

# **Bond Case Briefs**

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## **EMINENT DOMAIN - OHIO**

### **Harrison v. Montgomery County, Ohio**

**United States Court of Appeals, Sixth Circuit - May 11, 2021 - F.3d - 2021 WL 1881382**

Owner of property foreclosed for failure to pay taxes brought putative § 1983 class action against county, asserting takings claims under the Fifth and Fourteenth Amendments, alleging that county transferred properties to a land reutilization corporation without providing compensation for value that exceeded tax liabilities.

The United States District Court granted county's motion to dismiss for failure to state a claim. Owner appealed.

The Court of Appeals held that:

- Ohio claim preclusion law did not bar claims;
- Tax Injunction Act did not bar claims;
- Comity principles did not compel abstention; and
- Remand from appellate court was warranted for district court to consider claims in the first instance.

Ohio claim preclusion law did not bar property owner's § 1983 federal takings claims challenging county's seizure of surplus equity, an amount in excess of taxes owed, through Ohio's land bank foreclosure statute whereby county transferred clear title to owner's property to a land bank; federal takings claim was not ripe until county Board of Revision's final decision adjudicating foreclosure of owner's property and transfer of property to land bank.

Tax Injunction Act did not bar property owner's § 1983 takings claims challenging county's seizure of surplus equity, an amount in excess of taxes owed, through Ohio's land bank foreclosure statute whereby county transferred clear title to owner's property to a land bank; property owner did not challenge Ohio's collection of delinquent taxes and did not seek to halt foreclosures of tax-delinquent property or seek to get home back.

Comity principles did not compel federal court abstention from property owner's § 1983 takings claims challenging county's seizure of surplus equity, an amount in excess of taxes owed, through Ohio's land bank foreclosure statute whereby county transferred clear title to owner's property to a land bank, since property owner challenged only Ohio's extinguishment of surplus equity, not its foreclosure of tax-delinquent property.

Remand from appellate court was warranted for district court to consider property owner's § 1983 takings claim in the first instance, challenging county's seizure of surplus equity, an amount in excess of taxes owed, through Ohio's land bank foreclosure statute whereby county transferred clear title to owner's property to a land bank; neither Tax Injunction Act nor comity principles barred challenge.

