

March 3, 2014

The Honorable Edward FitzGerald
Executive
Cuyahoga County
Courthouse Square
310 W. Lakeside Avenue, Suite 700
Cleveland OH, 44113

The Honorable C. Ellen Connally
Council President, District 9
Cuyahoga County Council
323 West Lakeside Avenue, 4th Floor
Cleveland, Ohio 44113

The Honorable Dave Greenspan
Councilmember, District 1
Cuyahoga County Council
323 West Lakeside Avenue, 4th Floor
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The Honorable Chuck Germana
Councilmember, District 4
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The Honorable Jack Schron
Councilmember, District 6
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The Honorable Dan Brady
Council Vice President, District 3
Cuyahoga County Council
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Ms. Jeannet Wright
Acting Treasurer
Cuyahoga County
Whitlatch Building
1910 Carnegie Avenue
Cleveland, OH 44115

The Honorable Dale Miller
Councilmember, District 2
Cuyahoga County Council
323 West Lakeside Avenue, 4th Floor
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The Honorable Michael J. Gallagher
Councilmember, District 5
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The Honorable Yvonne M. Conwell
Councilmember, District 7
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The Honorable Pernel Jones, Jr.
Councilmember, District 8
Cuyahoga County Council
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The Honorable Sunny M. Simon
Councilmember, District 11
Cuyahoga County Council
323 West Lakeside Avenue, 4th Floor
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Cuyahoga County Executive FitzGerald, Acting Treasurer Wright, and Councilmembers
March 3, 2014

The Honorable Julian Rogers
Councilmember, District 10
Cuyahoga County Council
323 West Lakeside Avenue, 4th Floor
Cleveland, Ohio 44113

Re: Cuyahoga County's Real Property Tax Lien Certificate Sales System

Dear Executive FitzGerald, Acting Treasurer Jeannet Wright, and Cuyahoga County Councilmembers:

The NAACP Legal Defense & Educational Fund, Inc. (LDF) writes to offer its comments on Cuyahoga County's Real Property Tax Lien Certificate Sales System. Founded by Thurgood Marshall in 1940, LDF is the nation's oldest civil rights legal organization, and has fought, since its inception, to eliminate racial barriers from all aspects of American life and to create a more just and fair democracy. LDF has especially worked to combat policies and practices by both public and private entities that deny African-Americans housing opportunity and isolate African-American communities.

As the Washington Post recently uncovered in a multi-part investigative series, tax lien sales systems around the country—including in Cuyahoga County—have unfairly deprived residents of their property, and often have disproportionate impacts on communities of color.¹ The Washington Post discovered that jurisdictions often have inadequate protections in place to prevent tax lien purchasers from engaging in abusive and predatory lending practices.² Given the history of abusive practices in Cuyahoga County, Inspector General Nailah Byrd announced on December 5, 2013 that she is going to investigate allegations that Woods Cove II, a company that has purchased millions of dollars of property tax liens from Cuyahoga County, has engaged in extensive violations of Ohio law.³ In light of these recent developments and the devastating impact that abuses in the Real Property Tax Lien Certificate Sales System has had on African-American communities in Cuyahoga County, LDF strongly encourages Cuyahoga County to impose a temporary moratorium on tax lien certificate sales until a fulsome investigation can be conducted and meaningful reforms can be made to the real property tax lien certificate sales system.

¹ See e.g., Michael Sallah, et al., *Homes for the Taking*, Washington Post (full coverage), available at <http://www.washingtonpost.com/sf/investigative/collection/homes-for-the-taking/> (last visited Feb. 28, 2014). See also, Michael Sallah and Debbie Cenziper, *Debt-collecting machine*, Washington Post, Dec. 8 2013, available at <http://www.washingtonpost.com/sf/investigative/2013/12/08/debt-collecting-machine/> (last visited Feb. 28, 2014).

² Alexia Campbell et al., *Local laws do little to protect homeowners*, Washington Post, Dec. 8, 2013, available at <http://www.washingtonpost.com/sf/investigative/2013/12/08/local-laws-do-little-to-protect-homeowners/> (last visited Feb. 28, 2014).

³ Andrew J. Tobias, *County Inspector General to investigate disputed allegations against tax lien buyer*, www.cleveland.com, Dec. 5, 2013, http://www.cleveland.com/cuyahoga-county/index.ssf/2013/12/county_inspector_general_to_investigate_allegations_against_tax_lien_buyer.html (last visited Feb. 28, 2014).

I. Cuyahoga County's Real Property Tax Lien Certificate Sales System Has Unfairly and Unnecessarily Deprived Residents of Their Homes

Owning a home has long been the cornerstone of the “American Dream” and a foundation for long-term financial security. For many households, both in Cuyahoga County and around the nation, the home they own not only represents their most valuable asset, but it also serves as their primary source for intergenerational wealth and wealth-creation. Unfortunately, the recent economic crisis had a devastating impact on homeownership rates. Data released by the United States Census Bureau shows that homeownership rates, after increasing during the late 1990s and early 2000s, have steadily declined over recent years, and have now returned to their 1995 level.⁴ Ohio has not been immune to this trend. Earlier this year United States Senator Sherrod Brown highlighted the impacts of the foreclosure crisis on Ohioans, noting that nearly one quarter of all home sales in the State have involved short-sales or foreclosures, and 19% of Ohio homeowners’ mortgages are underwater.⁵ A report released in May 2013 found that Ohio ranked eighth in the nation for foreclosures,⁶ and observed that “[f]or the seventh year in a row Cuyahoga County topped the list [of foreclosures in Ohio] with 9 foreclosures per 1,000 people.”⁷

Communities of color have been particularly hard hit by the recent economic downturn. In the first decade of the 21st century, homeownership rates for African Americans and Latinos decreased in several Midwestern metropolitan areas, including Youngstown and Akron.⁸ Nationwide, homeownership rates among African Americans are at an all-time low: in the second quarter of 2013, less than 43% of African-Americans owned a home.⁹ The foreclosure crisis has also highlighted the importance of meaningful government oversight in the housing market and shown—to a devastating degree—what can happen when such oversight is lacking.

Despite the considerable progress that has been made in recent years to strengthen the housing market, a number of unjust, predatory practices continue to take advantage of vulnerable households. One such practice involves the sale of tax liens by municipalities. In 1997, the Ohio legislature passed a law allowing counties to collect delinquent real property taxes by selling tax certificates to third party investors, entitling those investors to a tax lien against the delinquent property. *See* Ohio Rev. Code § 5721.30 *et seq.* Tax lien certificates in Cuyahoga County are negotiated by the County Treasurer and sold in bulk to a single purchaser. The average sale in

⁴ *Residential Vacancies and Homeownership in the Second Quarter 2013*, U.S. Census Bureau, <http://www.census.gov/housing/hvs/files/qtr213/q213press.pdf> (last visited Feb. 28, 2014).

⁵ Press Release, U.S. Senator Sherrod Brown (D-OH), *With More than One-Quarter of Cuyahoga County Mortgages Underwater, Brown Urges Reinstatement of Provision that Helps Struggling Homeowners Avoid Tax Increase Starting this Year* (Jan. 6, 2014), <http://www.brown.senate.gov/newsroom/press/release/with-more-than-one-quarter-of-cuyahoga-county-mortgages-underwater-brown-urges-reinstatement-of-provision-that-helps-struggling-homeowners-avoid-tax-increase-starting-this-year> (last visited Feb. 28, 2014).

⁶ David Rothstein, *Policy Matters Ohio, Home Insecurity 2013: Foreclosures and Housing in Ohio* 1, 4 (2013), http://www.policymattersohio.org/wp-content/uploads/2013/05/Foreclosure_May2013.pdf (last visited Feb. 28, 2014).

⁷ *Id.* at 1.

⁸ *See* Nancy McArdle et al., *The Changing Face of Homeowners in Large Metro Areas* 7 (May 2012), available at http://diversitydata.sph.harvard.edu/Publications/Homeownership_brief_final.pdf (last visited Feb. 28, 2014).

⁹ Table 16. *Homeownership Rates by Race and Ethnicity of Householder: 1994 to Present*, U.S. Census Bureau, <http://www.census.gov/housing/hvs/data/histtabs.html> (last visited Feb. 28, 2014).

Cuyahoga County ranges from \$10 million to \$17 million, and contains several thousand parcels.¹⁰ The tax lien certificate purchaser pays the county the entire amount of the delinquency and the purchaser then holds the first priority lien against each of the properties in the amount of the delinquency. A tax lien certificate is placed on the properties once the tax lien certificate is sold. If the lien against a property is not redeemed within twelve months, the tax lien certificate purchaser may file a foreclosure action with respect to that property. While this law was originally designed “not to take away people’s homes and businesses,” but to “eat away at [] hard core tax delinquency” committed by those who treated nonpayment of property taxes as a low-interest loan from the county,¹¹ in reality, a much wider swath of the population has been impacted by the State’s tax lien certificate sales system, especially given the large number of hardworking, long-time homeowners whose finances were crippled during the economic recession.

While tax liens, which many local jurisdictions use to collect unpaid property taxes, are not inherently problematic, they can be abused, as the Washington Post’s investigation revealed. Specifically, purchasers of tax liens have manipulated the system by engaging in unscrupulous practices that have unfairly deprived residents of their homes and destabilized communities.¹² For example, the Washington Post highlighted how Aeon Financial—a company with a documented history of engaging in questionable business practices¹³—acquired thousands of tax liens in Cuyahoga County in 2008, and proceeded to foreclose on more than 400 properties.¹⁴ Aeon Financial has been accused of failing to properly maintain these properties, and Cleveland City Councilmember Jay Westbrook charged the company with engaging in “an extra-vicious business model.”¹⁵ Furthermore, the 2013 negotiated tax certificate sale agreement between Cuyahoga County and Wards Cove III demonstrates that potentially questionable practices are not limited to Aeon. For example, the agreement establishes a higher upper limit for attorneys’ fees than is set forth in state law, thereby allowing Wards Cove III to collect up to \$6,650 in attorneys’ fees from a delinquent property owner, despite the state law requirements that attorneys’ fees be reasonable and, if they exceed \$2,500, that fees be approved by a court. See Ohio Rev. Code § 5721.371. Similarly, the negotiated “tax certificate rate of interest” of 17.75% may be unreasonably high and not in the “best interests of the county” as required by Section 5721.33 of the Ohio Code.

¹⁰ *Tax Lien Certificate Sales*, Cuyahoga County Treasurer, <http://treasurer.cuyahogacounty.us/en-US/tax-lien-certificate.aspx> (last visited Feb. 28, 2014).

¹¹ Charles D. Rittenhouse, *The True Costs of Not Paying Your Property Taxes in Ohio*, 36 Dayton L. Rev. 221, 224 (2011).

¹² Michael Sallah et al., *Left with nothing*, Washington Post (Sep. 8, 2013), available at <http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/?hpid=z2> (last visited Feb. 28, 2014).

¹³ For an example of questionable business practices, see *Aeon Fin. v. District of Columbia*, 2014 D.C. App. LEXIS 15, *35-36 (D.C. Feb. 6, 2014) (because the District of Columbia acted in good faith when it “erroneously calculate[d] the amount due, accepte[d] payment from the delinquent property owner, and declare[d] a property redeemed,” the Court disagreed with Aeon’s argument that the miscalculated payment meant the property owner had not redeemed and still owed interest).

¹⁴ Michael Sallah and Debbie Cenziper, *Debt-collecting machine*, Washington Post, Dec. 8 2013, available at <http://www.washingtonpost.com/sf/investigative/2013/12/08/debt-collecting-machine/> (last visited Feb. 28, 2014).

¹⁵ *Id.*

Additionally, abusive tax lien sale practices in Cuyahoga County have disproportionately burdened minority communities. The Washington Post found that the properties Aeon Financial purchased in 2008 were largely located in “Cleveland’s historic Slavic Village” as well as “the badly blighted east side.”¹⁶ Slavic Village, a neighborhood that once boasted a strong Polish and Czech community, is now more than 50% African American.¹⁷ Similarly, the east side of Cuyahoga County has the largest concentration of African Americans in the County.¹⁸ According to the list of properties sold in September 2013,¹⁹ we have reason to believe that the pattern the Post noticed in 2008 continues, with many of the properties seemingly located in communities with significant African-American populations (e.g., East Cleveland, Cleveland, Garfield Heights).

II. Cuyahoga County Should Reform its Real Property Tax Lien Certificate Sales System

It is vital for Cuyahoga County officials to take immediate steps to re-evaluate its tax lien certificate sales system, and make meaningful and permanent reforms to this practice. Below, we have identified the first steps we believe Cuyahoga County officials should take in order to address the flaws in the property tax lien certificate sales process:

(1) Impose An Immediate Moratorium On the Sale of Tax Lien Certificates in Cuyahoga County

As an initial matter, Cuyahoga County should impose an immediate moratorium on the sale of tax lien certificates. Given the documented pattern of abuses, the ongoing investigation by Inspector General Nailah Byrd, and the likely disparate impact that the tax lien certificate sales system has on African-American communities throughout Cuyahoga County, the further sale of tax lien certificates should be stopped immediately. Under Ohio State law, counties are permitted to sell tax lien certificates to third parties, but they are not required to engage in that practice. As such, Cuyahoga County officials can—and should—decide to halt the sale of any more tax lien certificates until a fulsome investigation can be conducted and the system reformed.

(2) Create a Government Task Force to Analyze and Address the Flaws of the Current Tax Lien Certificate Sales System

County officials must engage in further investigation and research to fully understand the manner in which the Cuyahoga County tax lien certificate sales system has operated, and to determine how the system has been abused. This information is essential to ensure that any

¹⁶ *Id.*

¹⁷ Robert L. Smith, *Slavic Village, Devastated by National Housing Crisis, is Battling Back*, www.cleveland.com, Sept. 25 2013, http://www.cleveland.com/business/index.ssf/2013/09/slavic_village_devastated_by_t.html (last visited Feb. 28, 2014).

¹⁸ Cuyahoga County Data, Races – Black alone (%), http://www.city-data.com/county/Cuyahoga_County-OH.html (last visited Feb. 28, 2014).

¹⁹ *Tax Lien Certificate Sales-List of Parcels Sold*, Cuyahoga County Treasurer, http://treasurer.cuyahogacounty.us/pdf_treasurer/en-US/TaxLienSaleSold09.26.13b.pdf (last visited Feb. 28, 2014).

reforms are ultimately effective. To that end, a government task force should be convened in order to: (i) carefully analyze the flaws of the system, (ii) determine the most vulnerable communities affected by those flaws, and (iii) recommend changes that would protect these vulnerable communities in the future. This task force should also include participation from community stakeholders, who could represent the interests of the most vulnerable homeowners such as senior citizens, veterans, the disabled, and residents of color.

(3) Exercise the Cuyahoga County Treasurer's Wide Discretion to Conduct Tax Lien Certificate Sales in a Manner that is Fair and Just

Tax lien certificates in Cuyahoga County are negotiated and sold in bulk to private investors, with the bulk sale including any number of certificates as determined by the County Treasurer. Pursuant to state law, the Cuyahoga County Treasurer has the authority to select from the list of properties with delinquent taxes which properties will be included in a tax lien certificate sale. Ohio Rev. Code Ann. § 5721.31(A)(1). The Treasurer also has wide discretion in determining the terms of the sale. The terms may include (i) a premium to be added to or a discount to be applied to the certificate purchase price for the tax certificates; (ii) different time frames within which the certificate holder may initiate a foreclosure action than are otherwise allowed; (iii) the amount to be paid in private attorney's fees related to tax certificate foreclosures; or (iv) any other terms of the sale or transfer that the county treasurer, in the treasurer's discretion, determines appropriate or necessary for the sale or transfer. Ohio Rev. Code Ann. § 5721.33.

Taken together, Ohio State law provides the County Treasurer with wide discretion without meaningful oversight. Steps should be taken to ensure that tax lien certificate sales occur in a manner that is fair, just, and transparent. For example, while the Cuyahoga County Treasurer's website states that "[t]he Cuyahoga County Treasury may adopt rules governing the eligibility of persons to purchase tax certificates, such as a disclosure of income,"²⁰ there do not appear to be any rules or regulations beyond requiring bidders to submit a registration form with their names, addresses, EIN, and contact information prior to the sale. There are also no publicly available guidelines describing a vetting process by which the Treasurer ensures that purchasers of tax lien certificates are legitimate companies that operate within the bounds of applicable laws and regulations. Although it is appropriate for investors to seek to make a profit on their investments, they should not be permitted to take advantage of vulnerable homeowners by engaging in unscrupulous or potentially illegal behaviors. The Treasurer should establish guidelines setting forth eligibility criteria and any other factors considered prior to deeming any company eligible to purchase tax lien certificates, or, if such guidelines already exist, they should be made available on the Treasurer's website to improve the transparency of the selection process. Cuyahoga County residents need meaningful oversight to ensure that the negotiated terms of the sale are not solely motivated by the most return on investment for private corporations, to the detriment of homeowners.

²⁰ *Tax Lien Certificate Sales*, Cuyahoga County Treasurer, <http://treasurer.cuyahogacounty.us/en-US/tax-lien-certificate.aspx> (last visited Feb. 28, 2004).

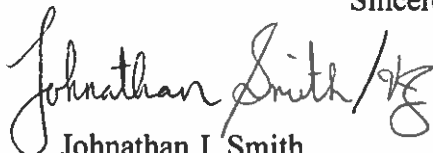
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Recently, the City of Cleveland and other municipalities within Cuyahoga County have expressed pronounced interest in addressing the rampant foreclosure crisis. For example, just this month, Cleveland and other cities released the results of a study designed to demonstrate how the demolition of vacant and abandoned properties could help to maintain property values in neighborhoods and curb additional foreclosures.²¹ This study reflects the sensible and laudable desire among local officials to try and take proactive, affirmative steps to stem the tide of foreclosures. Reforming the tax lien certificate sales system is similarly such a step. As described above, the tax lien certificate sales system in Cuyahoga County often leads to unjust and unnecessary deprivation of families from their homes. This, in turn, only leads to more vacant properties and further destabilization of the tax base.²²

Homeownership is indispensable to both Cuyahoga County's economic development and its residents' long term financial security, as well as to the maintenance of a stable property tax base for the County. We strongly encourage the County to impose a temporary moratorium on tax lien certificate sales and begin an investigation into the County's tax lien sale procedures to ensure that the system operates in a manner that is fair and that does not disproportionately impact communities of color.

LDF welcomes the opportunity to provide additional information and to work with Cuyahoga County officials to remedy the abuses in the tax lien certificate sales system.

Sincerely,



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²¹ Nigel G. Griswold et al., Griswold Consulting Group, *Estimating the Effect of Demolishing Distressed Structures in Cleveland, OH, 2009-2013: Impacts on Real Estate Equity and Mortgage-foreclosure* (2014), <http://www.wrlandconservancy.org/pdf/FinalReportwithExecSummary.pdf>; see also Leila Atassi, *Cleveland City Council Votes to Contribute \$50,000 to Vacant Housing Demolition Study*, www.cleveland.com, Feb. 11, 2013, http://www.cleveland.com/metro/index.ssf/2013/02/cleveland_city_council_votes_t.html (last visited Feb. 28, 2014) (stating that the study was commissioned for the purpose of proving that demolitions curb blight without consideration for alternative solutions to problem of vacant properties).

²² For a similar example, see Fred Schulte and Ben Protes, *The New Tax Man: Big Banks and Hedge Funds*, www.huffingtonpost.com, Oct. 18, 2010, http://www.huffingtonpost.com/2010/10/18/the-new-tax-man-big-banks_n_766169.html ("Andrew Neuhauser, an attorney with Advocates for Basic Legal Equality in Toledo, said his group believes the Lucas County tax sale, which reached a peak of about \$5.4 million in liens during 2006, has led to hundreds of foreclosures. That, in turn, has partly eroded the tax base and had a 'devastating effect' on some neighborhoods, he said. 'It's a short-term gain for the county that in the long term does harm.'") (last visited Feb. 28, 2014).