

## SHATTERING ‘BLIGHT’ AND THE HIDDEN NARRATIVES THAT CONDEMN

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*“The people on the bottom are giving up their land for the people on the top.”<sup>1</sup>*

## I. INTRODUCTION

Tilting at windmills is an expression used to describe Don Quixote’s battle against perceived giants that everyone else sees merely as windmills.<sup>2</sup> This expression can also describe the predicament of property owners from St. Louis Place, a neighborhood in St. Louis, Missouri. These owners fought against a combination of case law, statutes, governmental condemnation decisions and an unflattering narrative to save their property. In the end, St. Louis Place property owners might as well have been fighting windmills.

Many parties play a role in property takings from property owners in distressed communities, as exemplified by disinvestment and acquiescence to years of economic decay in locations like St. Louis Place. Thus, if there is a villain, it is society’s collective failure to intervene in communities that have great need and act in the best interest of that community. Everyone loves progress. However, intervention through forced takings and displacement affects the displaced property owners in ways that communities and researchers have yet to fully understand.

Since *Berman v. Parker*,<sup>3</sup> legal scholars have challenged the

<sup>1</sup> LAND GRAB (Atlas Industries 2017).

<sup>2</sup> MIGUEL DE CERVANTES, DON QUIXOTE DE LA MANCHA, 48 (Tom Lathrop, trans., Alma Classics, Ltd. 2005) (c. 1605-15).

<sup>3</sup> *Berman v. Parker*, 348 U.S. 26, 36 (1954) (upholding a blight redevelopment plan which targeted a blighted area of Washington, D.C. where most of the housing for the 5,000 inhabitants was beyond repair). Under the plan, the area would be condemned. The owner of a department store located in the area challenged the condemnation, pointing out that his store was not itself blighted and arguing that the creation of a “better balanced, more attractive community” was not a valid public use. Writing for a unanimous Court, Justice Douglas refused to evaluate this claim in isolation, deferring instead to the legislative and agency

definition of the term blight and the manner in which condemnation takings are used as revitalization tools in distressed communities. Attempts to narrow takings doctrine in the economic development context has had limited legislative success since the Court's decision in *Kelo v. New London*,<sup>4</sup> but takings due to a blight designation have largely been accepted as settled law.

Part II explores the problem presented by blight terminology and the case law and the statutory regime used to justify blight takings. In this section, the author asserts that the amorphous definition of blight, flawed decision-making, and false narratives, have led to the condemnation of properties in the most vulnerable communities. Moreover, Part II provides a snapshot of blight scenarios occurring across the country and why the settled nature of takings based on blight should be challenged. The takings, based on a blight designation, continue to be a serious national problem and a doctrine that is especially devastating for underprivileged and communities of color. This current state of the law provides unwarranted comfort for the judiciary to defer to state or local legislative bodies and for legislatures to rely on overly broad statutory terminology. Local stakeholders that desire to remove the "blight" of distressed communities also utilize the precedent and add to the inflammatory narratives. Thus, we pursue the call for legislative reform and a meaningful shift in the taking doctrine as applied in blight cases. To take property from one group and replace the property with newer improvements for the benefit of another group is questionable. Even the justification that a property owner purportedly has received due process and just *compensation* is not a satisfactory rationale for continuing current condemnation practice.

In Part III, the author constructs a three-prong framework (the "Blight Framework"), an interconnected marriage of terminology, false narratives, and governmental decision-making. The Blight Framework is developed to provide a better understanding of the problem and the parties involved in the takings. Part IV contextualizes these takings using a recent example in St. Louis Place. In 2009, owners of homes, churches, and businesses in St. Louis Place found their properties subject to blight

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judgment that the area "must be planned as a whole" for the plan to be successful. The Court explained that "community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis—lot by lot, building by building." The public use underlying the taking was unequivocally affirmed." *Id.*

<sup>4</sup> *Kelo v. New London*, 545 U.S. 469, 485-86 (2005) (broadened the takings doctrine to allow takings for a public purpose). *Kelo* illustrates the public outcry over economic development takings in communities not typically described as distressed, but of interest to developers, municipalities and their agents. *Id.*

condemnation and eminent domain.<sup>5</sup> In St. Louis Place, a variety of parties, including developers and local governmental parties, used blight condemnation as a means to generate revitalization and economic development to revitalize this distressed community. After a contentious six-year battle between developers, the municipality, its agents and the community, the dispute resulted in a land acquisition by the National Geospatial-Intelligence Agency (“NGA”).<sup>6</sup> Ultimately, the NGA acquired the property in St. Louis Place through a combination of voluntary settlements or eminent domain civil court actions. Despite their efforts to remain in St. Louis Place, neither legislation nor public outcry could protect property owners from takings due to a blight condemnation and eminent domain actions—not federal or state constitutions, not federal or state courts, nor state and local regulations. Not even the court of public opinion could stop governmental bodies from using blight condemnation and eminent domain action to take St. Louis Place.

Part V proposes legislative and community based solutions to address the flawed takings Blight Framework. Part VI provides some final observations and a charge for more open and inclusive conversations about revitalization of underprivileged communities.

## II. BLIGHT AND THE PROBLEM WITH TAKINGS

Across the United States, decades of economic and social distress in numerous communities is compounding the problem and increasing the likelihood of blight takings. Countless neighborhoods have suffered

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<sup>5</sup> Within a pro bono legal clinic, the author and law students represented twenty-six families owning twenty-three parcels of properties that were condemned in St. Louis Place. Representation included dozens of negotiations that led to over twenty real estate transactions and court representation in several eminent domain condemnation proceedings, primarily on matters with title issues. In total, the condemned area consisted of 554 parcels: 83.8% vacant land/land with a vacant building; 5.8% residential; 3.3% Civic and Institutional; 6.5% Industrial; and 0.5% Utility.

<sup>6</sup> *The Purpose of the Historical Project* THE CITY OF ST. LOUIS (July 4, 2017), <https://www.stlouis-mo.gov/government/departments/slhc/project-connect/nga/history/the-purpose-behind-the-historical-project.cfm> (describing the National Geospatial-Intelligence Agency’s (“NGA”) plan to construct a new federal facility in St. Louis, Missouri). Despite strong opposition from the St. Louis Place community, the National Geospatial-Intelligence Agency sought to construct a new \$945 million dollar facility. In order to build their new facility, the NGA sought to demolish properties in St. Louis Place through the use of blight condemnation and eminent domain actions. *See also*, Chuck Raasch, *Spy Agency Followed Guidelines in Picking North St. Louis for New Western HQ, Report Says*, ST. LOUIS POST-DISPATCH (Aug. 17, 2017), [http://www.stltoday.com/news/local/govt-and-politics/spy-agency-followed-guidelines-in-picking-north-st-louis-for/article\\_dc635a99-b343-5368-bb9d-598c2c9c16ca.html](http://www.stltoday.com/news/local/govt-and-politics/spy-agency-followed-guidelines-in-picking-north-st-louis-for/article_dc635a99-b343-5368-bb9d-598c2c9c16ca.html) (describing “other factors” that made the north side of St. Louis a better location than the alternative location because of “cost, mission efficiency, flexibility, local laws and regulations and environmental impact—all favored St. Louis.”).

economic and social devastation as a result of the 2007 mortgage crisis, the continuation of global job outsourcing, automation job reduction, and predatory lending practices in racially segregated communities. What have municipalities done in response? In response, some municipalities are frozen in despair seeking public and private partnerships to turn their local economies around. Other municipalities, however, are condemning properties and entire communities as blighted in order to take the properties for other uses.

*A. The Problem: Condemnation and Takings Based on Blight*

There is a systemic failure in blight takings. To better understand the failure, look first to the constitution and case law to comprehend the law and the manner in which takings doctrine has been considered settled law. This Article also takes a snapshot nationally of the conversation that is taking place on blight takings. To sort out what is happening at the grassroots level, the author constructs the Blight Framework, a combination of factors leading to the ultimate taking. The Blight Framework includes the current blight terminology, the governmental decisions to condemn and the narratives related to the condemnation.

*B. The Constitution and Case Law*

Federal and state governments have the power to take property by eminent domain.<sup>7</sup> However, legal scholars continue to question whether there are limits to the definition of blight and the condemnation of property based on blight. The Fifth Amendment prohibits the deprivation of property without due process and just compensation. Our founding fathers sought to limit the government's ability to take private property.<sup>8</sup> Furthermore, the Fifth Amendment's Taking Clause provides that private property may not be taken for "public use, without just compensation."<sup>9</sup> The Fifth Amendment is applicable to the States by the Fourteenth Amendment and equivalent provisions in all state constitutions.<sup>10</sup> The

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<sup>7</sup> JOSEPH WILLIAM SINGER ET AL., *PROPERTY LAW: RULES, POLICIES, AND PRACTICES* 1141 (6th ed., Wolters Kluwer Law and Business 2014).

<sup>8</sup> PETER W. SALSICH, JR. & TIMOTHY J. TRYNIECKI, *LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW* 67 (3d ed., American Bar Ass'n 1998); U.S. CONST. amend. V.

<sup>9</sup> U.S. CONST. amend. V (provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."). Matthew Kokot, *Balancing Blight: Using the Rules Versus Standards Debate To Construct a Workable Definition of Blight*, 45 COLUM. J.L. & SOC. PROBS. 45, 48 (2011).

<sup>10</sup> See SINGER, *supra* note 7; U.S. CONST. amend. XIV. See also *Chicago, Burlington & Quincy R.R. Co. v. Chicago*, 166 U.S. 226, 228 (1897).

right of the States to take or damage private property for public purposes has been deemed “an inherent attribute of sovereignty, irrespective of any constitutional or statutory provision.”<sup>11</sup>

The Takings Clause calls into question several constitutional issues in eminent domain. First, does a purported taking involve “private property” subject to the Fifth Amendment’s Taking Clause? Second, is the taking for “public use?” Third, if so, has there been payment of “just compensation?”<sup>12</sup>

Each of these questions can be applied to the takings involved in St. Louis Place. First, the Fifth Amendment’s Takings Clause applies because private property is involved. Second, whether the takings were for public use is less significant since the Supreme Court’s decision in *Kelo* broadened the interpretation of public use to include “public purpose.”<sup>13</sup> As a result, the public use doctrine under *Kelo* is likely satisfied where an original plan for economic development morphs into a federal acquisition by the NGA. Additionally, the Supreme Court’s deference to state or local municipalities is “embodied in a strong theme of federalism, emphasizing the ‘great respect’ that we owe to state legislatures and state courts in discerning local public needs.”<sup>14</sup>

The third inquiry that survives is the notion of fairness in the just compensation award and the due process owed to the party whose property is subject to a blight designation. Whether St. Louis Place owners actually received just compensation and due process is beyond the scope of this Article and of great interest for a deeper analysis. However, upon preliminary observation, where homeowners had legal representation (advice and consultation on the process, regulatory regime, appraisals, and representation at closings and in court), there appears to be a differential in the level of due process and just compensation received. Owners without representation had difficulty maneuvering the complexities of the condemnation process, whether that was due to limited reading and financial literacy or other challenges such as disability, immobility and age.

Historically, the federal government’s eminent domain power has been used to acquire property for public use<sup>15</sup> and eminent domain

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<sup>11</sup> *Gomez v. Kanawha Cty.* Comm’n, 237 W.Va. 451, 459 (2016).

<sup>12</sup> See SINGER, *supra* note 7.

<sup>13</sup> Noreen E. Johnson, *Blight and Its Discontents: Awarding Attorney’s Fees to Property Owners in Redevelopment Actions*, 93 MINN. L. REV. 741, 745 (2008).

<sup>14</sup> *Kelo v. New London*, 545 U.S. 469, 1147 (2005).

<sup>15</sup> History of the Federal Use of Eminent Domain, U.S. DEP’T OF JUSTICE (May 2015), <https://www.justice.gov/enrd/history-federal-use-eminant-domain>.

“appertains to every independent government.”<sup>16</sup> However, the Constitution protects private property from unbridled seizures by federal and state governments in two ways. First, a government entity wishing to acquire the land must demonstrate that the appropriation is for a public use. Second, the government entity must pay a full and fair amount for the appropriation.<sup>17</sup> Nevertheless, the definition of public use has been expanded to include takings for a public purpose or a public benefit.<sup>18</sup>

Three essential cases have developed the public use doctrine in condemnation proceedings; two cases before the United States Supreme Court and one at the State Supreme Court. The United States Supreme Court decided *Berman v. Parker* in 1954<sup>19</sup> and *Hawaii Housing Authority v. Midkiff*<sup>20</sup> in 1984. Furthermore, the Supreme Court of Michigan decided *Poletown Neighborhood Council v. Detroit*<sup>21</sup> in 1972. The sixty-three years of precedent in *Berman*, *Midkiff*, and *Poletown* along with the dicta in *Kelo*, have cemented a legal course of action for lower courts to give judicial deference to legislative decisions regarding the taking of private property in blight scenarios.

In *Berman v. Parker*, one of the first blight condemnation cases, the Supreme Court considered the issue of blight condemnation. The Court held government entities could use a redevelopment plan to target properties in Washington, District of Columbia with a blight designation:

Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth

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<sup>16</sup> *Id.*

<sup>17</sup> *Teitelbaum v. S. Florida Water Mgmt. Dist.*, 176 So. 3d 998, 1002 (Fla. Dist. Ct. App. 2015). *See also* *Bauman v. Ross*, 167 U.S. 548, 548 (1897); *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9-10 (1984).

<sup>18</sup> *Bellwood v. Am. Nat'l Bank & Tr. Co.*, 952 N.E.2d 148, 148 (App. Ct. 2011); *see also* *Chicago v. Barnes*, 30 Ill. 2d 255, 257 (1964) (holding that “private persons may ultimately acquire ownership of property arising out of a taking and the subsequent transfer to private ownership does not by itself defeat the public purpose.”); *see* *Gomez v. Kanawha Cty. Comm'n*, 237 W.Va. 451, 459 (2016) (“[T]he question of whether property has been taken for public use is question of law for court.”).

<sup>19</sup> *See* *Berman v. Parker*, 348 U.S. 26, 38 (1954).

<sup>20</sup> *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 229 (1984) (the Supreme Court reaffirmed *Berman*'s deferential approach to legislative judgment blight condemnation cases).

<sup>21</sup> *Poletown Neighborhood Council v. Detroit*, 304 N.W.2d 455, 455 (Mich. 1981) (the taking of an immigrant neighborhood in Detroit; overruled by *Cty of Wayne v. Hathcock*, 684 N.W.2d 765, 787 (Mich. 2004)); *see also* Patricia H. Lee, *Eminent Domain: In the Aftermath of Kelo v. New London, A Resurrection In Norwood: One Public Interest Attorney's View*, 29 W. NEW ENGL. L. REV., 121, 130-131 (2006) (suggesting the “federal judiciary is no longer the place for homeowners, small businesses, and other property owners to seek protection” from eminent domain takings and to “seek change at the local and state level”).

Amendment that stands in the way.<sup>22</sup>

Next, in *Hawaii v. Midkiff*, the Supreme Court examined a Hawaii statute that allowed fee title to be taken from lessors and transferred to lessees (for just compensation) in order to reduce the concentration of land ownership. The Court unanimously upheld the statute and rejected the Ninth Circuit's view that the law was "a naked attempt on the part of the state of Hawaii to take the property of A and transfer it to B solely for B's private use and benefit."<sup>23</sup>

In *Midkiff*, the Supreme Court reaffirmed the deferential approach to legislative judgment in blight condemnation cases established in *Berman*. The Court concluded that the State's purpose of eliminating the "social and economic evils of a land oligopoly" qualified as a valid public use.<sup>24</sup> The Court rejected the contention that the mere fact the State immediately transferred the properties to private individuals upon condemnation would diminish the public character of the taking. The Supreme Court explained "it is only the taking's purpose, and not its mechanics" that matters in determining public use.<sup>25</sup> More recently, *Kelo* implicitly condoned judicial deference to legislative blight condemnations.<sup>26</sup> This deference continues to be a cause of concern because of the variety of reasons that can constitute a taking for a public benefit. For example, a public benefit can include revitalization, economic development, affordable housing, increasing the local tax base, streets for stadiums, or beautification.

Following *Berman*,<sup>27</sup> blight takings have become a troubling phenomenon with no end in sight. Arguably, owners of private property should never have their properties taken merely because of amorphous conditions and false narratives.

### C. *Blight Stories Nationally*

Between February 1, 2017 and March 31, 2017, the author collected news articles by date, geographic location, subject, reference link and quotes related to blight.<sup>28</sup> Notably, many of the news articles were

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<sup>22</sup> *Midkiff*, 467 U.S. at 229.

<sup>23</sup> *Id.* at 235 (internal quotation marks omitted).

<sup>24</sup> *Id.* at 241-42.

<sup>25</sup> *Id.* at 244.

<sup>26</sup> See generally Steven Eagle, *Does Blight Really Justify Condemnation?*, 39 URB. LAW. 833, 833 (finding since *Kelo*, legislatures have amended and altered many public use requirements, yet legislatures also have created exceptions to the public use requirement for blighted areas).

<sup>27</sup> See *Parker*, 348 U.S. at 26.

<sup>28</sup> See *infra*, note 30-32 (34 states that were the subject of blight articles included the following: AK, AL, AZ, CA, CO, CT, DC, FL, GA, IL, IN, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, NE, NJ, NV, NY, OH, OK, PA, TN, WI, WV, VA, VT, WY).



generated in “Rust Belt” states, such as, upstate New York and Pennsylvania, eastward, to the state of Connecticut, indicating the breadth of blight activity. Query whether these news articles illustrate the problems that former industrialized states are experiencing and possibly the effect of depopulation and migration from east to west and old to new construction. During this two-month period, over 183 news articles were written about blight and condemnation. Furthermore, these news articles involved thirty-four states, including the District of Columbia.<sup>29</sup> The subject of news articles had various story lines:

- Mayor seeking to designate a community as blighted;<sup>30</sup>
- Why Tax Incentive Financing (TIF) is not used to alleviate the blight in the communities, but rather is used to fund new development and renovation for more privileged communities;<sup>31</sup>
- The devastating effects of unemployment and job loss in communities;<sup>32</sup>
- The effects of the mortgage crisis on communities.

Despite ongoing efforts to eradicate so-called blighted areas, oddly, blight has persisted and grown. Whether actual or perceived, such conflicting results beg the question: why has the number of blighted areas increased? Since *Kelo*, takings based solely on economic development have been under more scrutiny from the public and state legislatures. However, in economic development takings where the properties are designated blighted, the real reason for the taking is blurred. Often, narratives are created to frame the blight in a positive light along with a socio-economic justification for the taking. Moreover, the narrative communicates the motivation. For example, a blight narrative may claim that decision-makers should be motivated to remove unfit or unsafe blighted area for a greater good than leaving the property in a state of status quo. Those greater goods include job creation, higher tax base, more prosperity, and an aesthetically and architecturally pleasing community. Occasionally, this narrative is true, but, typically, the

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<sup>29</sup> *Id.*

<sup>30</sup> Andrew James, *Savannah Clean Up Program Launches Year Long Program To Clean Up Littering and Blight*, WSAV (Mar. 4, 2017), (<http://wsav.com/2017/03/04/savannah-clean-up-program-launches-year-long-fight-of-littering-and-blight/>).

<sup>31</sup> Associated Press, *In Pittsburgh's fight against blight, some areas left behind* (Feb. 25, 2017, 4:02 AM), *READING EAGLE* (<http://www.readingeagle.com/ap/article/in-pittsburghs-fight-against-blight-some-areas-left-behind>).

<sup>32</sup> See Alex Hill, *Map: Blight, Demolitions, and Unemployment*, DETROITGRAPHY (March 7, 2014), <https://detroitography.com/2014/03/07/map-blight-demolitions-and-unemployment> (discussing Mayor Duggan's ten-point plan for Detroit and laying out an urban planner's approach to remaking a city"). Hill notes, however that this plan lacks, “any real economic plans that are necessary for breathing new life into neighborhoods where unemployment reaches over 30% in some areas of the city”). See Associated Press, *supra* note 31.

narrative is either false or does not provide any of these benefits—greater goods—to the current property owners.

Courts have the judicial power to examine the constitutionality of actions taken by redevelopment authorities.<sup>33</sup> Furthermore, courts have the judicial discretion to review the interpretation and application of statutory provisions relating to a blight determination.<sup>34</sup> For instance, in *Norwood v. Horney*,<sup>35</sup> the Ohio Supreme Court placed constitutional limits on a municipality's blight designation. The Ohio Supreme Court, referencing the Ohio state constitution, held that the city of Norwood abused its discretion because of the paucity of evidence of blight—using the term “deteriorating area” as a standard for taking.<sup>36</sup> The Court further considered the term “deteriorating area” a speculation, as a future condition of the property, rather than a condition at the time of the taking and therefore, void for vagueness.<sup>37</sup>

Federal constitutional law has essentially taken a hands-off approach to blight designations. Why the hands-off approach? Professor

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<sup>33</sup> See 62-64 Main Street, L.L.C. v. Mayor & Council of the City of Hackensack, 221 N.J. 129, 136 (2015) (holding that “definitions of blight in Local Redevelopment and Housing Law comply with standards set by the state constitutional Blighted Areas Clause, and substantial evidence supported city’s blight determinations.”); see also *Chicago v. Eychaner*, 26 N.E.3d 501, 505, 520-22 (Ill. App. Ct. 2015) (holding Chicago’s “exercise of eminent domain power in conservation area in furtherance of economic development plan satisfied constitutional ‘public use’ requirement.”); *Makowski v. Mayor of Baltimore*, 439 Md. 169, 195 (2014) (ruling against property owner and holding that the evidence was sufficient to support the Circuit Court’s finding that the property owner was a “hold out” and that the city’s quick-take action was warranted.); see *Gomez v. Kanawha Cty. Comm’n*, 237 W.Va. 451, 461 (2016) (holding “that the question of whether property has been taken for public use is a question of law for the court.”); *In re Condemnation by the Commonwealth of Pa.*, 131 A.3d 625, 635 (Pa. Commw. Ct. 2016) (holding that “the failure to file a declaration of taking within the one-year time period [set forth in Eminent Domain Code] results in the original declaration lapsing;” overruling *In re Redevelopment Authority of Allentown (Ribbon Works)*, 31 A.3d 321, (Pa. Cmwlth. 2011)).

<sup>34</sup> 141 AM. JUR. 3D. Proof of Facts §5 (1999) (The cases are subject to the interpretation of the federal judiciary, to the extent that there is a constitutional question and the state judiciary on matters of state law. Federal law defers the definition and determination of blighted areas to the state governments that enable redevelopment corporations and local governments to administer them. State actions have a validity presumption.)

<sup>35</sup> *Norwood v. Horney*, 853 N.E.2d 1115, 1122 (Ohio 2006); Brief for Ohio Conference National Association for Colored Persons and National Institute for Urban Entrepreneurship et al. as Amicus Curiae Supporting Appellants, *Norwood v. Horney*, 853 N.E.2d 1115 (Ohio 2006) (No. 2005-0227).

<sup>36</sup> *Norwood*, 853 N.E.2d at 1126 (finding that “Norwood had abused its discretion insofar as it had found that the neighborhood was a ‘slum, blighted or deteriorated area.’ That conclusion was based on the paucity of evidence supporting the necessary finding that a ‘majority of structures’ in the neighborhood were conducive to ill health and crime, detrimental to the public’s welfare, or otherwise satisfied the criteria of a slum, blighted, or deteriorated area.”). See also 141 Am. Jur., *supra* note 34, at § 2.

<sup>37</sup> *Norwood*, 853 N.E.2d at 1146.

Eagle explains the failure of courts to intervene in blight designations by stating that, “[e]ven though the definition of ‘blight’ has been made more stringent in some states, the underlying concept of condemnation for blight remains accepted with little analysis.”<sup>38</sup> Eagle further asserts that blight is a “metaphor” for disease and “it seem[s] self evident that government may take blighted property by eminent domain.”<sup>39</sup> Eagle also illustrates that the term’s comparison to disease is not only of the parcel, but to the neighborhood and the city. Later, this Article will discuss why the metaphor has devastating implications for communities in distress.

*Kelo* did not alter the rule of case law regarding a government entity’s power to take property based on blight. In fact, *Kelo* provided more justification about the constitutionality of takings of blighted property. The reason is not due to the fact that the federal judiciary rendered the majority opinion that deferred to the legislature. The reason is more so that Justice O’Connor’s dicta, that blight condemnations should continue to be constitutional, did not appear to have full appreciation of the impact of takings of properties based on a blight designation.<sup>40</sup> In essence, *Kelo* gave a nod to the status quo.

To the extent that blight in distressed communities continues to be a driving force behind takings, it is imperative that we, as a society, clarify what “blight” actually means and how we should address and solve the problem. How a community and state legislature define what *blight* is will have vital implications for condemnation and eminent domain. Practically, in blight cases, the idea of challenging a blight decision remains an uphill battle for property owners and for their communities, if not a futile one, similar to fighting windmills.

This leads us back to *Berman* where the blight takings represent the use of eminent domain to address distressed properties. These takings continue unabated and are constitutionally sanctioned. Scholars have expressed their disapproval of current eminent domain policies, practices, and theories. Some scholars have taken a logical approach to try to explain the reasons why neighborhoods may experience more or less eminent domain takings, such as economic determinants,<sup>41</sup> lax local

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<sup>38</sup> See Eagle, *supra* note 26, at 840.

<sup>39</sup> *Id.*

<sup>40</sup> David A. Dana, *The Law and Expressive Meaning of Condemning The Poor After Kelo*, 101 NW. U. L. REV. 365, 366, 371-72, 382-383 (2007) (noting that “Justice O’Connor argued that Berman-style blight removal condemnations should continue to be constitutional but Kelo-style economic development condemnations should be flatly prohibited.”). *Id.* at 375 (noting that the dissent of Justice Clarence Thomas remains the only Supreme Court Justice who has advocated a rejection of blight condemnations).

<sup>41</sup> Carrie B. Kerekes, *Government Takings: Determinants of Eminent Domain*, 13 AM. L. &

government enforcement,<sup>42</sup> historic racial and exclusionary practices,<sup>43</sup> and governmental goal attainment.<sup>44</sup> Other scholars have expressed concern that eminent domain takings disproportionately affect communities of color and the underprivileged in very profound ways.<sup>45</sup> Communities of color must contend with unfair offers on their homes, the inability to relocate their businesses, the inability to defend against the takings,<sup>46</sup> or to the loss of cultural capital and critical social networks.<sup>47</sup> Moreover, scholars have found the political response to eminent domain takings as ineffectual<sup>48</sup> and continue to question the definition of blight.<sup>49</sup>

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ECON. REV. 201, 216 (2011) (finding that eminent domain use for private benefit is utilized more widely in states with: (1) higher rates of corruption, (2) appointed Supreme Court justices, (3) less fiscal decentralization, and (4) lower economic freedom).

<sup>42</sup> Kermit Lind & Joe Schilling, *Abating Neighborhood Blight with Collaborative Policy Networks—Where Have We Been? Where Are We Going?*, 46 U. MEM. L. REV. 803, 819-20 (2016) (noting that “[a]lthough neighborhood blight has many drivers and takes different forms, it seems to move fast and takes hold where housing markets and local regulation are weak and fragmented. One common contributing factor that we have seen and studied is the failure of local government code enforcement—the traditional housing and neighborhood maintenance programs and associated public policies—to take systematic approaches to manage blight.”).

<sup>43</sup> Dick M. Carpenter II, & John K. Ross, *Victimizing The Vulnerable, The Demographics of Eminent Domain Abuse*, INSTITUTE FOR JUSTICE (2007); see also Dana Berliner, *Public Power, Private Gain, A Five-Year, State-By-State Report Examining the Abuse of Eminent Domain*, INSTITUTE FOR JUSTICE (2003).

<sup>44</sup> Eagle, *supra* note 26, at 840 (stating that “[w]hile it is conventional to state that the presence of blight results in condemnation, it is more likely that the availability of condemnation results in “blight.”); see also Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 3-4 (2003) (noting that by “elevating blight into a disease that would destroy the city, renewal advocates broadened the application of the Public Use Clause and at the same time a re-conceptualization of property rights.”).

<sup>45</sup> See Carpenter *supra* note 43, at 7. See also U.S. COMMISSION ON CIVIL RIGHTS, THE CIVIL RIGHTS IMPLICATIONS OF EMINENT DOMAIN ABUSE: A BRIEFING REPORT (2014). See also, Brief for Better Government Association, as Amicus Curie Supporting Petitioners, *Kelo v. New London*, 545 U.S. 469 (2005) (No. 04-108).

<sup>46</sup> See Lee, *supra* note 21, at 122.

<sup>47</sup> Mindy Thompson Fullilove, *Eminent Domain & African Americans, What is the Price of the Commons, Perspectives on Eminent Domain Abuse*, INSTITUTE FOR JUSTICE 5 (2015) (providing a table of losses with examples from interviewed homeowners who had been displaced by eminent domain).

<sup>48</sup> Ilya Somin, *The Limits of Backlash: Assessing the Political Response to Kelo*, 93 MINN. L. REV. 2100, 2120 (2009).

<sup>49</sup> See Dana *supra* note 40, at 366, 382-83 (noting that reform “efforts in the law of eminent domain have largely focused on economic development condemnations in middle-class areas, and not blight condemnations in poor areas . . . the fact that the two cases that have spawned the greatest public outrage both involved middle-class areas . . . largely immigrant Poletown neighborhood in Detroit in 1980 . . . a middle-class section of New London, Connecticut.”). See *Poletown Neighborhood Council v. Detroit*, 304 N.W.2d 455 (Mich. 1981) (overruled by *Cty of Wayne v. Hathcok*, 684 N.W.2d 765, 787 (Mich. 2004)); see also, *Kelo v. City of New London*, 545 U.S. 469, 469 (2005).

Nevertheless, the call for change has failed to produce a nationwide shift in either blight terminology or the taking doctrine, and has failed to spur innovation that is needed in distressed communities.

This Article goes beyond the question, “are there any limits, practical or otherwise, to restrain governmental bodies in their exercise of eminent domain so long as they can rationalize a benefit flowing to the public?”<sup>50</sup> This Article also does not re-examine whether a particular taking is for public use, a public purpose, or taken to be given to a private party. This Article presumes the answer to the first question is “no” and the answer to the second question is virtually indistinguishable, in light of the current framework for blight takings. Rather, this Article argues that the systemic failure in blight takings is due, in part, to the current blight terminology, false narratives, and flawed decision-making related to condemnation and takings. The next section discusses the framework in greater detail.

*“Nay, I know Sir John will go, though he was sure it would rain Cats and Dogs.” – Jonathan Swift<sup>51</sup>*

### III. WHAT IS THE BLIGHT FRAMEWORK?

The Blight Framework illustrates the systemic failures of three distinct components that create a toxic foundation for blight takings: terminology, narrative, and decision-making. Condemnations and takings occur whether a particular property is in excellent condition or whether it is not worth taking. Condemnations and takings occur regardless of whether the area near the property is safe, moral, or healthy. The issue is whether property sought fits a statutory definition, there is a narrative justifying the taking and decision-makers decide to condemn. In this process, first, a government entity uses its power to condemn property. Second, the entity creates a narrative supporting a reason, real or pre-textual, as to why the property must be taken. Third, a government entity proceeds to take the property and pay the owner “just” compensation, the value of which can be contested prior to settlement or in court.

In analyzing the widespread use of blight and the harm it causes to

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<sup>50</sup> Donald E. Sanders & Patricia Pattison, *Economic Development Condemnation for the Benefit of Private Enterprise—Kelo v. City of New London*, 15 S. L.J. 1, 1 (2005).

<sup>51</sup> Jonathan Swift, A COMPLETE COLLECTION OF POLITE AND INGENIOUS CONVERSATION, Dialogue-II, 166 (Charles Whittingham & Co., 1704), available at <https://literarydevices.net> (a metaphor alluding to the end of the 17<sup>th</sup> century in England and other large cities around the world fighting poor sanitary conditions due to overcrowding or shortage of sewers and plumbing <https://literarydevices.net>).

those who are displaced by blight takings, one would question why the blight condemnation tool persists. Especially considering that taking property based on blight condemnation has never been determined sound or logical by *Berman*, *Midkiff*, or *Kelo*.<sup>52</sup> Legal scholars are admonished to question how we as a nation have gotten to this point.

Figure 1 illustrates the three systemic failures in condemnation: terminology, narrative and decision-making and is characterized as a “Blight Framework.”<sup>53</sup>

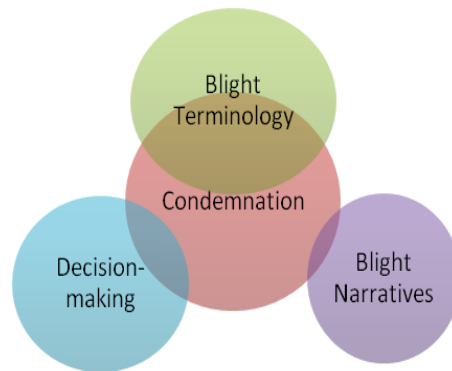


Figure 1: Blight Framework Diagram by Patricia H. Lee

A common narrative is that there is a desire to replace vacant buildings located in distressed communities and replace them with newer properties. There is a second part to the narrative that goes, “vacant buildings breed crime.” Generally, these two concerns are considered a big or wicked problem. However, displacement of communities based on the Blight Framework may be a bigger problem. It is generally known that the particular community is suffering distress, e.g. concerns about vacant buildings, concerns about crime, concerns about poverty. But what is it about this scenario that creates a climate that it is “acceptable” to take property? Worse is the fact that as people are displaced, there is a silence about what just happened. The new narrative is either about the new prosperous community that replaced the former community or the problems that are now occurring in another area (a new cycle begins). Rather than solving the community distress, we, as a society, are just

<sup>52</sup> Eagle, *supra* note 26, at 834 (citing to Justice Clarence Thomas’ question in *Kelo of* “whether the State can take property using the power of eminent domain is . . . distinct from the question whether it can regulate property pursuant to the police power” i.e. the power to abate a nuisance); see *Kelo v. New London*, 545 U.S. 469, 519-20 (2005); see also *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 229 (1984).

<sup>53</sup> Blight Framework Diagram by Patricia H. Lee (June 19, 2017).

moving people around and creating a momentary economic boom in the area that they left.

Statutes are written broadly to include the distressed community within the definition; the debate ensues, a narrative frames the debate and the government seals the decision with a condemnation. The property owners get a hearing and some compensation. A developer or other, third party takes the property. However, without a better understanding of this systemic framework, society may continue to fail the most vulnerable communities.

#### A. *Blight Terminology*

We begin with the origins of blight terminology used in blight condemnations and eminent domain and whether there is a problem with the use of this terminology.<sup>54</sup>

##### i. History, Etymology and the Metaphor

In the 1920s, government entities began taking properties as a tool to control urban development.<sup>55</sup> The early discourse, driven principally by urban planners, expressed concerns about the conditions of slums and blighted areas<sup>56</sup> leading to an extensive body of progressive literature in architecture,<sup>57</sup> sociology, and ecology.<sup>58</sup> The discourse originally focused on the problems of poor people in urban areas.<sup>59</sup> Urban planners and civic leaders expressed concerns about the failure to take proper measures to protect health, safety and welfare of urban residents. Reformers in the early 20<sup>th</sup> century used blight to refer to unsanitary

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<sup>54</sup> Although an important topic, this Article does not address the new phenomenon of *zombie properties*, which are properties impacted by the mortgage foreclosure or land use restrictions in zoning policy and may be responsible for the condemnation or taking of the property.

<sup>55</sup> See Pritchett, *supra* note 44, at 12 (discussing the 1926 case of *Euclid v. Ambler Realty Co.* wherein, Judge Sutherland ruled zoning codes an acceptable government measure to shape urban areas and did not violate the Due Process Clause of the Fourteenth Amendment). See *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 365 (1926).

<sup>56</sup> See Pritchett, *supra* note 44, at 16.

<sup>57</sup> MABEL WALKER, *URBAN BLIGHT AND SLUMS: ECONOMIC AND LEGAL FACTORS IN THEIR ORIGIN, RECLAMATION, AND PREVENTION* 3 (Cambridge: Harvard University Press, 1938).

<sup>58</sup> See Pritchett, *supra* note 44, at 16. (Pritchett observes that “[o]ther urban areas did not meet the definition of a slum, but they were “blighted.” The Chicago School of Sociology first used the term. Founded in the Progressive era, the Chicago school was led by Robert Park, Ernest Burgess, and R.D. McKenzie, and produced an impressive amount of scholarship that focused in particular on the problems of the poor in cities. These scholars introduced the “ecological approach” to the field of sociology, and this method of study was crucial to early twentieth century understandings of urban change.”).

<sup>59</sup> See Pritchett, *supra* note 44, at 16.

housing with offensive conditions<sup>60</sup> and to stem the threat of places where residents had poor sanitation conditions.<sup>61</sup>

However, in later years, the discourse changed. By the 1940s, reformers expressed their concerns with blight, not in terms of public health and moral well-being, but in terms of decline and economic stagnation.<sup>62</sup> Health, safety, and welfare continued to be raised as concerns, but couched as a possible future condition or eventuality, in light of the economic decline. The primary considerations became weak economic conditions that tended toward concerns about social ills. In the 1950s and 1960s, after the narrative of blight became more developed, planners and civic leaders created urban renewal programs, which further identified blight as an economic problem.<sup>63</sup> The 1920s aggressive solutions of clearance, eradication, and citywide zoning codes used in the context of slums<sup>64</sup> and unsanitary conditions, continued with the implementation of aggressive measures to take properties in economically declining communities.

The expansive context of the effort to clear and eradicate blighted properties appears to have no end in sight, nor any objective boundaries. The context and the rationale for the proliferation of designating areas as blighted is worthy of more research. For purposes of this Article, the author asserts that the definition and the false narratives are contributors to distortions in the decision making with the statute serving as a rubber stamp to approve redevelopment plans. This framework does not provide a prescription for the underlying problem creating the community's socio-economic distress.

Scholars have long wrestled with the distinction between blighted areas and slums. For example, the early writings of post-depression author Mabel L. Walker explored this distinction in depth.<sup>65</sup> Walker suggested that a blighted area was not a slum and distinguished the two terms. A slum, Walker explained, was “a residential area with an extreme condition of blight,”<sup>66</sup> wherein the housing was “so inadequate or so

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<sup>60</sup> G.E. Breger, *The Concept and Causes of Urban Blight*, 43 LAND ECON. 369, 369-76 (1967).

<sup>61</sup> THE VACANT PROPERTIES RESEARCH NETWORK, CHARTING THE MULTIPLE MEANINGS OF BLIGHT 3 (2015), [https://www.kab.org/sites/default/files/Charting\\_the\\_Multiple\\_Meanings\\_of\\_Blight\\_FINAL\\_REPORT.pdf](https://www.kab.org/sites/default/files/Charting_the_Multiple_Meanings_of_Blight_FINAL_REPORT.pdf).

<sup>62</sup> *Id.* (the authors explain that “[a]fter the economic collapse of the Great Depression, housing reformers and urban policymakers shifted gears away from . . . concerns about public and moral health.”).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See Walker, *supra* note 57.

<sup>66</sup> Walker, *supra* note 57 (Walker discusses migration and immigration, large numbers of African Americans and immigrants moved to urban cities across America).



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deteriorated as to endanger the health, safety, or morals of its inhabitants.” Walker further explained that inhabitants’ health, safety and morality were of greater concern than the economic condition of the area.

Walker makes a distinction between a slum and a blighted community. Walker argues that “slums” may be economically profitable to landlords, such as subdivided rental properties, which may be a hazardous location for tenants. This health/welfare versus economic distinction can be illustrated graphically.

<p><b><i>[Walker’s Prosperous Community]</i></b> Economically Profitable Safe, Moral, Healthy</p>	<p><b><i>[Walker’s Blighted Community]</i></b> Economically Distressed Safe, Moral, Healthy</p>
<p><b><i>[Walker’s Slum]</i></b> Economically Profitable But Unsafe, Immoral, Unhealthy</p>	<p><b><i>[Walker’s Slum]</i></b> Economically Distressed And Unsafe, Immoral, Unhealthy</p>

Figure 2: Prosperity, Blight and Slum Illustration by Patricia H. Lee

Using Walker’s analogy, in contrast to the slum narrative, “a blighted area” stood for an area “on the down grade, which [has] not reached the slum stage.”<sup>67</sup> This distinction is important, since an area that is declining potentially can be revitalized for the inhabitants of the neighborhood. Declining does not necessarily mean a social concern, like health, safety, and welfare. But rather, the concept of declining connotes a current economic concern and a futuristic social concern for those in the community or other stakeholders in the community. This important distinction between slums, economically profitable, subdivided to rent hazardous locations to tenants, was well taken.<sup>68</sup>

Because blight terminology is codified by statute, some scholars suggest the codification of blight is the source of the problem.<sup>69</sup> The blight statutory codes allow for, state-by-state, variations based on a variety of factors. The characteristics of blight as codified by statute,<sup>70</sup>

<sup>67</sup> Walker, *supra* note 57.

<sup>68</sup> Walker, *supra* note 57 (due to migration and immigration, large numbers of African Americans and immigrants moved to urban cities across America).

<sup>69</sup> Professor Richard Epstein, Remarks at the AALS Conference in San Francisco (Jan. 3, 2017) (Professor Epstein raised the dilemma for scholars to understand the peculiar way that regulation expands itself. Professor Epstein also noted that codifying the definition of blight by statute, was problematic); *see also* Am. Jur., *supra* note 34 at § 5 (Role of Courts).

<sup>70</sup> *See* 141 Am. Jur., *supra* note 34, at § 6 (defining Blight).

may be broad, specifically defined, or strictly prohibited.<sup>71</sup> The statutory codes are what is applied by state or local authorities, interpreted by courts and utilized by governmental bodies. Arguably, the terminology is where the problem begins.

Even before *Kelo*, scholars claimed that due to a mix of factors, the term “blight” had lost any substantive meaning as either a description of urban condition or a target for public policy.<sup>72</sup> Scholars have struggled with how imprecise the definition of “blight” is, noting that it can be subjective or objective, complex or simple, vague, amorphous, and varied by jurisdiction. This dilemma suggests that without a precise and objective definition, just about any condition could qualify for a blight designation. In the next section, the imprecise blight definition is addressed in order to determine what the term blight *really* means.

Eagle claims that the “powerful allure” of blight is as a metaphor for disease.<sup>73</sup> In agreeing with that notion, this Article seeks to shatter the misguided use of the blight metaphor in condemnation decision-making. As an alternative, consider the power of designing precise descriptions of the condition of the building or community in distress. In sum, a new language must be created and new solutions must be developed. Statutory distinctions between complex, simple, objective and subjective statutory construction addresses the problem in part. The very use of the word “blight” is an automatic trigger to condemn and take property in distressed communities. The problem with doing so is further discussed in this Article.

The deficiency of the language, practice, and the experiential breadth of blight, as applied in land use situations, becomes evident. Blight is not only a vague and subjective term, but has also been expanded from its original interpretation from social concerns during the Great Depression to economic development today. Blight as a noun joined with descriptive adjectives is creating an expanded lexicon, more than ever before, with concerns such as “big box blight,” “zombie blight,”<sup>74</sup> “urban,

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<sup>71</sup> 141 Am. Jur., *supra* note 34, at § 6 (defining Blight).

<sup>72</sup> Julie A. Goshorn, *In a TIF: Why Missouri Needs Tax Increment Financing Reform*, 77 WASH. U.L.Q. 919, 920 (1999) (noting that “[p]roponents [that sites are blighted] are quick to point out that these sites *legally* fit the definition of blight under [the] Missouri statute but their argument only highlights a poorly written statute.”) (emphasis added). *See also* Fullilove, *supra* note 47, at 10 (stating that, “Blight” is a term that has no fixed meaning. It implies that a building or a piece of land is in poor condition. It is used to infer that the building or land represents a “cancer” that has to be cut out in order for the “body” of the city to survive. “Blight” designations are applied to homes and territory that are to be designated for taking, as part of eminent domain proceedings.”).

<sup>73</sup> *See* Eagle, *supra* note 26, at 839-40.

<sup>74</sup> A recent and growing dilemma relates to properties that are being called “Zombie

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suburban or rural blight,” “extensive blight,” “residential blight,” and used as an adjective, “blighted area,” “blighted building,” etc. Next, blight etymology in search of the definition’s origin is explored in greater detail.

Etymology is the study of the origin and development of words.<sup>75</sup> The origin of the word “blight” can be traced back to the sixteenth century when blight was vaguely defined and used in different contexts. For example, in agriculture, the word blight was used to describe the rapid advancement of a disease in plants.<sup>76</sup> Blight also emerged from the talk of gardeners and farmers, perhaps ultimately from Old English, *blæce*, *blæcðu* a scrofulous skin condition and/or from Old Norse *blikna* “become pale.” Moreover, in agriculture, the word blight was occasionally used with a suggestion of an “invisible baleful influence;” hence a figurative sense of “anything which withers hopes or prospects or checks prosperity.” Urban blight attested by 1935.<sup>77</sup>

A “blighted area” has been defined as an unaesthetic and uneconomic section. In general, a blighted area is the type of area that razing all the buildings will serve a public purpose, even though a few of them may not be substandard or blighted.<sup>78</sup> On the other hand, a “slum” is defined as an area where the poor and underprivileged are housed in inferior and dilapidated dwellings, flats, apartment houses, and tenements.<sup>79</sup>

Ironically, the term blight started as a description for diseased plants, which is a woeful definition for what is happening today to our communities. If a farmer finds part of his crop is in a state of blight then the farmer seeks solutions to protect the rest of his crops from the blight. With concern, collaboration between the farmer, the community, and the government could create a solution so that all of the plants are not lost.

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properties.” The use of the terms “Zombie property” to describe a property may suffer from the same disservice and metaphor as does blight.

<sup>75</sup> ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/etymology> (last visited Dec. 27, 2017) (late 14c., *ethimologia* “facts of the origin and development of a word,” from Old French *etimologie*, *ethimologie* from Latin *etymologia*, from Greek *etymologia* “analysis of a word to find its true origin,” properly “study of the true sense of a word”).

<sup>76</sup> See The Vacant Properties Research Network, *supra* note 61, at 2.

<sup>77</sup> ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/blight> (last visited Dec. 27, 2017); MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/blight> (last visited Dec. 21, 2017) (provides the agricultural definition of “blight” as a disease that makes plants dry up and die; something that causes harm or damage like a disease; a damaged condition; something that impairs or destroys; and a deteriorated condition, alleging a known use in 1578).

<sup>78</sup> *Blight*, BALLENTINE’S LAW DICTIONARY (3d ed. 1969); see also *Velishka v. Nashua*, 106 A.2d 571, 571 (N.H. 1954).

<sup>79</sup> *Velishka*, 106 A.2d at 1187.

If a community is called blighted, a third party is using that definition, typically not one used by the property owner. Once the third party successfully identifies the area as blighted, the third party begins to raise funds for the area in order to take the properties away from the owners. The prior owners are replaced with new parties, whose plans and blueprints are funded and used to replace the properties.

To better understand the problem, consider two concentric circles of blight rationale. One circle could illustrate a community, such as, the one described by Swift in a late 17th century English town or one described by Walker in an American community during the Great Depression, where overcrowded communities suffered from unsafe conditions, dysentery and disease. In these cases, one rationale for blight would be the community was unsafe and a public menace, necessitating an intervention.

The second concentric circle could illustrate a community, such as St. Louis Place or another economically distressed community suffering from economic woes. The economic woes may create high housing vacancies, zombie properties, or other property deterioration. It is possible there would be some communities that suffered from a mix of both scenarios. The combination of social decay and economic deterioration may identify a community with rampant public health risk of disease and economic deterioration. Potentially, the circles could overlap with portions of the community suffering from social decay and other parts from economic deterioration. Currently, in blight designations, there is a conflation of blight due to economic deterioration and blight due to a grave public health crisis.

This Article does not go as far as Eagle's assertion that government entities use the blight condemnations to strengthen government and redevelopment.<sup>80</sup> Eagle's assertion may be true, but this Article does not address whether the blight designation is a means that justifies the ends of government or redevelopment. However, it is likely that the ends remain the same for the minority interests whose properties are taken. Is the property being taken because of a public benefit, personal animus, or for the benefit of a third-party's self-interest? The taking remains problematic and the property can be condemned and taken through an eminent domain action.

#### ii. Difficulty of the Blight Designation

As a matter of law, a government entity's designation of blight to condemn property is an issue that courts view as extremely difficult. The

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<sup>80</sup> See Eagle, *supra* note 26, at 840.

amount of process due is tied to a local government entity's enactment of a redevelopment plan and is not tied to the individual owner's private property rights. These "blight" takings are an American reality: a state government establishes the legal parameters within which a local government derives its authority to enact and implement ordinances and policies designed to prevent, mitigate and remove blighted properties.<sup>81</sup> The local governmental entity can designate a community or neighborhood blighted and then enforce its authority to condemn, and ultimately, commence an eminent domain action to forcefully take the property. Although some owners may voluntarily sell the home, business, or church, there is nothing truly volitional about the activities after a blight designation. In these situations, uncertainty reigns supreme and what is more common is the balancing of great risk and little reward. Owners must balance the great risk of facing an ugly, contentious, and expensive eminent domain action with little reward, or accept what the owner may not believe is just compensation. To the owner, rarely is the option or alternative a rewarding or lucrative experience.

Significantly, under federal and state law, eminent domain is limited in at least two ways.<sup>82</sup> First, under the public use doctrine, the property must be taken for a public use or as limited to a public purpose.<sup>83</sup> Second, the government must provide the owner of the taken property with just compensation.<sup>84</sup> However, scholars have continued to express concerns that "blight" has lost any substantive meaning as either a description of urban conditions or a target for public policy."<sup>85</sup> In 2004, Professor Colin Gordon noted that "blight is less an objective condition than it is a legal pretext for various forms of commercial tax abatement that, in most settings, divert money from schools and county-funded social services."<sup>86</sup> In 2011, Matthew Kokot, an Editor at Columbia Journal of Law and Social Problems, analyzed blight legislation state-by-state and developed categories for blight legislation.<sup>87</sup> Kokot proposed a

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<sup>81</sup> See The Vacant Properties Research Network *supra* note 61, at 3.

<sup>82</sup> See Berliner, *supra* note 43.

<sup>83</sup> See Berliner, *supra* note 43.

<sup>84</sup> See Berliner, *supra* note 43.

<sup>85</sup> Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 *FORDHAM URB. L.J.* 305, 307 (2004).

<sup>86</sup> *Id.*

<sup>87</sup> See Kokot, *supra* note 9 (distinguishing between rules based on legal commands that differentiate legal from illegal behavior in a comprehensive and clear manner versus standards that utilize general legal criteria that are unclear and fuzzy and require complicated judicial interpretation).

framework for defining blight statutes and created an analysis of complex, simple rules and standards.<sup>88</sup>

Eagle theorized that blight as a metaphor for disease has a powerful allure to make it seem self-evident that a government entity may take blighted property by eminent domain.<sup>89</sup> Eagle's interpretation provides a better understanding of the blight, more so than accepting the threefold categorization as the end of defining the language. As a metaphor, arguably the term blight has become intricately connected with condemnation. Blight designation is allowed to reduce or eliminate private property rights and still begs the question whether condemnation is justified because the blight is justified.<sup>90</sup>

When the definition of blight is equated to a metaphor it is easier to understand that the definition is merely a "figure of speech." Thus, when the word "blight" is used to describe an area, what may come to mind are 140,000 abandoned structures in Detroit, Michigan or the moldy, rodent infested Jamestown Mall in Florissant, Missouri. The blight narrative provides the justification for condemning the area, acquiring or taking the properties from the owner, and then possibly allowing a third-party to redevelop the area. Scholars and decision-makers do not fully understand the distress of the people that inhabit the condemned location, nor do we, as a society, provide effective and innovative solutions that might stem the displacement.

In the next section, this Article examines the recent blight designation by St. Louis, through its Land Clearance Redevelopment Authority ("LCRA"), to take St. Louis Place, a neighborhood consisting of ninety-nine acres of homes, churches, and businesses. The taking of St. Louis Place through blight condemnation provides an excellent case study. This Article seeks to address questions, such as, how blight is defined? What were the narratives surrounding St. Louis Place? What process did city, state, and federal government officials take to condemn the properties within St. Louis Place? Even though the St. Louis Place community resisted the blight condemnation, ultimately, the decision led to the acquisition, condemnation, and eminent domain action against property in order to allow the government entity to take the property for a public use.

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<sup>88</sup> See Kokot, *supra* note 9, at 63.

<sup>89</sup> See Eagle, *supra* note 26, at 839.

<sup>90</sup> See Eagle, *supra* note 26, at 839-44.

### iii. Legislative Codification of Blight

Particular statutory provisions frequently define “blighted area” with some degree of particularity, and the attention of the reader is directed to a typical “blighted area” redevelopment provision. In addition to the progression of case law and doctrine, the term “blight” also has a legislative history. Since 1932, the United States Congress has passed legislation designed to assist cities and states in removing the blight of unsafe and unsanitary dwellings.<sup>91</sup> Courts have defined the phrase “blighted area,” within urban redevelopment legislation, with broad strokes, so as to permit the greatest possible extent of property to be included within comprehensive municipal urban redevelopment plans.<sup>92</sup> Recently, urban redevelopment projects have increased in scope and quantity over the years.<sup>93</sup> However, as discussed earlier, takings based on blight became constitutionally sanctioned under *Berman*.<sup>94</sup>

Although the definitions of blight vary from state to state, the legislation broadly focuses on three primary areas: (1) lack of structural integrity; (2) presence of a health hazard; and (3) lack of suitability for human habitation.<sup>95</sup> Some states distinguish between physical and economic blight and require evidence of both.<sup>96</sup> However, in many states, scholars have found that blight continues to be defined according to vague and subjective criteria that make it possible to label almost any property as blighted.<sup>97</sup>

Most state statutes have very broad terminology as it pertains to blight takings. Professor David Dana observed that prior to *Kelo*, state legislatures have enacted blight statutes that were very broad in terminology and that allowed for condemnations.<sup>98</sup> By the end of 2006, Professor Dana found that Florida was the only state that had completely rejected condemnations based on both economic development and “blight” rationales.<sup>99</sup> Although Illinois and Missouri did not change the definition, these states provided level-of-proof and procedural changes,

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<sup>91</sup> Johnathan M. Purver, *What Constitutes “Blighted Area” Within. Urban Renewal and Redevelopment Statutes*, 45 A.L.R.3d 1096, 1096 (2017).

<sup>92</sup> See, Am. Jur. *supra* note 34, at § 2[b] (Summary and comment—Statement of the law).

<sup>93</sup> Am. Jur. *supra* note 34, at § 1 at 5.

<sup>94</sup> See *Parker*, 348 U.S. at 26.

<sup>95</sup> See Am. Jur. *supra* note 34, at § 6. (defining Blight).

<sup>96</sup> See *San Franciscans Upholding the Downtown Plan v. City & Cty. of S.F.*, 125 Cal. Rptr. 2d 745, 745 (Cal. Ct. App. 2002); Cal. Health & Safety Code § 33030(b)(1), (b)(2)(A, B).

<sup>97</sup> See *Somin*, *supra* note 48, at 2120.

<sup>98</sup> See *Dana*, *supra* note 40, at 374.

<sup>99</sup> *Dana*, *supra* note 40, at 375.

including rebuttable presumptions of the blight designation.<sup>100</sup> By 2009, Professor Ilya Somin found that thirty-six state legislatures had enacted post-*Kelo* reforms.<sup>101</sup> In these states, Professor Somin noted that seventeen were ineffective state laws because, in gains in forbidding takings, these laws merely allowed “them to continue under another name, such as ‘blight’ or ‘community development’ condemnations.”<sup>102</sup>

Kokot categorizes the types of blight statutes according to whether the statutory definition was based on complex standards, complex rules, or simple rules.<sup>103</sup> Kokot differentiated statutes based on Hans-Bernd Schäfer’s rules definition,<sup>104</sup> which he defined as “legal commands that differentiate legal from illegal behavior in a comprehensive and clear manner.”<sup>105</sup> Alternatively, Schäfer’s definition of standards, is defined as “general legal criteria that are unclear and fuzzy and require complicated judicial interpretation.”<sup>106</sup>

***Chart: Updated legislation based on Kokot’s 2011 statutory classification.***<sup>107</sup>

<b>Complex Standards (Broad and Subjective)</b> <sup>108</sup>	<b>Complex Rules (Proposed)</b> <sup>109</sup>	<b>Simple Rules (Specific Criteria)</b> <sup>110</sup>
Arizona, California	Alabama	Florida (prohibited)
Colorado, Connecticut	Alaska	Kansas (significant prohibitions)
Delaware, Illinois	Georgia	Nevada (prohibited)
Arkansas, Hawaii	Idaho	New Mexico (prohibited)
Iowa, Kentucky	Indiana	North Dakota (prohibited)
Louisiana, Maine	Massachusetts	South Dakota (significant prohibitions)
Maryland, Mississippi	Michigan	Texas, Utah
Missouri, Montana	Minnesota	
Nebraska, New Jersey	New Hampshire	
New York, North Carolina	Pennsylvania	
Oklahoma, Ohio	Virginia	
Oregon, Rhode Island	Washington	
South Carolina, Tennessee <sup>111</sup>	Wyoming	



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Vermont, West Virginia		
Wisconsin		

The Missouri statute illustrates how the majority of state legislatures define “blight.”<sup>112</sup> That definition provides that a governmental entity may take private property for public use or a public purpose. For example, Missouri provided the following information for the definition of an area that can be blighted by a city and the definition of blight:

“Area,” that portion of the city which the legislative authority of such city has found or shall find to be blighted so that the clearance, replanning, rehabilitation, or reconstruction thereof is necessary to effectuate the purposes of the law. Any such area may include buildings or improvements not in themselves blighted, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning,

<sup>100</sup> Dana, *supra* note 40, at 376-77.

<sup>101</sup> See Somin *supra* note 48, at 2119.

<sup>102</sup> Somin *supra* note 48, at 2120.

<sup>103</sup> See Kokot, *supra* note 9, at 60-79.

<sup>104</sup> Kokot, *supra* note 9, at 60-79 (illustrating the difference between a rule and standard with this example, “a speed limit of sixty-five miles per hour whose violation leads to a \$100-dollar fine is a rule, whereas a law requiring drivers to drive at a reasonable speed is a standard”).

<sup>105</sup> Hans-Bernd Schäfer, *Rules Versus Standards in Rich and Poor Countries: Precise Legal Norms as Substitutes for Human Capital in Low-Income Countries*, 14 SUP. CT. ECON. REV. 113, 116 (2006).

<sup>106</sup> *Id.*; see also Kokot, *supra* note 9.

<sup>107</sup> In the past five years, very few changes have developed with respect to the blight definition.

<sup>108</sup> Kokot, *supra* note 9, at 61 (defining complex standards as “general legal criteria that are unclear and fuzzy and require complicated judicial interpretation”); see also Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 559-60 (1992) (describing complex standards as a law which is given content ex post, usually by the judiciary).

<sup>109</sup> Kokot, *supra* note 9, at 60-63 (discussing how Professor Hans-Bernd defines rules to the eminent domain statutes. Professor Hans-Bernd explains that rules are “legal commands that differentiate legal from illegal behavior in a comprehensive and clear manner”; see also Hans-Bernd Schäfer, *Rules Versus Standards in Rich and Poor Countries: Precise Legal Norms as Substitutes for Human Capital in Low-Income Countries*, 14 SUP. CT. ECON. REV. 113, 116 (2006) (complex rules are those rules that specify a plethora of different rules and factors to provide more flexibility in situations where the legislature is unable to predict all possible scenarios in which the rule would apply); see also Colin S. Diver, *The Optimal Precision of Administrative Rules*, 93 YALE L.J. 65, 73-75 (1983).

<sup>110</sup> Kokot, *supra* note 9, at 62 (simple rules are rules that limit the factors and specify the situation when the particular behavior or action is illegal, e.g. speed limit of 65 miles per hour).

<sup>111</sup> See Somin, *supra* note 48, at 2115 (pointing out the ineffectiveness of these statutes).

<sup>112</sup> MO. REV. STAT. § 353.020, 99.865 (2012).

reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part; “Blighted area,” that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes. . .

Missouri’s statute is subjective, vague, and permits a variety of reasons that an area could be deemed blighted, including the inability to pay reasonable taxes. Despite providing ample discretion for government entities, subjective and broad statutory language is not recommended, nor preferred by the author. Indeed, subjective and broad blight statutes are part of the blight framework that allows for unfettered takings. Moreover, Missouri’s Real Property Tax Increment Allocation Redevelopment Act (“Act”) is also broad and subjective. The Act provides for the issuance of a variety of bond instruments to further urban renewal and redevelopment projects.<sup>113</sup> Furthermore, the Act includes a variation on the definition of a blighted area. The Act defines blight as follows:

an area which, by reason of the predominance of defective or inadequate street layout, insanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use. . .<sup>114</sup>

Eighteen years ago, Professor Goshorn asserted that:

Missouri’s current statutory definition of ‘blight’ is too broad to provide any significant restriction on the discretion of private developers and municipalities in choosing redevelopment sites. The Missouri state legislature should amend the Tax Incentive Financing (TIF) statute to require a more definitive ‘but for’ finding with respect to blight conditions on a particular parcel of land. For example, Goshorn suggests that the Missouri state legislature could revise sections 99.805 and 99.810140.<sup>115</sup>

In addition to the blight terminology and the breadth of the statutes, narrative also plays a role in blight condemnation and eminent domain. In blight condemnation, narratives are often used to rationalize taking property, rather than serving interest of the community. The narrative tends to be used to embolden proponents of condemnation, at the peril

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<sup>113</sup> See Mo. Rev. Stat. §§99.800-99.865 (2017).

<sup>114</sup> *Id.*

<sup>115</sup> See Goshorn, *supra* note 72, at 919.

of the property owner. The aims are to seek government and private sector intervention to eradicate the perceived blight and revitalize the area. Unfortunately, on many occasions the narratives are based on false narratives, which is discussed in greater detail in the next section.

### *B. Blight False Narratives*

Another part of the Blight Framework is the manner in which the narrative is used to justify takings of areas wrongfully or rightly considered blighted. What is missing from the scholarship is an understanding of the use and power of narrative in furthering governmental decisions to displace people, destroy homes, churches, and businesses, and make claims that the future development will create better outcomes. Making an analogy in the blight context, a false narrative would be a communication, false oral or written statement, coming from individuals or organizations who have perceptions of the condition or set of circumstances described.<sup>116</sup> Frequently, false narratives are communicated through media and other networks that tend to identify a community as too dangerous, crowded, and dilapidated to exist. In extreme situations, false narratives describe the area as a diseased condition housing unworthy people and businesses. Communicating a narrative of fear, stigma and suspicion, without practical solutions serving those affected, may exacerbate the problem or moves the issue to another location, further out to the suburbs or a rural area. Neither scenario gets to the heart of the real problem, which is that American people and communities are suffering and hurting. Whether the issues are socio-economic, cultural or racial distress, what we resist, persists.

Basic fairness is at play in areas designated as blighted and inhabited by vulnerable populations, such as, minorities and low-income individuals. There is concern the blighting and taking of property, tearing it down and replacing it with more expensive, new housing for middle and upper-class persons is tantamount to "economic theft." What is disheartening is that powerful voices communicate false narratives that create power imbalances and serve as an irrefutable narrative not beneficial to owners and property inhabitants. False narratives create fertile ground for taking property owned by these underprivileged and underrepresented populations.

The narrative in the Blight Framework illustrates how blighting of properties gets the decision-makers to a speedy result. However, that result does not solve the housing, economic and wealth gaps of the

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<sup>116</sup> See *infra* 129-36.

community that was displaced. To illustrate the point through an example of narrative, consider what you might do when confronted with news that there is a diseased rat in your vicinity. If a “thing” is called a diseased rat, it will likely be perceived as a diseased rat, whether it is a diseased rat or not. Our perceptions or biases can change through proximity or from our genuine interest in learning more through our own analysis. We recognize that to be is to be perceived or known,<sup>117</sup> but who determines the narrative that shapes these perceptions? Few people get close enough to do so and worse, many are disinterested. Thus, if blight is likened to a disease, for example, the Ebola virus, then that provides a starting definition. However, there is no clear solution to the Ebola health crisis, innovating to cure the disease, and eliminating the circumstances that caused it to happen in the first place. Furthermore, designing solutions that could prevent the crisis from ever happening again is not forthcoming.

Philosophers have been helpful in articulating a way forward in search of solutions for blight’s intractability.<sup>118</sup> One approach is to look to language and its limits. When we are confronted with language, Professor Bordotsky posits that language is central to our experience of being human and shapes the way we think, the way we see the world, and the way we live our lives.<sup>119</sup> When we consider language as central to our experience, one might think about the experience of being in an area designated as blighted. Alternatively, one might consider what the language means for individuals who don’t live that experience. The way individuals who live in a more upscale, privileged community experience blight is likely to be far different than the way it occurs for those that live within the targeted community. Similarly, the way individuals in high altitude areas of Houston who did not experience flooding in their homes during Hurricane Harvey would be quite different from their peers who owned homes in the path of Hurricane Harvey’s wrath.

Philosopher J. L. Austin gives us a hopeful approach to re-evaluate how we might supplement blight as a definition and the narratives that

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<sup>117</sup> GEORGE BERKELEY, A TREATISE CONCERNING THE PRINCIPLES OF HUMAN KNOWLEDGE 13 (David R. Wilkins, ed., 2002) (1713).

<sup>118</sup> Philosophers are helpful in articulating a way forward in the intractability of blight. Kuhn attempted to adopt a ‘paradigm’ for future research and would likely begin the quest with the term and actually attempting to define what the term blight means. See STEVE FULLER, KUHN VS. POPPER THE STRUGGLE FOR THE SOUL OF SCIENCE, 1-10, 124 (Columbia University Press, 2004) (suggesting that we consider Popper’s falsification theory admonishes us to responsibly question whether the object, in this case blight, is really a wicked problem or is it one with imagined wicked characteristics).

<sup>119</sup> Lera Bordotsky, *How Does Language Shape the Way We Think*, THE EDGE (June 11, 2009), [https://www.edge.org/conversation/lera\\_boroditsky-how-does-our-language-shape-the-way-we-think](https://www.edge.org/conversation/lera_boroditsky-how-does-our-language-shape-the-way-we-think).

support it.<sup>120</sup> Austin suggests that to better understand and supplement a word (in this case “blight”) consider that: “. . . ordinary language is not the last word: in principle it can everywhere be supplemented and improved upon and superseded. Only remember it is the first word.”<sup>121</sup> Additionally, Professor Bryan Stevenson challenged an audience in St. Louis to look beneath narratives relating to serious issues affecting our society.<sup>122</sup> Professor Stevenson’s specific example illustrated the narrative of juvenile children as “super-predators,” which led to harsh incarceration policies in minority communities. The super-predator narrative was false because a variety of circumstances could explain the behavior of the children. In any event, rather than a false narrative, the narrative could have been that at-risk children require more attention, healthcare, or other social services. This alternative narrative might have led to a more positive conclusion that focused on providing at risk children with more social services rather than incarceration. Different sets of policies could potentially flow from new, more truthful, narratives, as it is through these narratives and our sharing of the stories, that we better understand our own humanity.<sup>123</sup> Moreover, these narratives help design policies. Understanding the story from a variety of perspectives and getting beneath narratives challenges us to determine whether we have been overlooking something that has lingered under the surface all along.<sup>124</sup>

Walker suggests that a blighted area was the beginning of an evil waiting to happen. The narrative begins with the concern that a blighted area is one on the downgrade, with properties in various stages of obsolescent condition and character, becoming an economic liability to the owners and to the city.<sup>125</sup> However, due to the economic liability or

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<sup>120</sup> J. L. Austin, *Philosophical Papers*, (James Opie Urmson, et al. eds., 3d ed., Oxford, 1979).

<sup>121</sup> *Id.*

<sup>122</sup> Bryan Stevenson, Speech at Saint Louis University Center for Global Citizenship: An Evening with Bryan Stevenson (Dec. 2, 2016). In this speech, Stevenson provided four ideas for advocates to address thorny issues: 1) change the narrative; 2) get proximate; 3) do uncomfortable things; and 4) stay hopeful. Stevenson has represented capital defendants and death row prisoners in the deep south since 1985, as a staff attorney with the Southern Center for Human Rights in Georgia. Professor Vischer, in a 2017 AALS panel discussion in San Francisco, provided examples of what getting proximate might look like: presence in a service at a local church; involvement in book discussion groups, visible community presence and support, designating one signature event per year . . . just as examples. *Id.*

<sup>123</sup> Richard Delgado, *Storytelling and Narrative, Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2440 (1989).

<sup>124</sup> *Id.*

<sup>125</sup> See Walker, *supra* note 57, at 7.

weakness, the area becomes less profitable to a city and thus the claim for rehabilitation is made.<sup>126</sup>

Legal commentaries first shaped the narrative of blight by using negative words that generate thoughts of a virus, danger, high crime, not desirable, low morals, lacking amenity, unworthy people or businesses, and urban disorder. Some of those words are italicized and described in literature:

“Jamestown Mall is now infested with mold, graffiti and other conditions characterized . . . as a ‘social liability and a menace to public health, safety, (and) morals.’”<sup>127</sup>

“Blight in a neighborhood is like a virus that spreads throughout the community.”<sup>128</sup>

“Detroit has more than 140,000 blighted properties, and approximately 78,000 ‘abandoned and blighted’ structures, some 38,000 of which are dangerous.”<sup>129</sup>

“While there is no precise definition of blight, most blighted neighborhoods have dilapidated and vacant residential and commercial properties, have high crime rates, and lack desirable community amenities like high-quality schools or parks.”<sup>130</sup>

“. . . blight is based on perceptions of the value or worth of the people or businesses that are in the neighborhood.”<sup>131</sup>

“. . . from the field of plant pathology. . . to describe increasing urban disorder associated with crowded, poor, working class neighborhoods.”<sup>132</sup>

One of the partnerships in the Jamestown Mall was paid \$1 for one mall property, located at the Macy’s site.<sup>133</sup>

When describing the effects on compensation in light of the condition at Jamestown Mall, in Missouri, a public official stated that properties at this location will likely end up paying “pennies on the dollar – consistent with blight.”<sup>134</sup>

By looking to the narrative in the blight context, it is easier to understand what may be good policy for a particular community and what would be devastating to that same community. In St. Louis Place, the narrative

<sup>126</sup> Walker, *supra* note 57, at 5.

<sup>127</sup> Steve Giegerich, *St. Louis County Takes First Steps to Declare Jamestown Mall Blighted*, ST. LOUIS POST-DISPATCH (Dec. 7, 2016), [http://www.stltoday.com/news/local/metro/st-louis-county-takes-first-steps-to-declare-jamestown-mall/article\\_67758ee8-9e7f-5f44-9e47-d923ada8c605.html](http://www.stltoday.com/news/local/metro/st-louis-county-takes-first-steps-to-declare-jamestown-mall/article_67758ee8-9e7f-5f44-9e47-d923ada8c605.html).

<sup>128</sup> Marilyn L. Uzdevines, *Superpriority of Remediation Liens: A Cure To the Virus of Blight*, 45 U. BALT. L. REV. 403, 403 (2016).

<sup>129</sup> Christine Sgarlata Chung, *Zombieland/The Detroit Bankruptcy: Why Debts Associated with Pensions, Benefits, and Municipal Securities Never Die . . . and How They are Killing Cities Like Detroit*, 41 FORDHAM URB. L.J. 771, 773 (2015).

<sup>130</sup> A. Mechele Dickerson, *Revitalizing Urban Cities: Linking the Past to the Present*, 46 U. MEM. L. REV. 973, 973-74 (2016).

<sup>131</sup> *Id.* at 978.

<sup>132</sup> See Kermit & Schilling *supra* note 42 at 810.

<sup>133</sup> See Giegerich *supra* note 127.

<sup>134</sup> See Giegerich *supra* note 127.

communicated was that the properties in the area were dangerous, unsafe and economically deteriorated. However, the truth was much more complicated than the negative notion, as some homes, churches and businesses were functioning. In fact, many were beautifully maintained and there was a sense of community. To better understand the narratives, we look to stories, parables, and chronicles. Then, we can begin to have a powerful means for destroying mindsets.<sup>135</sup> In reviewing literature, blight has a narrative that is, almost in every instance, negative. It is hard to distance ourselves from the thinking that a description of a building, area, or location is blighted and that something is very wrong. But what is the wrong that is being described? Is it true in all cases or is it based on a stereotype?

False narratives reinforce grave notions and fears of blight. These narratives also justify the condemnation of blight. False narratives aid in providing blind rationale for private property takings/condemnations, stigmatizing people, communities and places; and contribute to the reduction in affordable housing. The way to offset false narratives is to understand the community, speak to community members and leaders and learn from their stories. Otherwise, it is easy to judge, to condemn, and then to take a blighted area without understanding the community. In the United States, our perception of blight is a national problem that touches communities across our country. Over the past three months, the author has tracked hundreds of news articles published across our country concerning local instances of blight. One might be surprised that there are so many communities in distress. On the other hand, considering the range of despair in the human condition, it should come as no surprise that people are suffering and they are not able to maintain their properties to meet or exceed the complex legislative standards or the simple legislative rules set forth by their state law.

For residents whose homes, businesses and churches are condemned, it is not only personally hurtful that false narratives are vocalized, but that the false narratives add to the social, psychological, economic, and cultural loss. For example, what if your doctor told you that your kidney is diseased and must be surgically removed when in fact it was a lie? The affected party is worse off than he or she was prior to the lie and knows that the taking is based on a falsity. Although the widespread use of blight as a tool to take properties is evident from recent news articles, what is not known is whether the use of the blight tool is being used more than in prior periods of time.

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<sup>135</sup> See Giegerich *supra* note 127 at 2413.

More research is needed to determine whether a blight designation is merely a pretext for taking. The concern is that, post-*Kelo*, distressed communities are targeted as blighted in order to skirt when there is an economic development rationale. Pre-textual reasons are arguably veiled lies that are used to condemn a community. For example, Ms. Tanya Washington, a resident of Peoplestown,<sup>136</sup> a neighborhood in Atlanta, Georgia, shared her personal experience with blight condemnation, which is informative for this discussion. In Ms. Washington's situation Atlanta filed an eminent domain action against Ms. Washington and her neighbors who lived in a historic Black neighborhood. Under Georgia law, legal title passed to Atlanta and the appraisal amount was placed in escrow. In short, the residents no longer owned their homes. What troubled Ms. Washington was that her family's displacement was caused by the development of Turner Field, which was previously vacated by the Braves in September 2016. Atlanta claimed Peoplestown was flooding, but the sale of the stadium and the \$300 million development plan suggested ulterior motives.

Let's be honest. If what we are observing are issues, such as, socio-economic, climate change, or the remaining vestiges of racial segregation, all of which have worsened since the 2007 mortgage crisis, then we need to address what is really happening in and to our communities. In law, predictions are often used to determine the likelihood of success or failure in a given case. These same predictions can be used to determine the effects of deteriorating low employment rates, post industrialization, segregation, flooding, and pollution among other things. It is predictable that there would be migration to more prosperous communities, and if there is no resale market in the communities, there would be a proliferation of vacancies, deteriorating roads and sidewalks, and empty big box buildings. What prevents us from defining the situation that is actually occurring in the area and refraining from using the word "blight?" The use of metaphors, however, can be vague and amorphous, that they fail to provide insight for good policy and better legislation. As Justin Garrett Moore, Senior Urban Designer in New York City and an internet blog post author, opines, "the

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<sup>136</sup> Tanya Washington, *Protect Peoplestown*, GO FUND ME (Nov. 19, 2016), <https://www.gofundme.com/protectpeoplestown?rcid=0e78978f21f8473b8f0a069073801a53> (Ms. Washington and her neighbors in the Peoplestown community pledged to fight Atlanta's "plans in court and create precedent that will discourage future land grabs and displacement." Ms. Washington created a go-fund-me website, which raised \$9,715); *see also Closer Look: Peoplestown Protests; Flying Fares; And More*, PUBLIC BROADCASTING ATLANTA (Nov. 17, 2016), <http://news.wabe.org/post/closer-look-peoplestown-protests-flying-fares-and-more>.



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most impactful tools are often words—the denotations and connotations and stories attached to the physical and social geographies of parts of the city: ghetto, slum, bad, black, blight.”<sup>137</sup>

Moore also raises concerns about using a word like blight, also likening the word to a disease, to describe a place where people still live. Moore urges that “we need to make a new word.” Using Moore’s suggestion, there are several reasons why creating a new word, or a set of new words, to describe the state of our communities, is a better solution. First, when one dispels a false narrative by actually going into a particular community, what they may find are people who still live in a neighborhood for a host of reasons. They are the ones that stayed, when others migrated away. Maybe they stayed because they had aged, are infirm, or simply happy with their home, business, or land. Perhaps they stayed because of important connections to the community, including businesses, schools, churches, friendships, and work. As should be clear, without closer inspection, condemning such areas as blighted creates a false narrative.

To illustrate this point, take an example of a university administration that uses the metaphor “rat’s nest” to describe faculty offices that are in a state of disarray. That disarray may include floors covered with crumpled papers, coffee mugs stained by old coffee, books that clutter the walking space, dust, cobwebs, and some dangerous safety pins left on the floor. Further, imagine the university policy reads:

The University administration has the power and authority to condemn “rat’s nest” faculty offices, and to evict any faculty member who is in such a rat’s nest office, only after giving a 10 (ten) day prior written notice. Furthermore, any exiting faculty will be given relocation assistance and just compensation for the value of the property left behind in his or her rat’s nest office.

The “rat’s nest” metaphor conjures negative emotions toward those offices and has the potential to be disrespectful towards the faculty that use those offices. As a result, we are better served to go beneath the narrative to learn more about those nasty, dangerous “rat’s nest” offices.

By speaking directly to each faculty member identified as inhabiting a rat’s nest office, one might dispel the rat’s nest metaphor and find the truth. For instance, one faculty member may have written six law review articles, been a mentor for many faculty members, and recently won professor of the year. This faculty member does not worry about the clutter in his or her rat’s nest office because he or she is too

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<sup>137</sup> Justin Garrett Moore, *Why We Need a New Word For 'Blight,'* LEGACY CITIES PARTNERSHIP (Sept. 30, 2015), <http://www.legacycities.org/2015/0/why-we-need-a-new-word-for-blight/>.

busy. Meanwhile, another faculty member has won several large cases for clients of the university's clinical program and mentors hundreds of students. The professor worries about others judging his or her office, because he or she believes it is only a temporary situation. At the moment, the faculty member is seeking access to justice for his or her clients and she is winning. Another faculty member is suffering from a physically debilitating disease and although he or she attempts to clean up his or her office, daily, there are limits to how much can be accomplished.

Similarly, labeling an area as "blighted" conjures negative feelings and emotions and creates a cloud over the area. To the extent that the underlying problem is an economic problem, why not call it a "poor area" rather than using the charged terminology of "blight?" When one goes beneath the narrative, as in St. Louis Place, what one would find is a complex assortment of reasons explaining the current state of this distressed community. Rather than finding an "infested" area or a "crime filled" area, one would have found a community of normal citizens simply trying to get by and doing their best to live their lives.

### *C. Blight Decision-Making*

In prior sections, two parts of the blight framework are reviewed: the definition of blight and the narratives surrounding blight. In this section, the third component: how government entities make decisions about taking private property and the rationale for the takings is discussed.

A taking may be a public benefit, but more likely it is not beneficial to the parties most affected. This section further looks at the decision-making process (which we will assume are choices made on behalf of a public benefit), and how that ultimate decision leads to the widespread takings of homes, churches, and business, without necessarily solving the underlying problem.

Municipalities are hampered by declining tax revenues, but still have responsibilities to address weakening economic conditions. An easy, but not always best, approach is to listen to development ideas that could possibly increase tax revenue. Listening to big ideas from developers or members of the community may be considered a shortcut to turn around a distressed community. In many cases, governments turn to tax incentive financing and community development block grants for funding new ideas.<sup>138</sup> At the same time, the community may not have the

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<sup>138</sup> Valerie Morgan, *DeKalb CEO Michael Thurmond: Bye' Bye' Blight*, OCG NEWS (Mar 2, 2017), <http://ocgnews.com/dekalb-ceo-michael-thurmond-bye-bye-blight/> (The board in

economic, political, and social wherewithal to bring forth their own development plan. This Article does not delve into the reasons why grassroots solutions are rarely forthcoming or thought to be too expensive.<sup>139</sup> However, transparent communication between the municipality and the residents in areas designated as blighted is not the norm.

Government entities make decisions in ways that may be to the disadvantage of property owners in distressed communities. Although that may be the status quo, one might ask why do communities allow bad decision-making? Generally, politics create highly visible concentrated benefits, available to a few, and hidden dispersed costs that are small in amount, but spread over a large number of people. Individuals think that there is a way out of these political economy problems.<sup>140</sup> Yet, voters are “rationally ignorant” of public policy, and have little incentive to get involved with these important decisions.<sup>141</sup> It is the two-level structure of collective decision-making in our constitutional-republic.<sup>142</sup>

However, this structure requires some basic insights into how politics works, which incorporates an understanding of human nature.<sup>143</sup> Public choice assumes that politicians often act on their own behalf, not on behalf of others. To the extent that politicians are brokers, they interact with a variety of individual voters and special interest groups (corporations, non-profits, political organizations, lobbyists). For groups with the most power and money, they demand “wealth transfers” and pay with votes and campaign or contributions. Politicians that reward those

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DeKalb, Georgia approved \$2.6 million for Operation Clean Sweep, a year-round initiative to target blight, litter, illegal dumping and cleaning up debris in county storm drains, streets, sidewalks and rights-of-way).

<sup>139</sup> Notable in news articles about blight, is that the voice is typically not that of the residents affected, despite what one might think would be the response of a community seeking ways to address the community issues. Rather, the news is from those who fear the neighborhood or those who want to redevelop the neighborhood to something different than what it is currently. Redevelopment may involve nonresidents who live outside of the affected area, but who have more economic wherewithal to redevelop the community in ways beneficial to those on the outside.

<sup>140</sup> See James M. Buchanan & Gordon Tullock, *CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (Charles K. Rowley, 1962).

<sup>141</sup> See Somin, *supra* note 48, at 2106 (illustrating that “[s]tudies have repeatedly shown that most citizens have very little knowledge of politics and public policy”).

<sup>142</sup> THE FEDERALIST NO. 51 (James Madison) (explaining that the Constitution provides a framework for laws to be written. Constitutional politics requires a super majority (2/3 or 3/4) to pass laws. This restricts the government’s power. In a constitutional republic, persons owe their loyalty to the Constitution rather than to the government. This sets a narrow path for what government can do.).

<sup>143</sup> THE FEDERALIST NO. 10 (James Madison).

campaign contributions and votes that result in bad outcomes, arguably, will be voted out of office in just a matter of time.”<sup>144</sup>

Public choice economics is the application of economics to political science. Professor James Buchanan argues that exposure to public choice analysis brings a more critical attitude towards political solutions and various socioeconomic problems, rather than a romantic view.<sup>145</sup> For example, public choice analysis illustrates the folly of government decision-making in the use of eminent domain to displace owners and tenants. In the first instance, the decision-maker argues that the condemnation and displacement is necessary for a host of reasons, such as, removing the blighted area or enhancing economic development. From a public choice economics perspective, politicians (mayors, aldermen, state senators, state representatives, congressmen) are using their authority to implement a political solution to address socioeconomic problems. Solving our socioeconomic problems (“market failure”), such as blight and the fear that it may spread to other areas, is a romantic endeavor. The romantic endeavor of fixing market failure(s) may lead to unintended consequences that do not address the issue of blight.

Public choice economics argue a government response, like eminent domain takings, may not be the appropriate action to take with a market failure like blight and the lack of economic development in possibly blighted areas. The presumption that politicians and government entities in municipalities are acting in the public interest by using their eminent domain powers raise a question of self-interest. Politicians, like all human beings, generally act in their own self-interest. Should the

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<sup>144</sup> Buchanan, *supra* note 140 (noting that other voters and interest groups who are less capable of effective political organization supply the “wealth transfers.” Politicians pay the “price” of losing political support if they do not satisfy voters and special interest groups. Politicians bring about market equilibrium by balancing benefits and costs to maximize their utility. Rent = An uncompensated transfer and does not create wealth. It only transfers it from one person (group) to another); see Steve Mariotti, *What Every Voter Should Know About Public Choice Theory*, HUFFPOST (Sept. 29, 2015), [https://www.huffingtonpost.com/steve-mariotti/what-every-voter-should-k\\_b\\_8217650.html](https://www.huffingtonpost.com/steve-mariotti/what-every-voter-should-k_b_8217650.html).

<sup>145</sup> Buchanan, *supra* note 140. See also Justice Frank Easterbrook, *Symposium: The State of Madison’s Vision of the State: A Public Choice Perspective*, 107 HARV. L. REV. 1328-29 (1994) (describing public choice through his interpretation of President James Madison’s contributions in The Federalist Papers. Easterbrook noted that “The Federalist Papers can be thought of as the first chapter in the modern theory of public choice—the study of the interaction between governmental institutions.” He argues that Madison believed “the core of the political process is the public and rational discussion about the common good, not the isolated act of voting according to private preferences.” However, he goes on to argue that Madison as a realist raises, in The Federalist No. 10 the concept of faction, wherein “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”).

citizens of St. Louis automatically assume that politicians will act in the public interest instead of their own self-interest when they make decisions to take private property? Citizens must carefully weigh these considerations. In the context of blight takings, politicians would be placed in a broker position, which is not one that underprivileged people will have much to offer compared to special interests.

Municipalities, or other government entities, designate areas as blighted for a variety of reasons. Some of the reasons are based on tangible, objective conditions, and other times it appears that the logic is flawed or pre-textual. In many cases, there is underlying support for a redevelopment plan, which is voted on by residents of the greater community or championed by elected officials. In other cases, the decision does not seem rational. For example, take the reception of blight in Mobile, Alabama compared to blight in Boston, Massachusetts. In Mobile, the Mayor enlisted Instagram to document blighted properties in order to reduce Mobile's high blight rates.<sup>146</sup>

Similarly, in Macon, Georgia there are thousands of properties that have been left abandoned. For instance, a recent editorial in the Georgia Telegraph expressed frustration with the fact that 1,517 properties had been identified as blighted, but constant delays hampered the demolition process.<sup>147</sup> Further, the editorial expressed frustration that of those 1,517 properties, 499 had court-approved demolition orders, some dating back four or five years and some barely visible or slowly dissolving away.<sup>148</sup>

On the other hand, in Boston, Massachusetts, the Boston Redevelopment Authority ("BRA") declared Yawkey Way blighted in order to allow the Boston Red Sox to fence off much of the area. In response, Attorney Joseph Marchese and other local businessmen sued the BRA. Marchese claimed damages in the excess of \$7.3 million agreement because they had been awarded the Red Sox air rights for seats overlooking Lansdowne Street and an easement to shut down part of Yawkey Way for concessions so long as the team played at Fenway Park.<sup>149</sup> Massachusetts Superior Court Judge, Mary K. Ames, criticized

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<sup>146</sup> Stephanie Kanowitz, *City Enlists Instagram In Blight Cleanup*, GCN (Mar. 2, 2017), <https://gcn.com/articles/2017/03/02/mobile-ala-instagram-blight.aspx> (discussing that in Mobile, Alabama, the city claimed that "[o]verall, blight created an \$83 million negative impact on real estate values in the city").

<sup>147</sup> *There is No Overnight Solution to Blight*, THE TELEGRAPH (Jul. 15, 2017), <http://www.macon.com/opinion/editorials/article161501798.html> (defining what blight is and concluding that areas within Macon Georgia fit the definition).

<sup>148</sup> *Id.*

<sup>149</sup> Donna Goodison, *BRA Sued Over No-Bid Deal With Sox Over Yawkey Way*, HERALD (Nov. 15, 2013), [http://www.bostonherald.com/business/business\\_markets/2013/11/bra\\_sued\\_over](http://www.bostonherald.com/business/business_markets/2013/11/bra_sued_over)

the BRA's decision stating that there was "[n]o rational review of the fact . . . [r]ather than deterioration there has been constant development and building of new residences and successful businesses during the past thirteen years."<sup>150</sup> Furthermore, the Massachusetts Inspector General, Glenn Cunha, claimed the deal was too low and also thought the decision to blight to make a deal was "based on faulty logic."<sup>151</sup>

In any event, approval of a redevelopment plan does not necessarily mean that affected stakeholders understand the plan or if the plan is understood to be in his or her best interest. With a redevelopment plan, governmental entities seek engagement by interested parties to help redevelop an area<sup>152</sup> and get support from parties who fear conditions in the community<sup>153</sup> and believe the plan will help.

#### IV. EVOLUTION OF BLIGHT CONDEMNATION

St. Louis Place is an archetype of the condemnation of any blighted area, whether that is The Hill District of historic Pittsburgh, the neighborhood that is the subject of the award winning play, *Fences*<sup>154</sup> or any other condemned area in the United States. St. Louis Place's condemnation may be more a rarity because it took seventy years to ultimately be demolished. However, what remains constant is the blight framework of terminology, narrative and decision-making. This section, explores the evolution of blight condemnation in St. Louis Place.

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no bid deal with sox on yawkey way.

<sup>150</sup> John Tlumacki, *Judge Lets Lawsuit on Red Sox' Yawkey Way Deal Proceed*, BOSTON GLOBE (Jul. 15, 2015), <https://www.bostonglobe.com/business/2015/07/16/blight-yawkey-way-judge-says-way/rZd0V1XtbjTaOdTVE0c6>.

<sup>151</sup> Spencer Buell, *State Blasts BRA's Yawkey Say deal with Red Sox in Report*, METRO (Oct. 27, 2015), <https://www.metro.us/boston/state-blasts-bra-s-yawkey-way-deal-with-red-sox-in-report/zsJojz---tjnqSrOMqEEI>.

<sup>152</sup> John Bender, *Providence Hopes To Acquire 300+ Abandoned Properties In Battle Against Blight*, RHODE ISLAND PUBLIC RADIO (Feb. 24, 2017), <http://ripr.org/post/providence-hopes-acquire-300-abandoned-properties-battle-against-blight>.

<sup>153</sup> Bill Capo, *Neighbors are Worried that a Blighted House in Central City is Presenting a Safety Hazard*, WWL (Mar. 2, 2017), <http://www.wvltv.com/news/local/neighbors-upset-over-blight-in-central-city/418875291>.

<sup>154</sup> Brentin Mock, *The Hidden Fences of August Wilson's Birthplace*, CITYLAB (Jan. 13, 2017), [http://www.citylab.com/navigator/2017/01/the-hidden-fences-of-august-wilsons-birthplace/512882/#disqus\\_thread/01/the-hidden-fences-of-august-wilsons-birthplace/512882/#disqus\\_thread](http://www.citylab.com/navigator/2017/01/the-hidden-fences-of-august-wilsons-birthplace/512882/#disqus_thread/01/the-hidden-fences-of-august-wilsons-birthplace/512882/#disqus_thread) (noting "[i]n 1956, some 8,000 families—1,239 of which were African American—were removed to make room for construction of a new civic arena. By 1960, Pittsburgh was one of the most segregated big cities in America.").

*A. Blighting St. Louis Place*

St. Louis, Missouri is known as the Mound City and is located across the Mississippi River from Cahokia Mounds, Illinois.<sup>155</sup> On September 18, 1820, the United States Congress granted Missouri statehood<sup>156</sup> as part of the Missouri Compromise, which allowed Missouri to continue to practice slavery. For over seventy years, St. Louis Place, located within St. Louis, has been subject to distress and condemnation by city planning.<sup>157</sup> The area of St. Louis Place is geographically bound by Cass Avenue (south), Jefferson Avenue/Parnell Street (west), Montgomery (north) and North 22<sup>nd</sup> Street (east).<sup>158</sup> To the south of South Louis Place was another contiguous tract of land was Pruitt-Igoe, which formerly contained the federally funded public housing project, Pruitt-Igoe Homes.

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<sup>155</sup> MAUREEN KAVANAUGH, HIDDEN HISTORY OF DOWNTOWN ST. LOUIS, 11-13, 27, 56 (This early culture of indigenous nations (the Missouri and Ota Ponca Indians) utilized the Mississippi River Valley for gaming and fishing. Later, Jesuit missionary Jacques Marquette and explorer Louis Joliet developed maps of the area in 1673, and later, Vincenzo Coronelli published the *1688 Map of Western New France, including the Illinois Country*. Pierre Laclède Liguist, who would be considered the party establishing St. Louis in 1764, chose a Market Street trading post in honor of King Louis IX of France.)

<sup>156</sup> *Id.* at 56. (describing St. Louis' cultural foundation. St. Louis has a foundation stemming from the early Mississippian culture, which had deep roots in the southern part of the United States).

<sup>157</sup> ERIC SANDWEISS, ST. LOUIS: THE EVOLUTION OF AN AMERICAN URBAN LANDSCAPE 228 (Temple University Press, 2001), (Illustration 7-8 shows a map describing the area an "Obsolete or Blighted Neighborhoods" in 1947); COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY 190 (University of Pennsylvania Press: PA, 2008) (noting that as early as the 1900's the city of St. Louis called virtually all areas of the north and west blighted to get the attention of federal and state politicians). City Plan Commission, St. Louis-MO Government website Historical City Planning Documents, *1942 Saint Louis After World War II*, <https://www.stlouis-mo.gov/archive/historical-city-planning-documents/housing.htm#1942> (last visited Dec. 27, 2017); see Jesse S. Raphae, *City Planning Commission as an Agency for City Planning*, 12 ST. JOHN'S L. REV. 226, 226 (1938) (describing the creation of city planning commissions).

<sup>158</sup> NEXT NGA WEST, DEVELOPMENT STRATEGIES STUDY: DATA AND ANALYSIS OF CONDITIONS REPRESENTING A "BLIGHTED AREA" FOR THE CASS AVENUE, JEFFERSON AVENUE/PARNELL STREET, MONTGOMERY STREET, AND NORTH 22<sup>ND</sup> STREET REDEVELOPMENT AREA, ST. LOUIS, MISSOURI I (2015) (A total of 106 acres (99 acres in St. Louis Place plus 7 acres in Pruitt-Igoe) are described. This study is included within Land Clearance For Redevelopment Authority of the City of St. Louis and Mayor Francis G. Slay, *Blighting Study and Redevelopment Plan For the Cass Avenue, Jefferson Avenue/Parnell Street, Montgomery Street, and North 22<sup>nd</sup> Street Redevelopment Area*, Project# 1945, January 13, 2015, retrieved from St. Louis City Register's Office, Room 118, St. Louis, City Hall. A map of the area is set forth in Exhibit I. The study quotes statistics from a prior 1973 St. Louis Plan Development Program report that included data dating back to a 1968 "Model City" area designation prepared by St. Louis City Plan Commission, with an area described the area north of the Central Business District).

Northside Regeneration, LLC (“Northside Regeneration”) is a Missouri company headed by veteran developer Paul J. McKee, Jr., who is also the Chairman and Chief Executive Officer of McEagle Properties. On September 8, 2009, Northside Regeneration introduced Ordinance #68484 and Board Bill #219 for a planned redevelopment plan, entitled the “Northside Regeneration Tax Increment Financing (Northside TIF Redevelopment)” to create a revitalization and economic development plan.<sup>159</sup> The St. Louis City Council undertook a blight study of both St. Louis Place and the historically failed housing development, Pruitt-Igoe<sup>160</sup> and ultimately amended the TIF Plan twice before 2013.<sup>161</sup> Between 2013 through the end of 2014, the blight study hung as a cloud over the property owners of St. Louis Place and anyone else interested in buying in this community.

From the inception, the Northside TIF Redevelopment Plan (NRTIF Plan) appeared to hold lofty goals to redevelop the distressed conditions of the area.<sup>162</sup> The NRTIF Plan encompassed approximately 1,500 acres of St. Louis, with 2,200 parcels of land. St. Louis sold half of the properties to McKee’s organization, including a \$1 million option on the redevelopment of the 34-acre Pruitt-Igoe.<sup>163</sup>

These redevelopment goals were met with opposition. Critics of the NRTIF Plan wrote and called in their concerns about aggressive purchasing in the area. Critics asserted that purchases in the area were not transparent and coined the phrase “phantom in the hood” to describe the widespread purchases of private property by buyers who then left

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<sup>159</sup> Tim Logan, *Paul McKee Charges on Amid Setbacks in Makeover of St. Louis*, ST. LOUIS POST-DISPATCH (Dec. 11, 2011), <http://www.stltoday.com/news/local/metro/paul-mckee-charges-on-amid-setbacks-in-makeoverq-of-st/article6ccacf40-80a8-5bab-a404-1b752ba65bb3.html> (the Northside TIF Redevelopment plan was amended on September 16, 2009 and again in 2013); *see also*, *Land Clearance for Redevelopment Authority (LCRA) Meeting*, ST. LOUIS-MO GOVERNMENT (Jun. 9, 2015, 9:30 AM), [https://www.stlouis-mo.gov/events/eventdetails.cfm?Event\\_ID=10137](https://www.stlouis-mo.gov/events/eventdetails.cfm?Event_ID=10137).

<sup>160</sup> Pruitt-Igoe Housing project was blown up in 1976, leaving the Pruitt-Igoe area contaminated and vacant for 40 years. This contiguous space was of concern to property owners in St. Louis Place.

<sup>161</sup>The St. Louis City Council amended the Northside Tax TIF Redevelopment Plan dated September 8, 2009 on September 16, 2009 and approved Redevelopment Projects for Redevelopment Project Area C and D of the Northside Regeneration Area in 2013.

<sup>162</sup> *See* Logan, *supra* note 159.

<sup>163</sup> Alex Ihnen, *McKee, NorthSide Win Unanimous \$390M TIF Ruling*, NEXTSTL (Apr. 9, 2013), <https://nextstl.com/2013/04/mckee-northside-win-unanimous-ruling-on-390m-tif/>. *See* Jacob Barker, *McKee Buys Pruitt-Igoe, A Symbol of St. Louis’s Decline and Now, Rebirth*, ST. LOUIS POST-DISPATCH (Aug. 14, 2016), [http://www.stltoday.com/business/local/mckee-buys-pruitt-igoe-site-a-symbol-of-st-louis/article\\_5e8c71c2-dd04-5381-8e50-fd7bf4a99783.html](http://www.stltoday.com/business/local/mckee-buys-pruitt-igoe-site-a-symbol-of-st-louis/article_5e8c71c2-dd04-5381-8e50-fd7bf4a99783.html) (In August 2016, McKee exercised the option on the 34-acre Pruitt-Igoe land).



properties vacant.<sup>164</sup> “Phantom” purchases continued unabated during this waiting period, leaving the area more distressed. At the conclusion of litigation contesting the NRTIF, the Missouri Supreme Court approved the NRTIF Plan and authorized the \$390 million tax increment financing package.<sup>165</sup>

As NRTIF litigation and time took a toll, fortuitously for St. Louis and Northside Regeneration, on April 4, 2014, a federal agency, the National Geospatial-Intelligence Agency (“NGA”) sought a request for proposals (“RFP”) from four municipalities to build a new facility.<sup>166</sup> The NGA, which had been located on the southside of St. Louis, announced that it planned to relocate its south campus and build a new NGA facility. This effort was intended to replace facilities in St. Louis that had exceeded their service.<sup>167</sup> The Board of Aldermen promptly passed a resolution imploring St. Louis to retain the NGA and participate in the RFP.

In 2015, Development Strategies, Principal Larry Marks, submitted a blight report to St. Louis and the Land Clearance Redevelopment Authority (“LCRA”), which included data and information on St. Louis Place and Pruitt-Igoe. Development Strategies, provided data concluding that the areas described were blighted.<sup>168</sup> Development Strategies noted statements dating back to a 1973 report

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<sup>164</sup> Kathleen McLaughlin, *Phantom of the Hood, Part 2*, RIVERFRONT TIMES (Jun. 20, 2007), <https://www.riverfronttimes.com/stlouis/phantom-of-the-hood-part-2/Content?oid=2478655>; see also Randall Roberts, *Phantom of the Hood*, RIVERFRONT TIMES (Jan. 10, 2007), <https://www.riverfronttimes.com/stlouis/phantom-of-the-hood/Content?oid=2479564> (These allegations were denied).

<sup>165</sup> Camille Phillips & Don Marsh, *North Side Redevelopment: A Conversation With Paul And Midge McKee*, ST. LOUIS PUBLIC RADIO (Mar. 20, 2014), <http://news.stlpublicradio.org/post/north-side-redevelopment-conversation-paul-and-midge-mckee> (NorthSide Regeneration LLC’s \$390M Tax Increment Financing package won a unanimous decision at the Missouri Supreme Court. The decision stated that Judge Dierker erred in his ruling that invalidated the TIF on grounds that it lacked specificity).

<sup>166</sup> U.S. Army Corps of Engineers, *The RFP and the Next NGA West Design-Build Process*, NEXT NGA WEST (Sept. 1, 2017), <http://nextngawest.com/articles/rfp-nga-west-design-build-process.html> (according to Next NGA West, “A Request for Proposal describes the Government’s requirements to prospective contractors in order to solicit proposals from them. The RFP includes anticipated terms and conditions that will apply to the contract; information required to be in the offeror’s proposal; and factors and significant sub-factors that will be used to evaluate the proposal and their relative importance. Interested design, engineering, and construction contractors use the information provided in the RFP to develop and submit their own detailed proposals to be considered and evaluated by the Government.”).

<sup>167</sup> The NGA had its mission with respect to the land acquisition. The NGA investigated sites for the potential relocation of its 2nd Street office facilities (Next NGA West Campus) in the greater St. Louis metropolitan area.

<sup>168</sup> Development Strategies Study, *supra* note 158.

about the condition of the area, and other statements about the conditions dating back to 1968:<sup>169</sup>

Worst living conditions in St. Louis;  
45% of the residents of this neighborhood lived in poverty;  
Serious housing deficiencies;  
Only 40% of dwellings were in sound condition;  
Only 17% of residents are homeowners;  
83% of residents pay rent to owners outside their community;  
Crime rates are the highest in the city; and  
Juvenile delinquency is the most serious factor in crime

Development Strategies provided historical data and statistics remarking that, “little has changed in this area over the last 40 years.”<sup>170</sup> In addition to providing a property, by property analysis, the Development Strategies noted that this area was part of the Northside Redevelopment Area, and previously had a blight designation dating back to 2009.<sup>171</sup> Including Pruitt-Igoe, the study found that as of December 2014, 82.5 (77.8%) of the 106.0 acres in the Redevelopment Area are vacant land and 6.4 acres (6.0%) of total acres are occupied by vacant buildings.<sup>172</sup>

On April 14, 2015, after the Development Strategies study identified St. Louis Place as blighted, the St. Louis City Council approved Ordinance #69977 (the “Ordinance” is attached hereto as Exhibit III), which occurred two weeks after the NGA announced St. Louis as the top spot for their relocation.<sup>173</sup> The Ordinance approved the Redevelopment Plan for St. Louis Place, but left out Pruitt-Igoe, pursuant to Section 99.320 of the Revised Statutes of Missouri. The Ordinance further stated that some of the area could be acquired by the LCRA through eminent domain action. LCRA or the Redeveloper would be responsible for relocating any eligible occupants displaced and provide financial aid.

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<sup>169</sup> Development Strategies Study, *supra* note 158, at 12-13 (explaining the “Blighting Factors” portion of a recent report considered that within the development footprint north of Cass Avenue are 138 buildings: zero were considered be in excellent condition, while eighty-two (59%) were considered dilapidated *or* in need of major repair).

<sup>170</sup> Development Strategies Study, *supra* note 158, at 12-13 (This statement is debatable in light of a number of changes that had occurred over the 40 years. First, the federally funded housing project, Pruitt-Igoe was blown up in 1976, leaving the area contaminated and vacant for 40 years. To the north of Cass new affordable homes were built in 1972 and inhabited primarily by African Americans.).

<sup>171</sup> Development Strategies Study, *supra* note 158, at 12-13; *see also* ST. LOUIS, MO. ORDINANCE 68484.

<sup>172</sup> Development Strategies Study, *supra* note 158, at 5 (which provides a Chart on Existing Land Use-Cass and Jefferson Redevelopment Area).

<sup>173</sup> Joe Millitzer, Betsey Bruce, & Erika Tallan, *NGA Announces North St. Louis As Location for New 1.75 Billion Site: 3000 Employees*, Fox2Now (Mar. 31, 2016, 4:26 PM), <http://fox2now.com/2016/03/31/nga-announces-north-st-louis-as-location-for-new-1-75b-site-3000-employees/>.

2017]

*SHATTERING 'BLIGHT'*

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Exhibit IV provides a more detailed timeline of the events that took place from the first blight designation to the completion of condemnation through eminent domain, approximately a six year process.

The Redevelopment Plan changed from what was first presented in 2009, to what was approved in 2015. Changes occurred in the ultimate use of the project, the parties that would acquire the properties and land, the size of the project, and what properties would be torn down. To the extent that there was a glimpse of hope that the property owners could get to stay in their homes, after a redevelopment and possible clean-up of the Pruitt-Igoe area, those pipe dreams soon ended.

Once the NGA became the known acquirer, the relevant regulations, statutes and policies relating to a federal government land acquisition came into play.<sup>174</sup> The end goal was condemnation. To this end, the takings and redevelopment processes moved very quickly and it was only a matter of time before the whole community would be condemned and torn down. The NGA targeted site selection and a purchase agreement between March 23, 2016 and September 15, 2016, and an unencumbered title closing on February 1, 2017.<sup>175</sup> To accomplish those ends, St. Louis, through its agency, LCRA, took a series of actions, including the completion of the condemnation and eminent domain actions, under state and local law.

St. Louis agencies moved quickly once they gained authorization to designate the St. Louis Place area as blighted. Property owners received notices about the blight designation and pending threat of condemnation. After the assemblage of appraisals, the owners received notices of the minimal damage offers as consideration for the taking of their dwellings and statutory relocation assistance for the displacement.<sup>176</sup> In the first notices, the compensation offered and relocation assistance was insufficient to replace housing cost of similar housing in nearby, more prosperous communities. The fear of homelessness was real in St. Louis Place, as a resurgence of the racial exclusion fear from prior decades.<sup>177</sup>

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<sup>174</sup> National Geospatial Intelligence Agency, EN0922151024KCO, Environmental Impact Statement For The Next NGA West Campus In The Greater St. Louis Metropolitan Area: Final Version, 39, 68-69 (2016) referred to as "NGA Environmental Study." See *infra* Exhibit II.

<sup>175</sup> Francis G. Slay, Mayor, St. Louis, Mo., Report to Planning Commission Meeting (Feb. 4, 2015).

<sup>176</sup> In a number of cases, the appraisals were drive by appraisals, wherein appraisers did not enter the inside of the property. Some properties appraised as low as \$15,000, later to be adjusted upon negotiations and hearings.

<sup>177</sup> *Infra*, Section B. Intertwining of Race, Property and Blight.

Property owner choices were slim and inadequate. If an owner refused to sell, the only remaining option was to seek due process in court. Owners, who were landlords, were placed in an uncomfortable position of notifying tenants and releasing tenants from their leaseholds. LCRA offered relocation assistance to both owners and tenants. Unfortunately, the owner and tenant's ideal choice to stay put was not an option. The end result was forced displacement of the owner or tenant with relocation assistance and compensation to move elsewhere.

From one perspective, a blight designation and the condemnation of locations such as St. Louis Place and Pruitt-Igoe were welcomed by not only government entities, but also members of adjacent, neighboring communities, some of whom may have good intentions and others whose intentions may be at odds with the displaced owners and tenants. However, cities, states, and federal agencies may see promise in the takeover of the specific targeted area, with romantic visions of enhanced employment opportunities and federal, state or local jobs and an enhanced tax base. The potential for urban revitalization, economic development, and possibly a bigger tax base has been a huge motivator for governments to redevelop areas in decline for years. Legislation and legal precedent is in favor of the takers, although, the basic economics many times are not. The historical use of blight as a rationale to condemn and take properties that meet certain conditions is not only constitutional, but is within the state and municipal legislative authority. Public commentary supports the idea of eradicating "blight" for a variety of reasons, including the self-interest of those who benefit, aesthetic reasons, narratives that continue to stoke fear about abandoned properties, events that may have taken place in this community, or the underprivileged nature of the people that live in the area.

Alternatively, from another perspective, residents who own or lease homes, businesses, and religious congregations in the neighborhood are placed in a defensive position because their homes, churches, or businesses have a special meaning to them as it represents a part of their lives. In a documentary, posted on Vimeo, community members in St. Louis Place described their frustrations about their journey, the condemnation and eminent domain.<sup>178</sup> Community members described the pain of losing their homes, their shared history, and the safety net that only a small community like St. Louis Place can provide. From the perspective of community members in St. Louis Place, this area is their home and worth much more than the sums offered as "just compensation." The residents in this community want change and

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<sup>178</sup> June Bae, *Exodus 2016*, VIMEO (June 1, 2016), <https://vimeo.com/164910847>.

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improvements, but the displacement and destruction of St. Louis Place is not the solution. For these residents, in no uncertain terms, their private property was not for sale and, even if it was, there is not a better place for them to go.

In designating St. Louis Place as blighted, there were no checks or balances. In sum, it was a foregone conclusion that St. Louis Place was designated as blighted because there was a redevelopment plan based on the current blight terminology, a decision to blight, and a narrative that negatively characterized the entire community. A local government's decision to condemn and take the properties was supported by a narrative that homes, churches, and businesses needed to be torn down for a public purpose of relocating the NGA in order to save jobs.

In the aftermath, all of the "houses are down and a fence is up separating the now cleared land from the rest of the neighborhood."<sup>179</sup> The push for saving memories of the remains of St. Louis Place was an important detail that many advocated for during the displacement. The least that should have been done in light of this displacement was to digitized memories and interviews of residents, in videos and photographs stored online.<sup>180</sup> The loss of condemned communities' collective histories and memories are just one of the many tragic sides to this issue. Even in this case where preservation was attempted, most residents had moved before the history project took place and as Lois Conley, the director of the Griot Museum, recalls, it was "too little too late."<sup>181</sup> One saving grace was that supportive neighbors who lived near the displacement, along with a few property owners able to relocate nearby, participated in the preservation project. Regrettably, other memories will never be captured.

*B. Intertwining of Race, Property and Blight*

Journalist Nicholas J.C. Pistor provided his observation of the displacement of owners' homes and businesses due to the blight

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<sup>179</sup> Jacob Barker, *St. Louis Memories Preserved*, ST. LOUIS POST-DISPATCH (Dec. 11, 2017), <http://www.stltoday.com/news/local/metro/after-nga-picked-new-hq-site-residents-he-lped-document-north/article22bfeb9c-1768-5039-a6a5-854a88a0770e.html> (illustrating a photo of the view of the Next NGA West Development site from the corner of Parnell Street and the St. Louis Avenue).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* (noting that some of the interviews and photos were in used in the Griot Museum exhibit: Eminent Domain /Displaced, which documented three urban renewal projects that forced the relocation of Mill Creek Valley, Wendell Phillips in Kansas City and St. Louis Place).

designation and pending eminent domain actions to take the property for the NGA.<sup>182</sup>

The city of St. Louis blighted properties on a regular basis. A building, a block, a neighborhood, is blighted in St. Louis on quite a regular basis. To some “blighting” is a simple economic tool. The designation provides access to various local, state, and federal economic development funding. “Blighting” is also more art than science. In common use, a “blighted” area is one that is underperforming economically (generally, not producing enough tax revenue). Just about anything could be “blighted,” by citing deferred maintenance and repeating the word “obsolete.”<sup>183</sup>

The ease of a blight designation rested on a turbulent early nineteenth century history. That tragic history included the Indian Removal Act of 1830, known as the Trail of Tears, the horrific institution of slavery, and the Missouri Compromise cementing the institution of slavery. In 1857, the Supreme Court infamously decided *Dred Scott v. Sandford*,<sup>184</sup> which had the effect of widening the breach between northern and southern states.<sup>185</sup> In Missouri, slavery was brought to the Missouri territory before 1818 when agricultural farming slaveholders utilized slave labor to work on tobacco, hemp, and corn farms.<sup>186</sup> Under *Dred Scott*, human beings, enslaved Africans, were considered property and deprived the ability to sue for their own property rights and liberty interests.<sup>187</sup>

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<sup>182</sup> Nicholas J.C. Pistor, *St. Louis Prepares for NGA Move*, ST. LOUIS POST-DISPATCH (June 6, 2016), [http://www.stltoday.com/news/local/metro/st-louis-prepares-for-nga-s-billion-dollar-move/article\\_39ae893a-2504-5004-a308-1fed845ae813.html](http://www.stltoday.com/news/local/metro/st-louis-prepares-for-nga-s-billion-dollar-move/article_39ae893a-2504-5004-a308-1fed845ae813.html) (Pistor explains that Missouri defines a “blighted area” as “an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.”).

<sup>183</sup> Alex Ihnen, *How to Blight 100 Acres of St. Louis City*, NEXT STL (Feb. 2 2015), <https://nextstl.com/2015/02/blight-100-acres-st-louis-city/>.

<sup>184</sup> *Dred Scott v. Sandford*, 60 U.S. 393, 393 (1857).

<sup>185</sup> JOHN HOPE FRANKLIN, *FROM SLAVERY TO FREEDOM, A HISTORY OF AFRICAN AMERICANS*, 195, 267-68 (Alfred A. Knopf, 7th ed. 1994).

<sup>186</sup> EDWARD E. BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM* 154-55, (Basic Books, 2014) (noting that Missouri was too far north for cotton to grow); see also Missouri Department of Natural Resources Survey, *Rural and Small Town Schools in Missouri* 9 (2003), <http://dnr.mo.gov/shpo/survey/SWAS024-R.pdf> (noting that at the time of emancipation a substantial number of Missouri’s estimated 115,000 enslaved Africans were concentrated in the Missouri River Valley, encompassing the little Dixie Region. The percentage of the enslaved population was between thirty-five and forty-five percent of the total population).

<sup>187</sup> See *Dred Scott*, 60 U.S. at 454; see also Franklin, *supra* note 185 (stating that “Chief Justice Roger B. Taney, speaking for the Court, added that sense the Missouri Compromise was unconstitutional, masters could take their slaves anywhere in the territories and retain

In *Plessy v. Ferguson*, the Supreme Court created the “separate but equal” doctrine and in doing so erased legislative accomplishments gained during the Reconstruction Era.<sup>188</sup> In 1954, the Supreme Court overturned the separate but equal doctrine in *Brown v. Board of Education of Topeka*.<sup>189</sup> In *Brown*, the Supreme Court held that segregation in education was “inherently unequal” and a violation of the Fourteenth Amendment’s Equal Protection Clause.<sup>190</sup>

In *Shelley v. Kramer*, the Supreme Court changed the manner in which property rights and opportunities were granted.<sup>191</sup> In *Shelley*, the Supreme Court held that the judiciary could not enforce racial covenants in real estate transactions. The property in *Shelley* was located at 4600 Labadie Avenue, near the Northside of St. Louis.<sup>192</sup> After *Shelley*, the next phase in St. Louis’ history included a housing boom led by widespread white flight and municipality incorporation with exclusion, a few miles away from St. Louis Place. Exclusionary zoning and a movement towards planning an urban renewal with disastrously scaled buildings designed to house the poor, brought about the St. Louis Pruitt-Igoe Housing Development Project.<sup>193</sup> By 1976 these towers were ultimately demolished, and the vacant, contaminated land has remained for the past forty years.<sup>194</sup> Many families displaced from the Pruitt Igoe Housing Development moved north to St. Louis Place or moved to areas south of Cass.

National population trends also shed light on one difference in the St. Louis story from other parts of the country that have experienced blight. Other urban locations had population increases in their urban core until the mortgage crisis of 2007. However, St. Louis’ socio-economic situation caused significant population declines as early as 1950 and continued throughout the present era. In 1810, in addition to Indigenous Americans, 19,783 Missouri citizens lived in the Missouri territory.

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title to them”).

<sup>188</sup> Arthur E. Sutherland, Jr., *Segregation and the Supreme Court*, THE ATLANTIC MONTHLY (July 1954).

<sup>189</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483, 483 (1954).

<sup>190</sup> See Department of Natural Resources Survey, *supra* note 186, at 6; see also U.S. CONST. amend. XIV.

<sup>191</sup> *Shelley v. Kraemer*, 334 U.S. 1, 1 (1948) (holding that courts could not enforce these racial covenants on real estate. The area at issue in *Shelley*, started at 4600 Labadie Avenue on St. Louis’ near northside).

<sup>192</sup> See Gordon, *supra* note 157, at 11.

<sup>193</sup> The Federal Government built the Pruitt-Igoe housing project to provide housing for persons displaced by urban renewal and recent migrants from the American South, most of whom were African Americans.

<sup>194</sup> See Gordon, *supra* note 157, at 12 (The last Pruitt-Igoe buildings were demolished and the site was cleared by 1976).

From this small number, St. Louis reached a population high of 856,796, St. Louis county 406,349, and the state 3.95 million by 1950.<sup>195</sup> As a function of lack of investment in the housing project and the mobility of residents during the 1950s and 1960s, the conditions in Pruitt-Igoe eroded, impacting on the formerly cohesive St. Louis Place neighborhood that it bordered to the north. Many property owners sold or walked away from their properties as crime escalated and property values declined. By 2016, St. Louis' population had dropped to 315,685, slightly over one million people<sup>196</sup> live in the county, and 6.1 million people live in Missouri.<sup>197</sup>

In an isolated and segregated way, one might compare St. Louis Place to some rural areas of West Virginia. St. Louis Place had a strong community before the decision to condemn the ninety-nine acres. For example, an economic boom in 1805 resulted in a subdivision development on the north and Westside of St. Louis on the property owned by O'Fallon, Carr and Mullanphy families.<sup>198</sup> However, absentee ownership and deferred maintenance dating back to the 1920's depression caused suffering in the early Eastern European community.<sup>199</sup> Although Eastern European immigrants left the areas as it began to decline, African Americans replaced them or stayed because of limitations placed on the areas they could purchase homes or businesses. For instance, it was common for deed covenants and restrictive agreements to outlaw "the signatories, their heirs, assigns, legal representatives and successors in title to restrict the property . . . against sale to or occupancy by people not wholly of the Caucasian race . . . later in the same document as people of the Negro or Mongolian Race."<sup>200</sup>

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<sup>195</sup> *Missouri Population*, WORLD POPULATION REVIEW (May 28, 2017), <http://worldpopulationreview.com/states/missouri-population/> (Due to increasing migration throughout the 19th century the population grew significantly, due to the arrival of Europeans and Africans from the slave trade, the population of Missouri climbed by 236.6% to 66,586, by 1820. A further increase of over 100% took those numbers to 140,455 by 1830); see *Population of St. Louis City & County, and Missouri 1820-2010*, GENEALOGY BRANCHES (May 28, 2017), <http://www.genealogybranches.com/stlouispopulation.html>; see also U.S. Bureau of the Census, *Missouri Population of Counties 1900-1990* (Mar. 27, 1995), <https://www.census.gov/population/cencounts/mo190090.txt>.

<sup>196</sup> *Demographics*, ST. LOUIS REGIONAL CHAMBER (May 28, 2017), <http://www.stregionallchamber.com/regional-data/demographics>.

<sup>197</sup> See *Missouri Population*, *supra* note 195.

<sup>198</sup> See *Development Strategies*, *supra* note 158, at 2.

<sup>199</sup> *Development Strategies*, *supra* note 158, at 3.

<sup>200</sup> *Development Strategies*, *supra* note 158, at 3. See Gordon, *supra* note 157, at 3, 71, 73; see also CLEMENT VOSE, *CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES 7-8* (Berkeley: University of California Press 1967); *Shelley v. Kraemer*, 334 U.S. 1, 1 (1948) (declaring this practice unconstitutional in 1948).



*C. From Seventy Years to Sixty-Days*

Imagine, in 2015, the St. Louis Place community, a vibrant neighborhood with traditions, homes, businesses, and churches that had co-existed for decades. Some residents, homes, and businesses were new to the community, but many moved to St. Louis Place over forty years after being displaced from the Pruitt-Igoe housing development or came from other parts of St. Louis.

Several decades ago, residents began to leave St. Louis Place in search of better job opportunities. During this same period, homeowners began to sell to unscrupulous buyers or left properties vacant and abandoned because of the weak resale values. Declining economic conditions and racial stigma inhibited homeowners' ability to resell their properties in the private real estate market, leaving residents to shutter family dwellings, businesses and churches. In some cases, the owner died, leaving property to a descendant or selling it to land acquisition speculators, since there was no adequate resale market. Those with mobility and employment outside the community have moved away to more prosperous communities, leaving a skeletal shadow of the community's past glory—when it had one. The few remaining residents, business and church owners are elderly, infirm or are living descendants of the original owners of the properties.

From one perspective, St. Louis Place' blight designation and condemnation could be considered a rare anomaly of a city creating an economic plan to address a perceived problem of a distressed neighborhood. In one sense, this scenario is another example of a city taking property from underprivileged community of color based on an amorphous definition of blight for the economic advantage of everyone except those who live in the community. On the other hand and in a worst-case scenario, blight takings are wealth redistribution, in a warped and reverse "Robin Hood" way. In a best-case scenario, the government entity satisfies a never-ending appetite for progress for those who have the means to garner the prosperity.

The last of the Blight Framework trilogy is government decision-making. Decision-making is also problematic because the government entity bases its decisions on inadequate information, fails to address a situation early enough so that the conditions do not worsen, and acts in a self-interested or other-directed manner. In the next part, decision-making in blight condemnation is discussed.

## V. DESIGNING SOLUTION

The search continues for policy and legislative reforms to the current eminent domain taking regime. As discussed, changes to the blight framework for takings have not been widely addressed. To that end, what is recommended is that we confront the manner in which decision-makers use condemnation tools to take properties throughout the United States. The definition of blight is vague and the codification of the word did little to clarify the terminology.

The prior section began with an indictment of the current framework of blight condemnations and takings. No one can or should lessen the impact of what is happening to displace underprivileged people from their communities. A fair and just solution would be to discontinue taking private property for public use or a public purpose, period.<sup>201</sup> However, that solution has not been accepted by the courts or the legislatures. Additionally, a number of scholars have suggested that nuisance law could be an alternative to a taking.<sup>202</sup> More research is required to determine the manner in which utilizing nuisance would be appropriate. The positive is that nuisance law calls for reparative measures and could be useful in early stages of property deterioration. The downside is that nuisance does not include the payment of just compensation, whereas, eminent domain takings do provide just compensation.

Some scholars have suggested narrowing the broad and ambiguous legal statutes to more complex rules,<sup>203</sup> offering public nuisance law as an alternative to the eminent domain taking tool<sup>204</sup> or more recently, turning to innovation to target properties through land-banking and early stage intervention.<sup>205</sup> However, these solutions have

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<sup>201</sup> See RICHARD ALLEN EPSTEIN, JUSTIFICATIONS FOR TAKINGS, Part III, THE POLICE POWER: ENDS 108-12 (Harvard University Press 1994) (on an anti-taking doctrine); see also notes 14, 214 (on attorneys' fees as one procedural solution).

<sup>202</sup> *Id.* at 112-15.

<sup>203</sup> See Kokot, *supra* note 9, at 81 (arguing "that a complex rule provides state legislatures with the best framework for overcoming the objection" that blight is a "loosely defined concept that is ill-suited to check government's power of eminent domain").

<sup>204</sup> See Eagle, *supra* note 26, at 853 (questions why "localities have not used nuisance law as a way of acquiring . . . blighted parcels without having to pay any compensation."); *But see* Ernesto Hernandez-Lopez, *Sriracha Shutdown: Hot Sauce Lessons On Local Privilege and Race*, 46 SETON HALL L. REV. 189, 240 (2015) (wherein municipal powers "capitalized on racial divisions" and used public nuisance claims to shut down the business production of a sriracha hot sauce and chili production).

<sup>205</sup> See generally Sohil Shah, *Saving Our Cities: Land Banking in Tennessee*, 46 U. MEM. L. REV. 927, 927 (2016); John T. Schuring, Comment, *Detroit's Renaissance Zones: The Economics of Tax Incentives In Metropolitan Location Decisions, The Results of the Zones To Date, And Thoughts on the Future*, 83 U. DET. MERCY L. REV. 329, 329 (2006).

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not been implemented nationally and generally, local and state governments, community members, and the legal community are woefully unaware of the negative aspects of blight takings and what possibilities may exist for community empowerment.

Another possibility is to consider new policies to change the current framework of blight condemnations. One suggestion is to develop policies that provide “in-time” solutions for communities suffering distress. Consider three timings for a solution: one that is too early; one that is in-time; or one that is too late. Consider this hypothetical: what if you received an invitation to have lunch with a colleague who is concerned about a building that is vacant near her home? If you do not return the call until there are five homes vacant in the community, that surely would be too late. If the colleague calls to express concern about a hypothetical problem in her community, for example, the neighbor just bought a kitten and your friend is concerned that there will be cats running through the neighborhood. The idea of talking with the friend on whether she should have a conversation with her neighborhood to spay/neuter her cat, would be too early. On the other hand, if your friend calls about the vacant property or a proliferation of stray cats in the neighborhood, responding immediately to assist with this request, would be “in-time.”

This Article does not seek to answer why St. Louis waited seventy years to revitalize St. Louis Place or forty years to address the demolished Pruitt-Igoe. In both situations, St. Louis’ response was clearly *too late*. As a result, the deferred dreams and wishes of property owners in St. Louis Place is a loss for what the community could have been. Unfortunately, St. Louis Place voices went unheard, powerlessness set in, and community deterioration took hold. Thus, it is in-time solutions that balance the needs of property owners with the potential for community revitalization. In the next section, the in-time policy solution is discussed in greater detail as a method to respond distressed communities.

*A. Stop Defining Distressed Communities as Blighted*

It is necessary to stop using the term “blight,” the metaphor, to describe a condition in a community or of a property. Using the “blight” metaphor to describe a community in distress is too vague to continue its use, especially if a local government is responding in-time. The best solution to this problem is to abandon the use of this type of terminology and use words that describe the problem. Just as a “rat’s nest office” does not explain why an office is unkempt, neither does using the word blight explain to a decision-maker why the property is in a certain condition.

Describing a faculty member's office as a "rat's nest office" does not help the faculty member who is suffering in the condition they inhabit. Moreover, it does not provide any clarity on why the condition is happening. If there was clarity, a university administration might suggest effective remedies.

More descriptive terms would better describe the reason for the condition and allow for possible solutions. For example, rather than calling an area "blighted" consider identifying the condition that the area is suffering from and what is causing the distress in the community. With some urgency, a community and its leaders could describe what is happening. Consider the four concepts: urban or rural depopulating area; isolated areas; contaminated area; and flooded areas.

#### i. Urban or Rural Depopulating Areas

A "depopulating area" is an area that is losing its population for reasons that may relate to the closure of businesses, job loss due to internet purchasing or automation, an aging population that is not being replaced with younger residents, or younger people are migrating to newer schools and jobs. A new word such as "Urban Depopulating Areas" has precedent from its use in rural areas. In the United States and internationally, the term "Rural Depopulation" is widely known and discussed in scholarly literature.<sup>206</sup>

It would be useful to do comparative research on urban solutions to community distress. For example, in the European Union ("EU"), the EU studied depopulating areas and the underlying cause of the depopulation. Prior to recent immigration issues, parts of the EU experienced geographical isolation,<sup>207</sup> demographic problems,<sup>208</sup> scarce economic activity,<sup>209</sup> and low standards of living. The standards of living

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<sup>206</sup> Jeffrey Walser & John Andulek, *The Future of Banking in America, Rural Depopulation: What Does It Mean For The Future Economic Health of Rural Areas and the Community Banks That Support Them?*, 16 FDIC BANKING REV. 1, 3 (noting the depopulation of a significant portion of America's rural counties, including the Great Plains, the Corn Belt, the Delta-South, and Appalachian East).

<sup>207</sup> Guy Crauser, Director General for Regional Policy Depopulation Policy for the European Commission, Remarks at a Regional Policy Depopulation Seminar in Lycksele, Sweden (June 12, 2001) (transcript available at [http://ec.europa.eu/regionalpolicy/archive/sources/doc/conf/depop/document/crauser\\_en.pdf](http://ec.europa.eu/regionalpolicy/archive/sources/doc/conf/depop/document/crauser_en.pdf)) (describing geographical areas located way from economic areas and supports of local initiatives, such as: roundtables on population decline Cross-border cooperation and coordinating efforts in declining areas).

<sup>208</sup> *Id.* at 3 (describing locations where young people emigrate and the remaining population is ageing and there are low fertility rates).

<sup>209</sup> *Id.* (describing how employment tends to be concentrated in the primary or public sector, how industrial activity is largely in traditional rural areas, and how services are lacking. Climate is often a major factor hampering competitiveness).

were on average lower than in other parts of the country experiencing severe rural poverty.<sup>210</sup> The EU provided three main approaches to tackling population decline: (1) housing, (2) facilities, and (3) economic activity. Using these approaches, EU member state governments could then formulate key strategies to address depopulating areas.

The EU found that the causes and effects of population decline varied from location to location. In one town, the shrinking number of households may mean that neighborhoods were becoming dilapidated and homes abandoned, while another town may have no such problem. To take account of this, each region has its own approach. However, in all the areas affected, the overall policy is to foster cooperation between housing associations, schools, care institutions, active members of the community and businesses. The aim is for stakeholders to develop solutions together to problems relating to housing and facilities in depopulating areas,<sup>211</sup> and maintaining economic activity and employment in depopulating areas.<sup>212</sup>

#### ii. Isolated Areas

Scholar Vicki Been argues that we must go further and deal with the complexities that special features of residential segregation—the lack of anything approaching a free market, the pervasive role of government in creating segregated communities, the connections between residential segregation and almost every other social problem we confront today—pose to achieving greater diversity.<sup>213</sup> There are areas in the United States that are depopulating and increasingly isolated because of historical segregation or other involuntary constraints placed on the community—for instance, lack of transportation, schools, food deserts. In St. Louis Place, outward migration of African-Americans was systematically restricted, which resulted in the isolation of the small St. Louis Place community from state and national economic prosperity.

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<sup>210</sup> *Id.*

<sup>211</sup> *Id.* (Stakeholders assess the need for modifications to the housing stock, e.g. major maintenance or renovations to make them energy-efficient. They also consider demand for new homes and where these should be built. Stakeholders consider the feasibility of concentrating or merging local facilities such as schools, libraries, childcare and healthcare services. They also look at the accessibility of current facilities and whether it needs improving).

<sup>212</sup> *Id.* (Stakeholders consider ways of maintaining—and, if possible, boosting—the local economy. This could be done by making agreements, for instance with local schools, businesses and care institutions about how to fast-track school-leavers into employment; about the accessibility of business parks or shopping areas; about taking advantage of opportunities for partnerships; and with roles played by stakeholders in declining areas.)

<sup>213</sup> Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5, 5 (2010).

Policy decisions that limit reinvestment and development due to redlining and false narratives also exacerbate the distress. Identifying the specific reason for the distress would be a first step in finding a solution. A “historically segregated area” might explain the isolation in St. Louis Place and other communities across the United States, such as San Francisco’s Chinatown, Detroit’s urban zone, Appalachia’s rural area, or Oklahoma’s reservation area. These historically segregated areas are locations that may have experienced restrictions and alienation that led to their properties being described metaphorically as “blighted.” These communities would be better served with other prescriptions rather than by being labeled a name that does not accurately describe the reasons for the state of the neighborhood.

### iii. Contaminated or Brownfield Areas

Additionally, another condition could be a “contaminated area” that has forced residents to leave because of a toxic chemical spill, a catastrophic environmental event, or possibly because of an industrial/mall brownfield that is no longer functional and closed down.<sup>214</sup> Brownfields are defined as “blight.” It is not surprising that when such areas become devastated, inhabitants will evacuate the area and leave the properties vacant. Brownfield in-time solutions are needed.

### iv. Flooded Area

Another possibility might be a “flood area,” which is an area affected by weather conditions that in turn affects migration and infrastructure. Increasingly, blight caused by natural disasters is becoming more common. For example, hurricanes, floods, and fires that have occurred in Texas, Louisiana, Florida, North Carolina, Arizona, and California. Recently, in 2017, Hurricane Harvey, which caused widespread flooding in the Houston metropolitan area, illustrated the devastating power the environment can have on our communities. As a result, federal, state, and local entities need to rethink urban planning decisions. For instance, governments should review how they decide to

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<sup>214</sup> *Overview of the Brownfields Program*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Dec. 9, 2017), <https://19january2017.snapshot.epa.gov/brownfields/brownfield-overview-and-definition.html> (according to the United States Environmental Protection Agency, a brownfield is defined as “a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It is estimated that there are more than 450,000 brownfields in the U.S. Cleaning up and reinvesting in these properties increases local tax bases, facilitates job growth, utilizes existing infrastructure, takes development pressures off of undeveloped, open land, and both improves and protects the environment.”).

breach levees in order to redirect water flow away from prosperous areas to less prosperous areas for the “greater good.”

In addressing in-time solutions, we, as a society, can collectively get beneath the narratives. There are many parties that use narratives falsely to describe what is happening in communities, that each has a role to play in changing that dialogue. Culprits include: governmental parties participating in the taking; the media reporting on the takings; the adjacent communities that benefit from the takings; and splits in the community itself, wherein each member for his or her own specific reasons may support or oppose the taking. As Stephenson would suggest, we must get beneath the narrative to determine if it is true or not. Upon digging further into the narrative, one could craft the least restrictive solutions to the taking.

Thus, collectively, we could begin to solve the problems of distressed communities. That could turn blight, as we have come to understand it, on its head. Yes, the area may appear in bad condition, but it is because the people are underprivileged and need workable solutions to address the issues on their property or in their community. If the issue is lack of employment, why not create a solution for jobs rather than condemning property in the affected area as blighted? If the issue is predatory lending or that people are unable to obtain needed capital, collective solutions should be developed to address this dilemma. There may also be reasons that cause an area distress that relate to contamination or weather-related events. In-time solutions in these situations are critical to address the distress. Waiting forty years to clear up any contamination remaining when Pruitt-Igoe was demolished was again, too late. These concepts will take time to develop new frameworks. In the meantime, there are other possibilities to address the problems of blight terminological framework.

Policy reform takes time and a collective will to change. Another reform would be to review current blight legislation and codes for potential reform. The next section provides examples of legislative reforms that could provide fairer and more just results for those whose properties are being condemned due to blight.

#### *B. Continue to Reform State Legislation*

In light of the systemic failures of the blight terminological framework, we can still reform the statutes that are themselves subjective and broad. Utilizing objective, fact based, narrow standards is a step toward clarity and transparency. With objective standards, St. Louis Place may have had a fighting chance; however, overly broad standards

that include getting behind in taxes allow any area to be subject of a blight designation. A few reforms would include the following.

i. Reform Blight Statutes and Replace them with Model  
Legislation Similar to Florida

**73.014 Taking property to eliminate nuisance, slum, or  
blight conditions prohibited.**<sup>215</sup>

(1) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, the state, any political subdivision as defined in s. 1.01(8), or any other entity to which the power of eminent domain is delegated may not exercise the power of eminent domain to take private property for the purpose of abating or eliminating a public nuisance. Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, abating or eliminating a public nuisance is not a valid public purpose or use for which private property may be taken by eminent domain and does not satisfy the public purpose requirement of s. 6(a), Art. X of the State Constitution. This subsection does not diminish the power of counties or municipalities to adopt or enforce county or municipal ordinances related to code enforcement or the elimination of public nuisances to the extent such ordinances do not authorize the taking of private property by eminent domain.

(2) Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, the state, any political subdivision as defined in s. 1.01(8), or any other entity to which the power of eminent domain is delegated may not exercise the power of eminent domain to take private property for the purpose of preventing or eliminating slum or blight conditions. Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, taking private property for the purpose of preventing or eliminating slum or blight conditions is not a valid public purpose or use for which private property may be taken by eminent domain and does not satisfy the public purpose requirement of s. 6(a), Art. X of the State Constitution.

ii. Reform the Required Vote by Local Decision-Makers to a  
Super-Majority Decision

Taking private property for the greater good is too important of a decision to be left in the hands of local government, such as, a majority in a city council. A better approach is to have a supermajority in the

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<sup>215</sup> FLA. STAT. § 73.014 (1-2) (2017).



decision-making process for condemnation and eminent domain actions. In St. Louis Place, a supermajority would not have changed the decision because a supermajority of the St. Louis city council agreed with the decision to condemn the neighborhood. However, there are communities where a supermajority could make a difference. For instance, it is likely a supermajority could have led to a different decision in Boston's decision to blight Yawkey Way.

### iii. Reform Relocation Timelines

Another legislative proposal is to expand the timelines for relocation. According to the Uniform Relocation Act, displaced owners could get up to ninety-days of time to relocate.<sup>216</sup> In Missouri, for example, displaced owners receive sixty-days. As a matter of legal practice for the attorneys representing homeowners through these difficult decisions and as a matter of real consequences for those affected by this forced change, the timeline of sixty-days was too short. In St. Louis Place, property owners had varying conditions and abilities and situations that require special handling and time.

### iv. Reform Legislation Related to Attorneys' Fees

Another legislative reform would allow owners the ability to recover attorneys' fees when their properties are condemned.<sup>217</sup> Attorneys' fee recovery statutes are a necessary step in leveling the playing field. The complexity of takings in blight context creates problems for property owners who seek to represent themselves. These owners are, generally, unfamiliar with the statutes, ordinances, rules and the practice of law. There is also little understanding about the power of negotiation of offers put before them as just compensation. Currently, other than pro-bono lawyers, private attorneys are reluctant to intervene because there is no clear sight to recoupment of attorneys' fees. If the owners do not have money to hire an attorney, the owner must either represent himself or seek a pro-bono attorney if available. To that end, there are at least three approaches to attorney's fee recovery: (1) constitutionally mandated attorneys' fees; (2) conditional recovery based on percentage increase in the condemnation award; and (3) judicial discretion. Although not favored, in Pennsylvania there is a cap on the attorneys' fees.

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<sup>216</sup> Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 C.F.R. § 24.203(a)(3) (2017).

<sup>217</sup> See Crystal Genteman, *Eminent Domain and Attorneys' Fees in Georgia: A Growing State's Need for a New Fee-Shifting Statute*, 27 GA. ST. U.L. REV. 829, 829 (2012); see also Johnson, *supra* note 13.

<b>Constitutionally Mandated Attorneys' Fees</b>	Recovery of attorneys' fees and litigation are part of the state constitution's requirement of just compensation. Under the statute to interpret the amendment, "the court, in eminent domain proceedings, shall award attorneys' fees based solely on the benefits achieved for the client." Fla. Const. art. X, § 6; FLA. STAT. § 73.092(1) (2009).
<b>Conditional Recovery Based on Percentage of Increase</b>	If the jury's final award of compensation is greater than the condemner's initial offer and the statute's requirements are met, then courts must award costs. MONT. CODE ANN. § 70-30-305 (2009); OR. REV. STAT. § 35.346(7) (2007); MICH. COMP. LAWS ANN. § 213.66(3) (1998); ALASKA R. CIV. P. 72(K)(3); WASH. REV. CODE § 8.25.070(1)(B) (2008); IOWA CODE § 6B.33 (2008); S.D. CODIFIED LAWS § 21-35-23 (2004); COLO. REV. STAT. § 38-1-122(1.5) (2007); MINN. STAT. § 117.031 (2005).
<b>Judicial Discretion</b>	Landowners may recover costs at the courts discretion. Oklahoma and Idaho require that the just compensation award exceed a set amount of 10% of the condemning authority's offer in order to invoke the discretion of the court, while NY requires that the award be "substantially in excess of the amount of the condemner's proof" and be "deemed necessary by the court for the condemnee to achieve just and adequate compensation." LA. REV. STAT. ANN. §§ 19:8, 19:109 (2004); CAL. CIV. PROC. CODE § 1250.410 (2007); DEL. CODE ANN. TIT. 10, § 6111 (1999); IDAHO CODE ANN. § 7-711A (2004); OKLA. STAT. TIT. 27, § 11(3) (1997); N.Y. EM. DOM. PROC. LAW § 701 (1987); KAN. STAT. ANN. § 26-509 (2000); NEB. REV. STAT. § 76-720 (2009).
<b>Fee Capping</b>	A property owner in an eminent domain action generally receives reimbursement of reasonable expenses, including attorneys' fees; however, the amount is capped at \$4,000. 26 PA. CONS. STAT. § 710 (2009)

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*C. Start a Grassroots Movement to Create Real In-Time Solutions*

The community is one of the most important pieces of the puzzle to building effective solutions. Any solution therefore must begin with the community. There are a number of ways that the community can be involved and provide real in-time solutions to ward off blight designations.

## i. Negotiate Community Benefit Agreements

A community benefit agreement is described as a negotiated agreement between a developer proposing a particular land use and a coalition of community organizations that purport to represent the members of the community, whether individually or as group.<sup>218</sup>

## ii. Resist False Narratives

In Sierra Vista, Arizona residents resisted the blight label to their West End neighborhood.<sup>219</sup> Real Estate agents Linda Huffman, Debbie DeRosa and Melissa Clayton questioned the impact on the community. DeRosa went further and questioned:

whether designating the properties 'blighted' and 'slum' would have a lasting impact on property values. Armed with a copy of the governing state statute that was highlighted and had several stickie notes, DeRosa indicated the city isn't following the intention of the state law which she said is aimed at improving residential, not commercial areas.<sup>220</sup>

In St. Louis Place, although community members were unsuccessful in stopping the condemnation of their neighborhood, community members hosted a petition to stop the eminent domain action and delivered over 95,000 signatures to the federal agency.<sup>221</sup>

## iii. Innovate

Additionally, community members can innovate and develop their own ideas on ways to improve and revitalize their communities. For example, with today's technology, land banking innovations, and enhanced communication, it is conceivable that a community can

<sup>218</sup> Been, *supra* note 213, at 5.

<sup>219</sup> Eric Petermann, *Residents Resist 'Blight' Label on West End*, SIERA VISTA HERALD (Mar. 3, 2017), [http://www.svherald.com/free\\_access/residents-resist-blight-label-on-west-end/article\\_ea3980be-ffdc-11e6-b59c-dbd461cad5c5.html](http://www.svherald.com/free_access/residents-resist-blight-label-on-west-end/article_ea3980be-ffdc-11e6-b59c-dbd461cad5c5.html); *see also*, David Firestone, *Black Families Resist Mississippi Land Push*, N.Y. TIMES (Sept. 10, 2001), <http://www.nytimes.com/2001/09/10/us/black-families-resist-mississippi-land-push.html>

<sup>220</sup> Petermann, *supra* note 219.

<sup>221</sup> Maria Altman, *Residents Ask NGA to Drop North St. Louis Site*, ST. LOUIS PUBLIC RADIO (May 6, 2015), <http://news.stlpublicradio.org/post/residents-ask-nga-drop-north-st-louis-site#stream/0>.

innovate solutions to improve and revitalize their community. Professor Cavalieri argues that by using “sophisticated data sets, land banks have begun to identify the levels of vacancy and abandonment that correlate with negative neighborhood outcomes.”<sup>222</sup> The hope is that communities are empowered to prevent blight or return from a blighted state.<sup>223</sup>

## VI. CONCLUSION

St. Louis Place experienced seventy years of declining socio-economic conditions and racial restrictions that hindered the ability of property owners to prosper in this distressed community. The economic distress mirrored that of other locales around the country, with private developers stepping in for redevelopment in an area where the private real estate market had significantly declined. Transitioning from economic development to acquisition by a federal governmental entity, the blight framework created a foregone conclusion. Blight is correlated to the decline of the private real estate market and a failure by society to intervene in powerful ways to help solve the problems of these communities. Easy solutions, from fads to real development and solicitations from federal agencies need significant community impact before properties are taken from one owner and given to another.

Currently nothing substantive limits a municipality and its agents, from deciding to designate a community as blighted, and proceed with eminent domain. Neither federal or state constitutions, courts, or regulations provide a satisfactory remedy for owners who wanted to stay in their homes, businesses and churches. The statutes are written to broadly cover many different types of properties. Narratives regarding the condition of homes or neighborhoods help the court of public opinion justify taking properties in underprivileged communities. This systemic failure is a great disservice to property owners who seek to stay and improve their neighborhood. The combination of amorphous blight statutory definitions, which is nothing more than a misguided metaphor, judicial restraint, and false narratives provides a climate for speedy decisions to condemn and to take.

A better approach is to create a new framework—one that will design effective solutions for local communities. First, identify the community’s underlying problem and design thoughtful solutions that take into account whether the community is distressed due to depopulation, isolation, contamination, or weather conditions. By

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<sup>222</sup> Shelley Cavalieri, *Linchpin Approaches to Salvaging Neighborhoods in the Legacy Cities of the Midwest*, 92 CHL.-KENT L. REV. 475, 486 (2017).

<sup>223</sup> *Id.*

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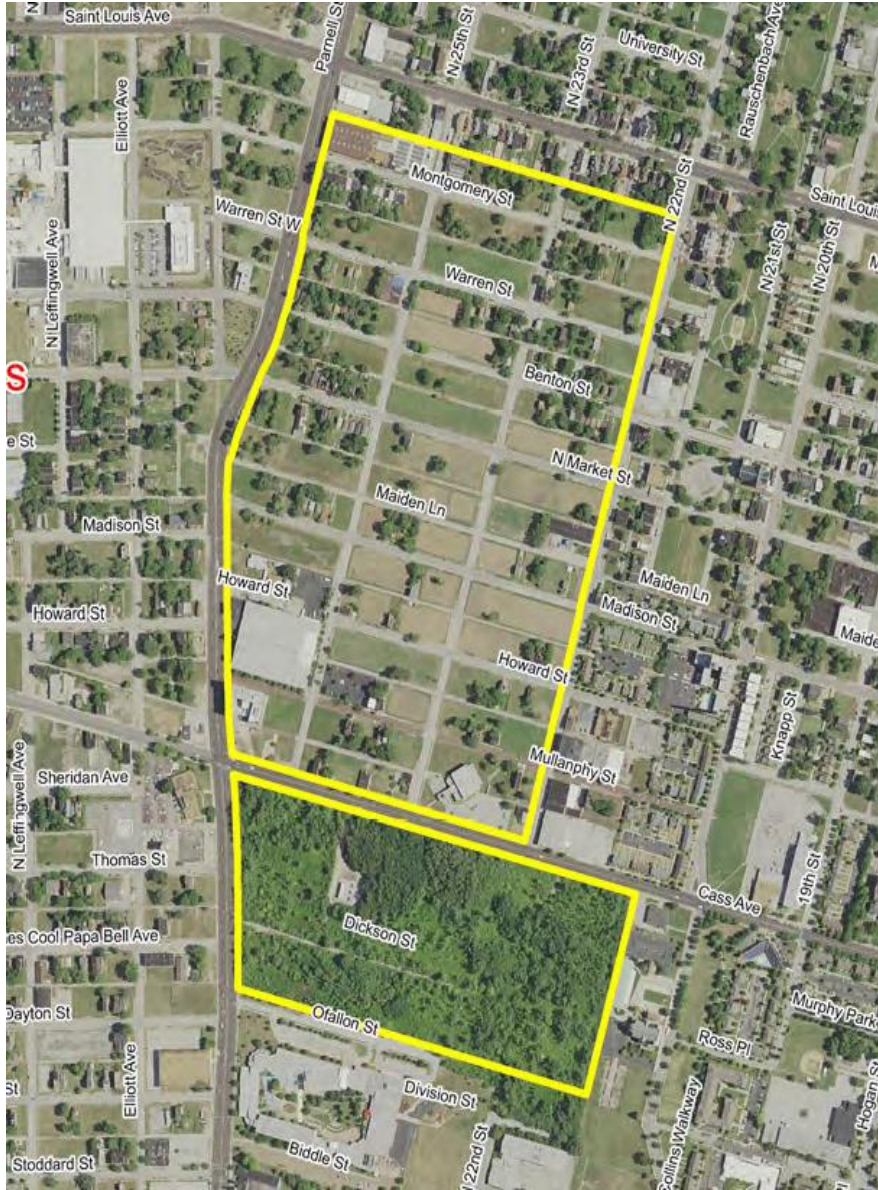
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correctly labeling the distress and identifying the problem with early detection, the community stakeholders, federal, state and local government entities, as well as the private sector can collaborate to solve the underlying problem. Second, legislation is necessary to reform or eliminate blight codes. This Article suggests the approach taken by Florida to ban takings based on blight is correct because there are better ways to solve these problems and pinpoint the distress, without blighting entire areas.

Lastly, individuals within communities need to be involved because they are in the best position to identify and solve the problems facing their community. It is the resident and his or her community that may have the best ideas on how to make improvements. Through measures such as community benefit agreements, narrative resistance, innovation, and collaboration, the community can and should remain involved. As solutions are developed, we, as a society, will be better able to preserve fundamental, but threatened private property rights.

**EXHIBIT I**

**NGA Scoping Map of St. Louis Place and Pruitt-Igoe Site<sup>224</sup>**



<sup>224</sup>See NGA Environmental Study, *supra* note 174, (including the scoping map).

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**EXHIBIT II****Summary of Statutes, Regulations, Orders, and Required Consultations Pertinent to the Proposed Action Law or Regulation Description**

American Antiquities Act (16 United States Code [U.S.C.] 431 et seq.)  
American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996)  
Archaeological and Historic Preservation Act (AHPA) (16 U.S.C. 469 et seq.)  
Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.)  
Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668 et seq.)  
Clean Air Act (CAA) (42 U.S.C. 7401 et seq.)  
Clean Water Act (CWA) [33 U.S.C. 1251 et seq. Sections 401 and 402]  
CWA (33 U.S.C. 1313 Section 404)  
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended  
Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.)  
Energy Independence and Security Act (EISA), Section 438 (42 U.S.C. 17094)  
E.O. 11990: Protection of Wetlands Management  
E.O. 12898: Federal Action to Address Environmental Justice in Minority and Low-Income Populations  
E.O. 13045: Protection of Children from Environmental Health Risks and Safety Risk  
E.O. 13186: Responsibilities of Federal Agencies to Protect Migratory Birds (66 Federal Register (FR) 63349, December 6, 2001)  
E.O. 13007: Indian Sacred Sites (61 FR 26771)  
E.O. 13175: Consultation and Coordination with Indian Tribal Governments  
Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.)  
National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 306108)  
Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001)  
NEPA (42 U.S.C. 4321 et seq., 40 CFR 1500- 1508) and ARs 200-1 and 200-4, 32 CFR 651  
Noise Control Act (42 U.S.C. 4901 et seq.)  
Protection of Historic Properties (36 CFR 800)  
Resource Conservation and Recovery Act (RCRA)  
Toxic Substances Control Act (TSCA) (15 U.S.C. 53)

**EXHIBIT III**

**Redevelopment plan for Cass, Jefferson, Parnell, Montgomery, N. 22nd** BOARD BILL NO. 263 INTRODUCED BY ALDERWOMAN HUBBARD, ALDERMAN BOSLEY An ordinance approving a Redevelopment Plan for the Cass Ave., Jefferson Ave./Parnell St., Montgomery St., North 22nd St. Redevelopment Area (“Area”) after finding that the Area is blighted as defined in Section 99.320 of the Revised Statutes of Missouri, 2000, as amended, (the “Statute” being Sections 99.300 to 99.715 inclusive), containing a description of the boundaries of said Area in the City of St. Louis (“City”), attached hereto and incorporated herein as Exhibit “A”, finding that redevelopment and rehabilitation of the Area is in the interest of the public health, safety, morals and general welfare of the people of the City; approving the Plan dated January 13, 2015 for the Area (“Plan”), incorporated herein by attached Exhibit “B”, pursuant to Section 99.430; finding that there is a feasible financial plan for the development of the Area which affords maximum opportunity for development of the Area by private enterprise; finding that some property in the Area may be acquired by the Land Clearance for Redevelopment Authority of the City of St. Louis (“LCRA”) through the exercise of eminent domain or otherwise; finding that the property within the Area is partially occupied and LCRA or the Redeveloper shall be responsible for relocating any eligible occupants displaced as a result of implementation of the Plan; finding that financial aid may be necessary to enable the Area to be redeveloped in accordance with the Plan; finding that there shall be no real estate tax abatement; and pledging cooperation of the Board of Aldermen and requesting various officials, departments, boards and agencies of the City to cooperate and to exercise their respective powers in a manner consistent with the Plan.



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**EXHIBIT IV****North Side St. Louis Blight Designation and Timeline**

<b>Date</b>	<b>Document/Event/Meeting</b>
Documented Sept. 8, 2009; Amended, Sept. 16, 2009; Approved Nov. 10, 2009	Ordinance #68484/Board Bill #219-Northside Regeneration, LLC, a Missouri limited liability company, prepares a plan for redevelopment titled the "Northside Regeneration Tax Increment Financing Redevelopment Plan" <sup>225</sup> NRTIF Plan
2013, Oct. 4 Board Bill 199	NRTIF Plan Approving Amended Redevelopment Projects for Redevelopment Project Areas of Northside Regeneration Area
2015, Jan. 8 <sup>226</sup>	Development Strategies reports Data and Analysis of Conditions Representing a "Blighted Area"
2015, Jan. 15 <sup>227</sup>	Blighting Study and NRTIF Plan signed by Mayor. Project # 1945
Documented 2015, Jan. 23 Approved 2015, Feb. 25 <sup>228</sup>	Ordinance #69977/Board Bill #263FS-Floor Substitute: Approving a Redevelopment Plan for Cass Ave., Jefferson Ave./Parnell St., North 22 <sup>nd</sup> St. after finding area blighted.
2015, Feb. 4	Planning Commission of St. Louis Regular Meeting General Presentation on Potential NGA Facility.
2015, April 1	NGA Announces Plan to Stay in St. Louis
2015, April –June 1	Opposition by St. Clair, Illinois opposing the Decision
2015, June 1 <sup>st</sup>	NGA announces NGA West in St. Louis on the north side <sup>229</sup>

<sup>225</sup> *Land Clearance for Redevelopment Authority (LCRA) Meeting*, ST. LOUIS-MO GOVERNMENT (June 9, 2015, 9:30 AM), [https://www.stlouis-mo.gov/events/eventdetails.cfm?Event\\_ID=10137](https://www.stlouis-mo.gov/events/eventdetails.cfm?Event_ID=10137).

<sup>226</sup> Development Strategies, Data and Analysis of Conditions Representing a "Blighted Area" (2015). Available at St. Louis City Register-Rm. 118 (Document included as part of the Blighting Study and Redevelopment Plan for the Cass Ave., Jefferson Ave./Parnell St., North 22<sup>nd</sup> St. Redevelopment Area).

<sup>227</sup> Hard copies at St. Louis City Register-Rm. 118.

<sup>228</sup> ST. LOUIS, MO., ORDINANCE NO. 69977 (2015).

<sup>229</sup> Nicholas J.C. Pistor, *NGA Plans to Stay in St. Louis*, ST. LOUIS TODAY (Apr. 1, 2016),

2015, June 9	LCRA Special Meeting to create LCRA Holdings Corporation to facilitate Redevelopment area, and engage bond counsel for proposed issuance of Tax exempt obligations
2 <sup>nd</sup> Edition-Nov. 2015	Next NGA West: Summary-Why NGA in North St. Louis?
2016, Jan.	Next NGA West: Executive Brief- North St. Louis Site supports the Mission of the NGA <sup>230</sup>
2016, June 7	Industry Forum for Construction Trade interested in Site Prep for NGA Site <sup>231</sup>
2017, Jan. 23	Project Connect Hold Third Public Meeting
2017, June 29	St. Louis reaches an agreement with the Air Force and the NGA, allowing the Air Force to acquire the north St. Louis site <sup>232</sup>

<http://www.stltoday.com/news/local/govt-and-politics/nga-plans-to-stay-in-st-louis/article916d75e0-da86-5553-acff-e30d74eb0537.html>.

<sup>230</sup> NEXT NGA WEST, THE NORTH ST. LOUIS SITE SUPPORTS THE MISSION OF NGA (2016), <https://www.stlouis-mo.gov/government/departments/. . ./NGA-Executive-Brief.pdf>.

<sup>231</sup> Gateway Classic Foundation, 2012 Martin Luther King Dr., St. Louis, MO.

<sup>232</sup> Celeste Bott, *St. Louis, NGA Reach Land Acquisition Agreement for New Headquarters in North City*, ST. LOUIS POST-DISPATCH (June 29, 2017), [http://www.stltoday.com/news/local/govt-and-politics/st-louis-nga-reach-land-acquisition-agreement-for-new-headquarters/article\\_25de616c-6671-5c54-aa6b-e5348127262e.html](http://www.stltoday.com/news/local/govt-and-politics/st-louis-nga-reach-land-acquisition-agreement-for-new-headquarters/article_25de616c-6671-5c54-aa6b-e5348127262e.html).