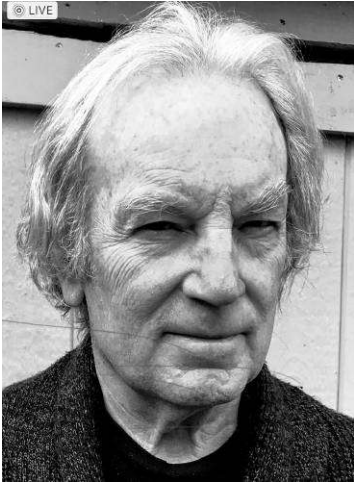


## Pushback: City flouts high court on ‘home equity theft’



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Over the past six months, tax collectors in 14 Franklin County municipalities have purchased legal ads in this newspaper announcing their “intention to take” 146 parcels of land/homes for non-payment of taxes. Greenfield had the longest list of takings, with 61 parcels.

We are witnessing the final months of the unconstitutional takings of excess home equity — a process that the U.S. Supreme Court unanimously struck down 147 days ago. Three months after the Supreme Court Tyler v. Hennepin County ruling, the Massachusetts Land Court issued a statement on the decision: “Under the U.S. Constitution, property owners will be owed compensation from a tax foreclosure — if the property taken by the government is worth more than the tax debt owed. Property owners who are undergoing tax foreclosure should be aware of their right to claim compensation for their ‘home equity’ — the excess value of the property above the amount of the tax debt.

“Cities, towns, and other plaintiffs bringing tax foreclosure cases will now need to ensure they comply with these constitutional protections and provide just compensation to property owners. In tax foreclosure cases pending before the Land Court, the court will address any motions or other pleading that may be filed based on the Tyler decision.”

Despite this very clear warning, some cities and towns continue to act as if they must “follow the law,” yet ignore the U.S Constitution and the Land Court statement. Greenfield’s tax collector told the City Council in September: “We have to follow state law.” The city’s lawyer said: “We can’t operate against state law.” But the law they pledged fealty to has been ruled unconstitutional.

Our city lawyer insists we can’t pay restitution to people who lost equity, because we “can’t spend public funds except for a public function.” Yet the Land Court has said that property owners “will be owed compensation” for their excess value above debt — which is private equity — not public money.

Five months after the Supreme Court's ruling, Greenfield has done nothing to give back money unconstitutionally taken. In September, two citizens filed complaints in federal court. One was a homeowner who owned 19 acres of land, 13 of which were nature trails. He is seeking restitution of more than \$270,000 in home equity. The homeowner in the second lawsuit lost \$62,500 in one day when the city sold her home at auction for only 35% of its assessed value. The city owes her \$15,544 in lost equity — plus three years of interest.

An article in September's Commonwealth Magazine cautioned municipal officials: "There's a very real possibility that the people who have had their equity stolen will file suit to reclaim it, which could cost cities and towns across Massachusetts millions of dollars." On Sept. 19, the California-based Pacific Legal Foundation sent a letter to the president of Greenfield's City Council: "We sent correspondence to Greenfield Treasurer Kelly Varner, urging the City to immediately halt any property tax foreclosures that may result in the theft of home equity. Each property owner who is deprived of equity under the current scheme has a takings claim against the government — exposing the public to millions of dollars in imminent claims."

A tax collector from a neighboring town told me: "We have been advised by town attorneys to hold off on sales of town-owned properties that were acquired due to tax foreclosure until the commonwealth reviews and acts on the finding by the Supreme Court."

In response to two federal lawsuits, Greenfield's attorney filed a motion to dismiss on Oct. 10. But the city cannot "dismiss" its obligation under the Constitution's Fifth Amendment: private property shall not be taken for public use without just compensation. Greenfield says its "ready to defend itself," but when will the city defend the victims of our unconstitutional actions? It's time to make these families whole, including interest and legal fees, just like the plaintiffs had to pay.

Greenfield could lose all claims over stolen equity. Case law precedents recognize that a taxpayer is entitled to the surplus in excess of the debt owed. The plaintiffs are seeking compensatory damages, punitive damages, treble damages, costs and attorney fees. The city should settle such claims quickly to avoid mounting legal costs. We can still take homes to auction, but we need to stop immediately all takings of excess equity. People in other towns who lost home equity should also file court complaints.

Greenfield's home equity policy has been a house of cards and it's about to collapse.

Al Norman has been an author and community activist locally and nationally for 45 years. His Pushback column appears every third Wednesday.