the property to another government body. If this occurs, the state law does not require compensation to the debtor. It is unclear how often this law is used within Idaho, due to the convoluted nature of the process. But this law leaves individual property owners vulnerable to theft. The Idaho State Legislature needs to address this policy oversight in the next session. Idaho Statute 31-808-9 states:⁹

⁷ SB0253, 66th Montana Legislature, available at <https://leg.mt.gov/bills/2019/billpdf/SB0253.pdf>

⁸ Montana Code Annotated 2023, Title 15. Taxation. Chapter 6. Property Subject to Taxation. Part 1 Classification, available at https://leg.mt.gov/bills/mca/title_0150/chapter_0060/part_0010/sections_index.html

⁹ Idaho Statute Title 31 Counties and County Law Chapter 8 Powers and Duties of Board of Commissioners, available at <https://legislature.idaho.gov/statutesrules/idstat/title31/t31ch8/sect31-808/>

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Idaho lawmakers need to remove this exception and require that all property owners and other lien holders be fairly compensated.

“In addition to any other powers granted by law, the board of county commissioners may at their discretion, grant to or exchange with the federal government, the state of Idaho, any political subdivision or taxing district of the state of Idaho or any local historical society which is incorporated as an Idaho nonprofit corporation which operates primarily in the county or maintains a museum in the county, with or without compensation, any real or personal property or any interest in such property owned by the county or acquired by tax deed, after adoption of a resolution by the board of county commissioners that the grant or exchange of property is in the public interest.”

Idaho lawmakers need to remove this exception and require that all property owners and other lien holders be fairly compensated. The current law allows counties to transfer property to other government entities, leaving property owners and lien holders in limbo, awaiting funds that will never be paid because the property was gifted to other government entities. The law should be amended by deleting section 9 and require a sale of the property to obtain fair market value.¹⁰

Oregon

Oregon’s use of home equity theft is egregious. Oregon has accumulated funds in excess of \$30 million between 2014 to 2020, foreclosing on 158 properties. On a per home average, Oregon foreclosed homes are the second highest in the nation at \$196,037, trailing Washington, D.C. The property tax debts were 7 percent of the value of the homes seized, giving local Oregon governments a windfall of a 93 percent surplus above the debts owed.¹¹

Victims of home equity theft include children who have lost parents and were unaware of the property until fines were accumulated and the children had no means of resolving the debt.

Victims of home equity theft include children who have lost parents and were unaware of the property until fines were accumulated and the children had no means of resolving the debt. Despite home equity theft hurting many vulnerable individuals, Oregon’s Attorney General Ellen Rosenblum signed on in support of Hennepin County’s actions against Geraldine Tyler as an “amici state.” Rosenblum’s office said it was to support the law on the books. But is that fair of the Oregon attorney general to support a government taking of the property rights of an individual?¹²

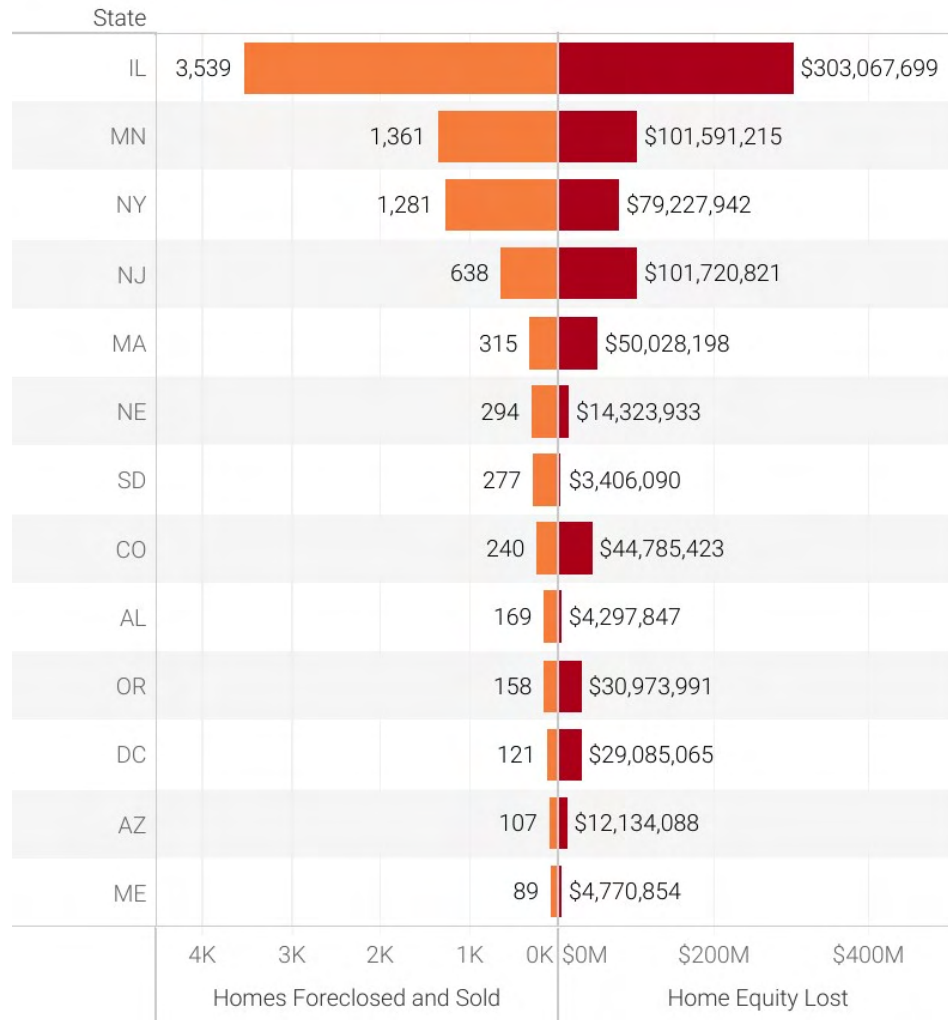
¹⁰ “States with Loopholes That Allow Home Equity Theft,” Pacific Legal Foundation, available at <https://homeequitytheft.org/loophole-states>

¹¹ Oregon, Pacific Legal Foundation, available at <https://homeequitytheft.org/oregon>

¹² “Why Oregon Signed On to a Supreme Court Case to Defend Taking a 94-Year-Old Woman’s Money,” by Nigel Jaquiss, Willamette Week, May 2023, available at <https://www.wweek.com/news/2023/05/14/why-oregon-signed-onto-supreme-court-case-defending-taking-94-year-old-womans-money/>

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The Oregon legislature needs to remove home equity theft from the Oregon Revised Statutes Title 29, Chapter 312.



Thankfully, the desires of the Oregon Attorney General to support the laws on the Oregon books above the rights of the individual were ignored by the Supreme Court. Now, the Oregon legislature needs to remove home equity theft from the Oregon Revised Statutes Title 29, Chapter 312, and ensure that tax foreclosures end with competitive auctions of the foreclosed property, after robust notice to property owners, and returning surplus equity to the debtor and not allowing the government to keep the surplus above the tax debt owed.¹³

Address other debt acquisition policies

State legislatures at a minimum need to prohibit home equity theft by government. There are also other issues that would protect the interests of property owners and encourage ethical government practices. Pacific Legal Foundation has created model policy that would give adequate time for property owners to redeem debts, provide a fair time frame for notification, and

¹³ ORS 312.270 Title of county purchasing property, available at https://oregon.public.law/statutes/ors_312.270

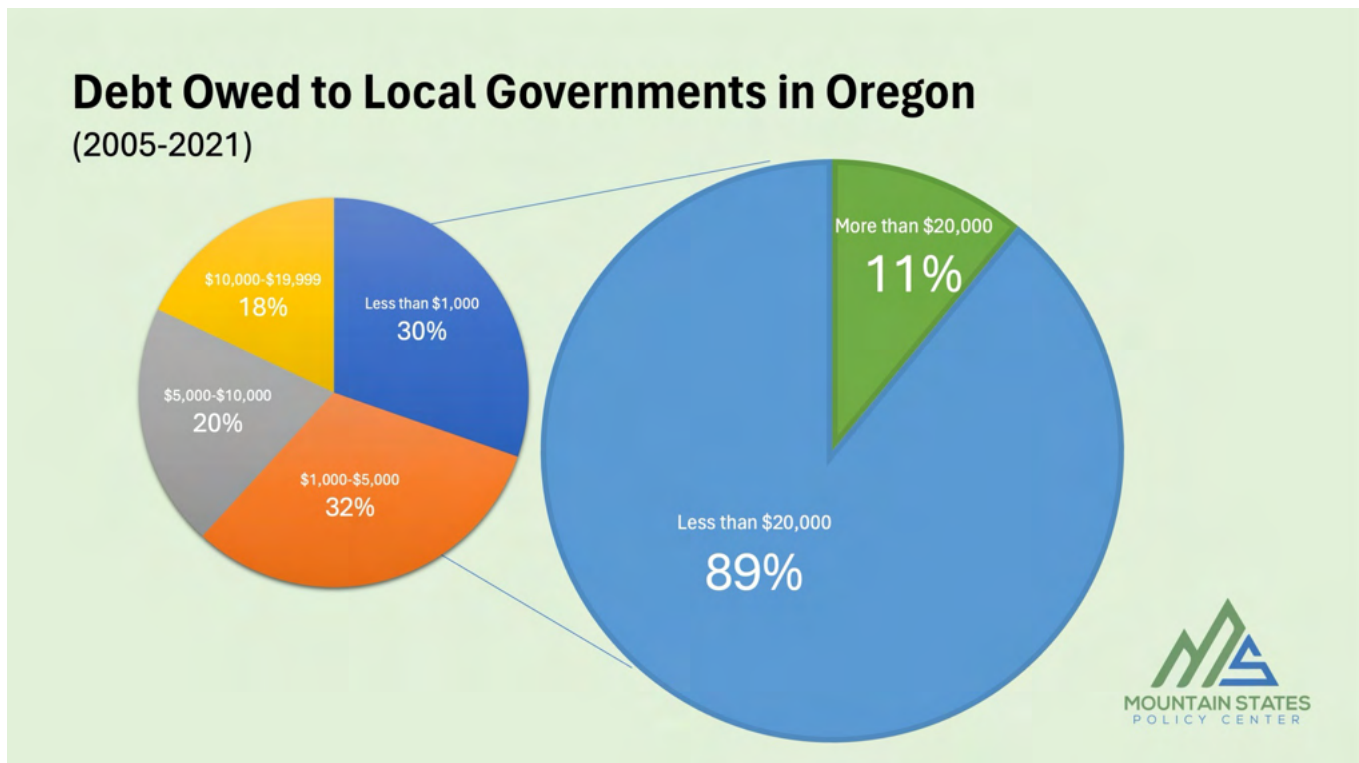
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For less than \$20,000 owed, Oregon has foreclosed on hundreds of homes.

when needed require a public sale to obtain the highest bid.¹⁴ A significant recommendation is that foreclosures cannot occur for outstanding debts less than 5 percent of the total fair market value of the property or \$50,000, whichever is lower.

Conclusion

Protecting property owners from home equity theft does not mean protecting them from repaying tax debts owed to the government. Ending home equity theft means preventing governments from taking advantage of property owners through nefarious means. For less than \$20,000 owed, Oregon has foreclosed on hundreds of homes. Only 11% of property owners targeted by home equity theft owed the government more than this amount from 2005 to 2021.¹⁵



This small debt is minimal compared to the financial windfall governments receive by taking the equity. During oral arguments, Justice Elena Kagan queried Hennepin County that if there was a \$5,000 tax debt and a \$5 million house, could the government sell the house and keep the surplus? When Hennepin

¹⁴ Property Equity Protection Act, Pacific Legal Foundation, available at https://homeequitytheft.org/static_assets/1e389cbf-2bf0-4a11-b7e8-c3f435a92494/PLF-End-Home-Equity-Theft-Model-Policy.pdf?X-Amz-Content-Sha256=UNSIGNED-PAYLOAD&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4GVITVOKWO37KTUQ%2F20231127%2Fus-east-1%2Fes3%2Faws4_request&X-Amz-Date=20231127T233533Z&X-Amz-SignedHeaders=host&X-Amz-Expires=604800&X-Amz-Signature=251faaf461b3259c9f7f45c80170e60159d572cd21d799d3bcd55c0e73a7ed3d

¹⁵ Oregon, Pacific Legal Foundation, available at <https://homeequitytheft.org/oregon>

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Property owners who have had all their equity taken for government budgets lose almost 30 years of financial gains for a couple years of debt repayment.

County asserted that this would happen, Chief Justice Roberts said, “If that’s all true what’s the point of the takings clause?”¹⁶

Ending home equity theft protects the financial future of property owners. Property owners who have had all their equity taken for government budgets lose almost 30 years of financial gains for a couple years of debt repayment. In Oregon, it would take the average debt 2.5 years to be paid off, but 27.5 years of payments to regain the seized equity.

Just like taking the whole cake after loaning one cup of sugar is pure greediness on the part of the neighbor, the government taking all the equity for a few dollars in debt is sinister. As home values increase across the Mountain States, so does the incentive for home equity theft to pad government budgets, leaving more property owners vulnerable. It is time for Montana, Idaho, and Oregon to *fully* ban home equity theft and protect the interests of vulnerable property owners from governments seeking to take more than they’re owed.

Nothing in this publication shall be construed as an attempt to aid or hinder the passage of any legislation.

¹⁶ “Justices appear likely to side with homeowner in foreclosure dispute,” by Amy Howe, SCOTUSblog, April 2023, <https://www.scotusblog.com/2023/04/justices-appear-likely-to-side-with-homeowner-in-foreclosure-dispute/>

ABOUT THE AUTHOR

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Madi holds a master's degree in Agricultural and Resource Economics from Colorado State University as well as a B.S. in Environmental Economics, Policy, and Management from Oregon State University.

She is the former Director for the Initiative on Agriculture at Washington Policy Center, one of the first free market think tanks in the nation to launch a focus on Agriculture.

Before joining WPC, she worked for Ag Association Management in Tri-Cities, Washington, working with growers and industry across Washington, Oregon, and Idaho. She also spent two years as an associate of The Context Network. Her time involved working as a business analyst on various agriculture projects in production, wholesale, retail, and policy Ag sectors. She was also a wildland firefighter for four summers.

Madi's work has been published in the Idaho Statesman, The Capital Press, Tri-City Herald, and the Spokesman-Review.

