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State and Local Government and Veterans' Affairs
Joint Committee on Agency Rule Review

Testimony of State Senator Timothy J. Grendell
18th Ohio Senate District
(Lake, Geauga, and part of Cuyahoga County)

Before

Committee on Oversight and Government Reform
Subcommittee on Domestic Policy

Honorable Dennis Kucinich, Chair

December 7, 2009

Good morning Chairman Kucinich, Ranking Member Jordan, and members of the subcommittee. Thank you for providing me with this opportunity to address the foreclosure and financing issues that now contribute to our state's and country's financial problems. While currently I have the privilege of serving in the Ohio Senate, I also have over twenty-two years of legal experience representing home buyers, home builders, and developers, and I have negotiated numerous real estate financing transactions from a simple home loan to multi-million dollar development loans. I also have represented parties in foreclosure lawsuits. As a state legislator, I have been actively involved in the passage of land banking legislation and consumer protection legislation.

While the national foreclosure crisis is generally dated to beginning in late 2006 or early 2007, the seeds for that crisis were planted in 2000 when federal law changes invited the broadening of access to home purchase financing which, in turn, contributed to the loan crisis.

Because of the scope and personal nature of the current foreclosure situation and its contribution to the decline of national and state financial institutions, there is a tendency to paint these issues with a broad brush or to seek more governmental intrusion into the free market lending process.

The loosening of the home loan process promoted by federal intervention may have been motivated by the admirable policy goal of increasing individual homeownership. However, admirable policy cannot override reasonable economic principles. If someone cannot afford to buy a home, a home should not be purchased.



Traditionally, individuals were required to make a 10%-20% down payment. Those individuals saved their money and made a substantial equity investment when they purchased their home, usually with a 15-30 year fixed rate mortgage.

This millennium, individuals were able to purchase homes with little or no equity and with a variety of variable rate loans. In Cleveland, some speculators were able to borrow excess dollars based on friendly (inflated) appraisals and actually profit from their home purchase. Often, these properties were then rented out.

While some foreclosures resulted from involuntary events such as an unexpected job loss, others resulted from the abandonment of overinflated value buildings purchased on nonrecourse terms or by insolvent buyers.

There are several factors that invited and fueled this unfortunate situation. These include:

1. Federal encouragement of high risk home financing;
2. Overly aggressive lending, fueled by the subprime loan investment market;
3. Failed regulatory oversight;
4. A lack of personal responsibility by borrowers, encouraged by access to easy money;

A strong argument can be made that the last factor is the most important because no one can be forced to borrow money, especially if such a loan is beyond the borrower's economic means. Simply put, an individual who enters into a contract to borrow money is and must be expected to be bound by his or her contractual obligation. To hold otherwise, threatens the sanctity of private contracts, which forms the foundation of our free market economic system.

Especially because of the scope and publicity involved with the current foreclosure situation, there is a tendency to pursue further government intervention; however, prudence is warranted. No action should be taken that interferes with private contract rights (e.g. forced restructuring of private loan agreement terms) or private contract enforcement rights (e.g. a delay or moratorium of foreclosures). The idea that private contracts can be rewritten or suspended by government in times of "crisis" is dangerous and potentially destructive to America's democratic free enterprise economic system.

Moreover it is important that the Federal Government should comply with the Tenth Amendment of the United States Constitution and refrain from interfering in the peoples' right to real property ownership and the banks right to foreclosure.

I respectfully submit that the current foreclosure/financial "crisis" results from a deviation from fundamental free market principles and that a return to free market principles, not more governmental intervention, is the appropriate way to work our way out of this "crisis."

To the extent federal policies encouraged or pushed lenders into making bad loans or that the resulting access to easy money encouraged borrowers to enter into bad loans, governmental intervention exacerbates the process. More governmental intervention will only further degrade the situation.

With this in mind, I respectfully make the following suggestions:

1. The federal government should immediately cease and repeal any policies that encourage lending to unqualified buyers, as determined by sound financial practices.

2. The federal government should resist the impulse to pass legislation that jeopardizes the enforceability of private contracts.
3. The federal government should recognize and honor the 10th Amendment to the U.S. Constitution (see the attached Ohio Senate Resolution) by taking no action that interferes with the right of the states to enact their respective real property laws and foreclosure procedures.
4. Return to free market principles which recognize that (a) property values are based on what a willing buyer is willing to pay a willing seller, and (b) loan decisions should be made by a prudent lender to a qualified borrower based on sound economics and the borrower's likely ability to perform its contractual repayment obligations.
5. Maintain the sanctity and enforceability of private contracts, which are fundamental to commerce and our State and national economic system.

At the end of the day, the goal should be a return to a free market system, with minimum reasonable regulatory oversight. Lenders and borrowers both must act responsibly, and individuals must appreciate that they will be held responsible for meeting their contractual obligations. Neither Congress nor State legislatures should absolve them of those obligations no matter the scope of the publicity or political benefit such legislation intervention may generate.

President Dwight Eisenhower said it best: "...without free enterprise there can be no democracy." Thank you again for the opportunity to address you this morning. I am happy to take any questions you may have.

As Adopted by the Senate

**128th General Assembly
Regular Session
2009-2010**

S. C. R. No. 13

Senators Grendell, Faber

**Cosponsors: Senators Gibbs, Buehrer, Cates, Hughes, Schuler, Schuring,
Carey, Goodman, Harris, Husted, Niehaus, Patton, Schaffer, Seitz, Wagoner,
Widener, Jones**

CONCURRENT RESOLUTION

To claim sovereignty over certain powers pursuant to 1
the Tenth Amendment to the Constitution of the 2
United States of America, to notify Congress to 3
limit and end certain mandates, and to insist that 4
federal legislation contravening the Tenth 5
Amendment be prohibited or repealed. 6

**BE IT RESOLVED BY THE SENATE OF THE STATE OF OHIO (THE HOUSE OF
REPRESENTATIVES CONCURRING):**

WHEREAS, The Tenth Amendment to the Constitution of the 7
United States reads: "The powers not delegated to the United 8
States by the Constitution, nor prohibited by it to the States, 9
are reserved to the States respectively, or to the people"; and 10

WHEREAS, The Tenth Amendment defines the total scope of 11
federal power as being that specifically granted to the federal 12
government by the Constitution of the United States and no more; 13
and 14

WHEREAS, The scope of power defined by the Tenth Amendment 15
signifies that the federal government was created by the states 16
specifically to be an agent of the states; and 17

WHEREAS, Today, in 2009, the states are often treated as 18
agents of the federal government; and 19

WHEREAS, Many federal laws directly contravene the Tenth 20
Amendment to the Constitution of the United States; and 21

WHEREAS, We believe in the importance of all levels of 22
government working together to serve the citizens of our country, 23
by respecting the constitutional provisions that properly 24
delineate the authority of federal, state, and local governments; 25
and 26

WHEREAS, The Tenth Amendment assures that we, the people of 27
the United States and each sovereign state in the Union of States, 28
now have, and have always had, rights the federal government may 29
not usurp; and 30

WHEREAS, Article IV, Section 4 of the Constitution of the 31
United States, states in part, "The United States shall guarantee 32
to every State in this Union a Republican Form of Government," and 33
the Ninth Amendment to the Constitution of the United States 34
states that "The enumeration in the Constitution, of certain 35
rights, shall not be construed to deny or disparage others 36
retained by the people"; and 37

WHEREAS, The United States Supreme Court ruled in *New York v.* 38
United States, 505 U.S. 144 (1992), that Congress may not simply 39
commandeer the legislative and regulatory processes of the states 40
by compelling them to enact and enforce regulatory programs; and 41

WHEREAS, the United States Supreme Court, in *Printz v. United* 42
States/Mack v. United States, 521 U.S. 898 (1997), reaffirmed that 43
the Constitution of the United States established a system of 44
"dual sovereignty" that retains "a residuary and inviolable 45
sovereignty" by the states. The majority of the United States 46
Supreme Court noted in that case (521 U.S. 898, 921-922): 47

"As [President] Madison expressed it: '[T]he local or 48

municipal authorities form distinct and independent portions of 49
the supremacy, no more subject, within their respective spheres, 50
to the general authority than the general authority is subject to 51
them, within its own sphere.' The Federalist No. 39, at 245. 52

This separation of the two spheres is one of the 53
Constitution's structural protections of liberty. 'Just as the 54
separation and independence of the coordinate branches of the 55
Federal Government serve to prevent the accumulation of excessive 56
power in any one branch, a healthy balance of power between the 57
States and the Federal Government will reduce the risk of tyranny 58
and abuse from either front.' . . . To quote [President] Madison 59
once again: 60

'In the compound republic of America, the power surrendered 61
by the people is first divided between two distinct governments, 62
and then the portion allotted to each subdivided among distinct 63
and separate departments. Hence a double security arises to the 64
rights of the people. The different governments will control each 65
other, at the same time that each will be controlled by itself.' 66
The Federalist No. 51, at 323"; and 67

WHEREAS, A number of proposals by previous administrations, 68
some now pending proposals by the present administration, and some 69
proposals by Congress may further violate the Tenth Amendment 70
restriction on the scope of federal power; now therefore be it 71

RESOLVED, That the State of Ohio hereby acknowledges and 72
reaffirms its residuary and inviolable sovereignty under the Tenth 73
Amendment to the Constitution of the United States over all powers 74
not otherwise enumerated and granted to the federal government by 75
the Constitution of the United States; and be it further 76

RESOLVED, That this resolution serves as notice to the 78
federal government as agent of the states, to end federal mandates 79

that are beyond the scope of the constitutionally delegated 80
powers; and be it further 81

RESOLVED, That all compulsory federal legislation that 82
directs states to comply under threat of civil or criminal penalty 83
or sanction or that requires states to enact legislation or lose 84
federal funding be prohibited or repealed; and be it further 85

RESOLVED, That the Clerk of the Senate transmit authenticated 86
copies of this resolution to the President of the United States, 87
the President Pro Tempore of the United States Senate, the Speaker 88
of the United States House of Representatives, the Speaker of the 89
House of Representatives and the President of the Senate of each 90
state's legislature, and each member of the Ohio Congressional 91
delegation. 92