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Note

No Room for the Poor—The Blight of Eminent Domain on America's Lowest Economic Classes*

I. Introduction

The first definition of "blight" given by *Merriam-Webster's Collegiate Dictionary* is "a disease or injury of plants marked by the formation of lesions, withering, and death of parts."[1] The second and third definitions are just as negative and describe blight as "something that frustrates plans or hopes" or "something that impairs or destroys."[2] The last definition, "urban blight," describes blight as "a deteriorated condition."[3] In practice, "blight" is the label assigned by U.S. law to land that is considered to be so dilapidated or injurious to public health that its removal is allegedly in the community's best interest. More disturbingly, this label is sometimes used to describe property that is merely ugly or slightly inadequate due to beaten up sidewalks or similarly minor issues.[4]

This Note argues that urban blight needs to be delineated from other definitions of blight—i.e., a "disease," a thing that "frustrates plans or hopes," or a thing that "impairs or destroys"—in order for people to understand the most equitable way of dealing with urban blight. In the case

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1. *Blight*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2006).
2. *Id.*
3. *Id.*
4. *See, e.g.*, *infra*, note 74.

of the other definitions of "blight," it is easy to see that destroying or "killing" the blight may be the best decision. Like cutting out a cancer, everyone is better off without. However, the removal of urban blight is not that simple, and "killing" urban blight can have extremely harmful effects on people living in and around it. Therefore, governments must be very careful when deciding that removal of urban blight is the best decision for a community and be sure to equitably treat people who are displaced by blight-removal projects.

Blight removal projects may be spearheaded by many different categories of government, ranging from city government to federal agencies. Therefore, in this Note the term "government" is meant to be read broadly enough to encompass all forms of government that could enact one of these projects. "Condemning authority" refers to any level or branch of government that is in charge or could be in charge of a blight-removal project.

Part II of this Note will give a brief overview of arguments for blight removal and how this Note seeks to address them. Part III will examine the negative effects of blight-removal projects, both on individuals and on society as a whole. Harms on individuals will include monetary and psychological harms. Harms on society will include the potential to cause distrust in government as well as to perpetuate low economic classes. Part IV will detail the current legal protections against blight removal for communities where the blight removal would disparately impact ethnic or racial minorities as well as communities where no disparate impact would be present. Part IV will also detail why these protections are inadequate. Part V will propose new legal protections. It will then briefly discuss what level of government would be best suited to put these proposed protections into place.

II. Arguments for Blight Removal/Scope of This Note

Proponents of blight removal argue that it benefits citizens by bringing economic rejuvenation to an area, helps to get rid of high crime rates associated with blighted properties, and prevents the "cynicism" or depression that living in a dilapidated area may cause.[5] This Note does not argue that blight removal is never successful in achieving these ends.[6]

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5. *See, e.g.*, BLIGHT'S IMPACTS, DETROIT BLIGHT REMOVAL TASK FORCE, http://report.timetoendblight.org/know/ [https://perma.cc/H8MB-VYA6] ("Blight is a strong deterrent to economic investment and a proven threat to public safety. Blight can be a source of despair or cynicism for people who have witnessed the decline of a particular building or neighborhood over time.").

6. For examples of successful use of eminent domain for economic development, see DOUGLAS R. PORTER, URBAN LAND INST., EMINENT DOMAIN: AN IMPORTANT TOOL FOR COMMUNITY REVITALIZATION 19–22 (2007), http://thejcra.org/jcra_files/File/resources/eminent%

Rather, it seeks to show that *even when* blight removal is successful at bringing about economic rejuvenation and lifting spirits in an area, it still comes at a high monetary and emotional cost to those displaced or otherwise affected by the removal. This Note does not argue that inaction is appropriate in all circumstances. Rather, it seeks to show that current practices for remedying these issues are unfair.

Thus, this Note does not argue that blight removal is never appropriate. Rather, it seeks to show that there should be better processes to determine when blight removal is absolutely necessary to fix a problem. When it is not, this Note argues for alternatives to blight removal. When it is absolutely necessary, this Note proposes protections for current residents that will ensure that they are dealt with more fairly than current practices require.

III. The Negative Effects of Blight Removal Projects

This Part details the negative effects of—and therefore the case for restricting—blight removal projects. I have separated the concerns with blight removal into harms that are primarily felt by the individual and harms to society more generally. The individual harms are further split up into different kinds of harms that individuals may face. This Part is meant to give the reader a more detailed understanding of the costs associated with blight removal, but it is by no means an all-inclusive list of the harms that can occur due to blight removal projects. Studies on the effects of blight removal are not extremely common and therefore this Part draws heavily from studies done on negative effects of eminent domain more generally.

A. Individual Harms

Literature in the area of blight removal tends to focus on the overall effect of the blight removal plan. Therefore, there is very little in the way of how individuals living in an area may be affected. This subpart draws many of its examples from *The Hill*, a documentary of a low-income, predominately minority community that was torn down in New Haven, Connecticut.[7] It is assumed for the sake of this subpart that the harms that these individuals endured would be typical of a blight removal plan that condemns an entire community.

1. Monetary.—"Monetary" harms are the costs that citizens must bear in order to move once their house is condemned. Obviously, every property owner whose land is taken by a condemning authority is entitled to "just compensation" pursuant to the Fifth Amendment.[8] However, there are many

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20domain.pdf [https://perma.cc/ZWG5-QZ6H].

7. THE HILL (Cinema Guild 2013).

8. U.S. CONST. amend. V (requiring that "private property [shall not] be taken for public use,

other monetary costs that residents are forced to internalize when a condemning authority takes the property they own or the property they are renting in.

These damages include the cost of moving and finding a new place to live.[9] This can be a time-consuming and expensive process. It is even more damaging if one considers that because blight removal projects target rundown areas, they affect low-income individuals at a higher rate than other people.[10] Therefore, the individuals affected most by blight removal are not likely to have the luxury of being able to take time off work in order to find a new place to stay.

Beyond the costs of moving, there is also the potential (and probable) scenario in which residents are not able to find housing that is as affordable as their previous residence.[11] Given that residents' houses are being removed because they are considered to be blighted, the chance that they will be able to find housing that is as affordable is not very likely. Furthermore, if the condemning authority removes many units at a time, this could result in an overall deficit of affordable housing in the area and lead to a spike in the price of affordable housing.[12] This could result in someone having to start

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without just compensation"). This Note argues that current blight removal practices are unjust *even if* residents are always given the fair market value of their land. For studies that show this is not always the case, see Yun-chien Chang, *An Empirical Study of Compensation Paid in Eminent Domain Settlements: New York City, 1990–2002*, 39 J. LEGAL STUD. 201, 239–40 (2010) (finding that the majority of people in the study were either grossly overpaid or grossly underpaid for their property, with no clear reason why); Thomas Mitchell et al., *Forced Sale Risk: Class, Race, and the "Double Discount*,*"* 37 FLA. ST. U. L. REV. 589, 631–38 (2010) (discussing multiple studies in this area that have shown substantial percentages of residents were underpaid).

9. An opinion by the Judge Posner recognized this among many costs that "just compensation" does not account for:

> Compensation in the constitutional sense is therefore not full compensation, for market value is not the value that every owner of property attaches to his property but merely the value that the marginal owner attaches to *his* property. Many owners are "intramarginal," meaning that because of relocation costs, sentimental attachments, or the special suitability of the property for their particular (perhaps idiosyncratic) needs, they value their property at more than its market value (i.e., it is not "for sale"). Such owners are hurt when the government takes their property and gives them just its market value in return.

Coniston Corp. v. Vill. of Hoffman Estates, 844 F.2d 461, 464 (7th Cir. 1988).

10. In fact, it has been shown that even general eminent domain use affects low-income populations at a higher rate than others. Dick M. Carpenter & John K. Ross, *Testing O'Connor and Thomas: Does the Use of Eminent Domain Target Poor and Minority Communities?*, 46 URB. STUD. 2447, 2456 & tbl.4 (2009). This study also showed that minority groups and renters are disproportionately impacted by eminent domain use. *Id.*

11. In *The Hill*, residents were hard pressed to find alternative housing that they could afford. THE HILL, *supra* note 7.

12. Brief for NAACP et al. as Amici Curiae Supporting Petitioners at 14, Kelo v. City of New London, 545 U.S. 469 (2005) (No. 04-108), 2004 WL 2811057, at *14 (citing HERBERT J. GANS, URBAN VILLAGERS: GROUP AND CLASS IN THE LIFE OF ITALIAN-AMERICANS 380 (2d ed. 1982), which found that 86% of relocated persons in the study were paying more rent than they had at their previous residence).

paying off a mortgage all over again.[13] It could also involve needing to rent instead of own because other properties in the area are prohibitively expensive. In cases where the condemning authority takes possession of someone's property—or, for that matter, the property a person is renting in—for being blighted and fails to find them alternative housing, it is as if the condemning authority is saying that it would rather these residents go homeless than have to withstand the eyesore of their "blight" any longer.

In addition, in the event that equally affordable housing does exist, it is likely to be scarce and may force residents to move an appreciable distance.[14] As noted above, when projects remove entire communities they can create an overall deficiency in affordable housing,[15] which would force residents to look further away. This could cause additional costs in the residents' lives due to the increased cost to get to work, school, or any other obligations.[16] There are also emotional costs associated with having to move far away from one's community, which will be addressed in section 2 below.

The costs listed above are entirely internalized by the resident. In cases where it is legal to possess someone's property for blight, there are currently no protections to take care of the costs outside of "just compensation" to the property owner.[17] Furthermore, renters are turned out of their homes and forced to bear the costs discussed above without any compensation.

2. Harms that Are Not Easily Quantified.

a. Psychological.—Possible harms individuals may suffer from blight removal go further than monetary costs. For some, the loss of a valued home

13. *See, e.g.*, THE HILL, *supra* note 7.

14. Convenience of location is one of many factors that concerned Vice Chair Abigail Thernstrom in her statement to the U.S. Commission on Civil Rights: "'[J]ust compensation' . . . seldom fully compensates the owners for less tangible but important things such as convenience of location, neighborhood networks and relationships, conveniently located parks and other facilities, convenience to transit, and other factors." U.S. COMM'N ON CIVIL RIGHTS, BRIEFING REPORT: THE CIVIL RIGHTS IMPLICATIONS OF EMINENT DOMAIN ABUSE 25 (2014) (statement of Abigail Thernstrom, Vice Chair, U.S. Comm'n on Civil Rights), http://www.usccr.gov/pubs/FINAL_FY14_Eminent-Domain-Report.pdf [https://perma.cc/4LUZ-R3N8]. Similarly, an article about displacement by gentrification noted that displacing low-income residents may perpetuate poverty:

> Displaced low-income families are given no other option in today's housing market than to relocate to other areas where affordable housing exists, areas which are more often than not, as a result of regional forces, also unstable, declining, and economically isolated from the opportunities of high performing schools, employment growth, and a strong municipal tax base. Moreover, these relocations adversely affect them to a greater degree than those with more economic resources.

John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433, 441–42 (2003).

15. *See supra* note 12 and accompanying text.

16. *See supra* note 14.

17. *See infra* Part IV.

may be quite substantial. Consider the statement of one former New Haven resident, Margaret Harris, regarding how she came to own her home:

> I purchased the house from the church. . . . I went there often because I was working for the Christian Community Action next door and we had board meetings there. I told the minister 'one day I'm going to own this house.' So I told him 'if you're ever wanting to sell it, you know to let me know.' And about five years later, he called me. . . . And I just adored it.[18]

Harris's house was ripped down as part of a blight removal project.[19] Many may fairly consider concerns such as emotional attachment to one's home to be less important than more concrete, monetary harms caused by blight removal. However, what happened to Harris was clearly unjust: she had dreamed of having this "blighted" house for a long time and finally acquired it only to have it torn down. She was on such a low rung of the economic ladder that her step up the ladder was to buy a house the city labeled as "blight."

Furthermore, Harris's attitude is not atypical. In an empirical study on the public's reactions to eminent domain projects, Professors Janice Nadler and Shari Diamond found that the majority of people said that they would require more from the government in addition to "fair value" and moving expenses in order to agree to sell their property.[20] Furthermore, some indicated that no amount of money would be sufficient for them to agree to sell at all.[21] This research shows that people place more value on their homes than the condemning authority gives them. Whether this is due to the inconvenience of moving, subjective value of the home, costs of moving, or indignation in being forced to part with their home is not clear.[22]

Another factor to consider is residents' attachment to their community. Given that blight removal projects can sweep away whole neighborhoods, they can also destroy long-standing communities.[23] In her book, *Root Shock*,[24] Mindy Thompson Fullilove explains the effects that losing a

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18. THE HILL, *supra* note 7.

19. *Id.*

20. Janice Nadler & Shari Seidman Diamond, *Eminent Domain and the Psychology of Property Rights: Proposed Use, Subjective Attachment, and Taker Identity*, 5 J. EMPIRICAL LEGAL STUD. 713, 731, 739 (2008).

21. 9.4% of people in one experiment and 15% in another experiment were unwilling to sell their property at any price. *Id.* at 731, 739. The 15% were part of an experiment in which the researchers purposely tried to make the circumstances around the use of eminent domain inflammatory or frustrating to the property owner. *See id.* at 737–38.

22. For a discussion of some possible reasons behind people wanting more for their homes than "just compensation," see *id.* at 720–22.

23. *See, e.g.*, Jeffrey T. Powell, *The Psychological Cost of Eminent Domain Takings and Just Compensation*, 30 LAW & PSYCH. REV. 215, 220–22 (2006); THE HILL, *supra* note 7.

24. MINDY THOMPSON FULLILOVE, ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT (2004).

community may have on a person. "Root shock," she explains, "is the traumatic stress reaction to the destruction of all or part of one's emotional ecosystem."[25] This stress is a "profound emotional upheaval" that "increases the risk for every kind of stress-related disease, from depression to heart attack."[26] Referring specifically to the loss of a local community, she explains:

> Root shock, at the level of the local community, be it neighborhood or something else, ruptures bonds, dispersing people to all the directions of the compass. Even if they manage to regroup, they are not sure what to do with one another. . . . The elegance of the neighborhood—each person in his social and geographic slot—is destroyed, and even if the neighborhood is rebuilt exactly as it was, it won't work.[27]

This assertion is consistent with other studies that have explored the emotional state of residents after being relocated. Many people in these studies have reported having issues with feelings of loss and depression after being displaced.[28]

b. Other Unquantifiable Harms.—There are other unquantifiable harms that may result from blight removal projects that will be more particular to the individual. For instance, a blind person who has managed to learn his neighborhood so well that it is quite easy for him to get about and maintain his autonomy will have to learn how to navigate an entirely different area.[29] Furthermore, if this person were elderly or otherwise found it hard to learn a new area, he or she may not be able to adjust and have to seek assisted living.[30] If the blight removal project results in decreased traffic in the area, then business owners and employees will also be affected.[31] If a business is condemned, the owners will lose the good will they had built in the area.[32] Once again, all of these are merely examples of what could happen; they are far from an all-inclusive list.

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25. *Id.* at 11.

26. *Id.* at 14.

27. *Id.*

28. Powell, *supra* note 23, at 220–22 (discussing the results of several studies done on residents that were relocated for eminent domain projects).

29. *See, e.g.*, THE HILL, *supra* note 7.

30. Increased institutionalization of the elderly was another one of the main concerns addressed in an amici brief in the *Kelo* case. Brief for NAACP et al. as Amici Curiae Supporting Petitioners at 14–15, Kelo v. City of New London, 545 U.S. 469 (2005) (No. 04-108), 2004 WL 2811057, at *14–15.

31. *See, e.g.*, THE HILL, *supra* note 7 (one business owner in the area had to close down his restaurant due to decreased traffic in the neighborhood that was being torn down).

32. Failure to compensate businesses for loss of good will is one of many practices criticized by Professor Ilya Somin in his statement to the U.S. Commission on Civil Rights. U.S. COMM'N ON CIVIL RIGHTS, *supra* note 14, at 47 (statement of Ilya Somin, Professor of Law, George Mason Law School).

B. Societal Harms

Along with the harms that individuals may suffer from a blight removal project, there are also potential harms to society as a whole. As mentioned above, proponents of blight removal claim that the removal of blight will bring in business and economic rejuvenation to the area.[33] Assuming that this is true, who will be left to enjoy this increased investment? Certainly not those who had lived in blighted areas the condemning authority set out to "save." New residents or those who live around the area that is demolished may reap the benefits of this development but not those whose houses are being destroyed. Furthermore, if the rest of an area is to benefit as much as the condemning authority says it will from blight removal, it is even more unfair that it does not pay the property owners and residents more to sell their land or move out.

Blight removal has also been condemned for exploiting low-income communities and communities that have been historically discriminated against, such as racial minorities.[34] As one scholar has summarized:

> In 1936's *New York City Housing Authority v. Muller*, the New York Court of Appeal allowed a blight condemnation that degraded and expelled poor immigrants in the Lower East Side. In 1954's *Berman v. Parker*, the U.S. Supreme Court permitted a "Negro removal" that dislocated 97 percent African American community. In 1981, the Florida Supreme Court approved of a tax increment revenue pledge that would service slum redevelopment clearance that evicted a community of color, and in 1985 a Florida appeals court approved of slum condemnations in a largely minority area, which might have exacerbated homelessness.[35]

Blight removal projects are criticized further because, instead of creating more affordable housing for the residents they evict, they have a history of replacing low-income housing with housing that would be too expensive for the current residents.[36] This adds to the injustice of the system

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33. *See*, BLIGHT'S IMPACTS, *supra* note 5.

34. Yxta Maya Murray, Detroit Looks Toward a Massive, Unconstitutional Blight Condemnation: The Optics of Eminent Domain in Motor City 42 (Loyola Law School, Legal Studies Paper No. 2015-12) [hereinafter Murray, Detroit Looks Toward a Massive, Unconstitutional Blight Condemnation], http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580623 [https://perma.cc/S4XP-FHBG]; see generally Yxta Maya Murray, *Peering*, 22 GEO. J. ON POVERTY L. & POL'Y 249 (2015).

35. Murray, Detroit Looks Toward a Massive, Unconstitutional Blight Condemnation, *supra* note 34, at 42 (footnotes omitted).

36. *See, e.g.*, Ryan Merriman, Note, *Closing Pandora's Box: Proposing a Statutory Solution to the Supreme Court's Failure to Adequately Protect Private Property*, 2012 BYU L. REV. 1331, 1348–49; Plaintiffs' Brief Opposing Defendants' Second Motion to Dismiss at 6–7, Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly, No. 08-cv-02584 (D.N.J. 2011), 2009 WL 705118.

described above, where poor residents of "blighted" neighborhoods are not reimbursed for moving costs, may have to move further away from their jobs, and will probably have to move to more expensive homes.[37] All of these concerns, coupled with the fact that many of these projects only create housing that is too expensive for the previous tenants and therefore do not help alleviate the burden of finding low-cost housing, show a decidedly unfair system.

Given all of the above, it should come as no surprise if people involved in these projects were to become less trusting of government intervention, particularly in instances involving housing. It appears that this distrust has occurred in at least one area of Detroit, where a rundown house had been abandoned for about ten years and had been foreclosed for about four years, before it was finally demolished.[38] Throughout this period of time the neighbors of the house had been anxious to get it torn down due to the criminal activity it had facilitated, including dogfighting and drugs.[39] An article on the final demolition of the house noted that "[m]any Detroiters . . . are also wary of the city's motives for demolition. 'I think it's to make the city look better, not for the citizens, but for the people that they're expecting to come in,' [one woman] said, referring to white people."[40] When the government is thus perceived, it should consider how to remedy its persona to the public. More importantly, it should consider if and under what circumstances this criticism—that these projects are not actually for the benefit of the current residents—is true.

C. Bottlenecks and the Keeping of an Underclass

Of the above harms, many of them could affect any one resident who is removed from his or her home for a long time. Even someone who merely works near the blighted area may be affected for a long period of time, such as a business owner who must shut down due to decreased traffic in the area. These kinds of harms may keep people—some of whom may have even been on the move up the economic ladder—at the bottom of the economic ladder. People who were on their way to pay off their mortgage may find themselves scrambling to make new mortgage payments once again, instead of saving for a child's education or for retirement. An enterprising citizen who loses her business may simply not have enough funds to start all over and may have to take a different job. Many will have to use much of their savings to be able to afford a new place to live. Some may have to move far away from

37. *See supra* section III(A)(1).

38. John Eligon, *Good Intentions of Detroit Residents are Tested by Blight*, N.Y. TIMES (Dec. 12, 2014), http://www.nytimes.com/2014/12/13/us/good-intentions-of-detroit-residents-are-tested-by-blight.html [https://perma.cc/G7L7-YJL5].

39. *Id.*

40. *Id.*

their current jobs in order to find somewhere to live that they can afford. And, in cities where the cheapest housing available is being destroyed, some people might even go homeless. These effects are more likely to occur due to blight removal projects than ordinary eminent domain projects because blight removal disproportionately impacts very low-income people. These people are not as likely to have adequate savings to deal with all of the costs that moving and finding a new place to live impose and are not as likely to be able to afford legal counsel to make sure that they get "just compensation" for whatever their land is actually worth than other people are.

These situations describe the creation of what one academic has dubbed "bottlenecks." In his book, *Bottlenecks*, Professor Fishkin explains that in a pluralistic opportunity model, "[w]henever some people's opportunities are constrained relative to those of others, *something* in the opportunity structure is doing the constraining."[41] Fishkin goes on to call this "something" a "bottleneck."[42] Fishkin further classifies bottlenecks into three categories: qualification bottlenecks,[43] developmental bottlenecks,[44] and instrumental-good bottlenecks.[45] Instrumental-good bottlenecks "occur[] when some particular good is needed to "buy" or achieve many other valued goods."[46] Money is given as an example of an instrumental-good bottleneck.[47] Because the above effects of blight removal worsen the monetary situation of the already poor, they worsen that bottleneck. Furthermore, as discussed above, these monetary damages may affect lower-income people for significant periods of time, since low-income people are not likely to have funds saved to deal with the serious issues blight removal is likely to create.

This effect of worsening an already-present bottleneck matters because it shows the extent to which blight removal projects can conflict with America's espoused belief in equal opportunity. It is easy to talk about how some poor people losing a little money is alright because of the overall "economic rejuvenation" of the city or the number of investors the city will draw. However, it is harder to ignore those low-income individuals when one considers the serious, long-lasting consequences that imposing further monetary harm upon them will have. Further constraining the opportunities of the already poor will not have a negative effect on just one generation, but also on their children and the opportunities they will be able to provide to their children. If the weight of this imposition becomes too difficult to escape, it could foster, in some of these blighted communities, the forced

41. JOSEPH FISHKIN, BOTTLENECKS: A NEW THEORY OF EQUAL OPPORTUNITY 143 (2014).
42. *Id.* at 143.
43. *Id.* at 156.
44. *Id.*
45. *Id. at* 158.
46. *Id.*
47. *Id.*

perpetuation of an economic class.

Clearly, blight removal is not the only problem that low-income individuals must face in trying to climb the economic ladder. However, it is enough of a problem that condemning authorities should give it more serious thought before deciding to condemn poor people's property. It was said of the American Dream in 1931 by James Truslow Adams that it is "that dream of a land in which life should be better and richer and fuller for every man, with opportunity for each according to his *ability* or *achievement*."[48] When our government acts in such a way that it threatens the ability of low-income people to pursue this dream, when it pre-determines their opportunities by having land and worth taken away from them for the sake of a more beautiful or functional neighborhood, it threatens the viability of this dream as a whole.

IV. Current legal protections

A. Generally

1. Constitutional Issues.—Currently, the power of the government to remove blighted areas by way of eminent domain is very broad. This wide-ranging power is the result of a long line of Supreme Court cases deferring to the legislature in matters involving eminent domain use for a city's development.[49] Additionally, the Supreme Court has consistently interpreted broadly the Fifth Amendment's requirement that the condemned land be put to "public use."

Over fifty years ago, in *Berman v. Parker*,[50] a department store owner challenged the constitutionality of Congress's use of eminent domain power in the District of Colombia.[51] At the time of the case, Congress had police power over the District of Columbia.[52] The District of Columbia Redevelopment Land Agency (the Agency) had found that an area within D.C. had many very unhealthy living spaces and therefore decided that the best course of action was to redevelop the entire area, even buildings within the area that were not blighted.[53] The plaintiff argued that, at least as applied to his store, this was unconstitutional.[54] For one, the plaintiff's property was

48. JAMES TRUSLOW ADAMS, THE EPIC OF AMERICA 404 (1931) (emphasis added). Note the similarities between this idea and Fishkin's thoughts on what makes an ideal equal opportunity structure. *See supra* notes 41–47 and accompanying text.

49. *See, e.g.*, Kelo v. City of New London, 545 U.S. 469 (2005); Haw. Hous. Auth. v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

50. 348 U.S. 26 (1954).

51. *Id.* at 31–32.

52. *Id.*

53. *Id.* at 29–30.

54. *Id.* at 31.

not slum housing.[55] Furthermore, the plaintiff argued that the act was unconstitutional because it would allow the government to take his land for this development plan and eventually place it into another private owner's hands.[56] This, the plaintiff argued, did not constitute a "public use" pursuant to the Fifth Amendment.[57]

The Supreme Court decidedly disagreed. It held that it was within the legislature's discretion not only to redevelop slums, but also to redevelop "blighted areas that tend to produce slums."[58] As to the plaintiff's second argument, the Supreme Court further concluded that "[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy."[59] The Court held that, so long as the plaintiff was paid just compensation pursuant to the Fifth Amendment, he had no cause for constitutional complaint.[60]

This precedent was followed by the state courts. And, in 2005, the Supreme Court continued to broaden its interpretation of the Fifth Amendment's "public use" requirement. In *Kelo v. City of New London*,[61] property owners challenged the city's redevelopment plan.[62] This plan would take their properties and utilize them for office space, support space for the state park, or support space for the nearby marina.[63] The plaintiffs argued that to take private property for these private purposes did not satisfy the "public use" requirement of the Fifth Amendment.[64] The Court held that private property taken for a comprehensive economic development plan satisfied the "public use" requirement of the Fifth Amendment because it "unquestionably serves a public purpose."[65] It is important to note that, unlike most of the property involved in *Berman*, the property at issue in this case was not even blighted or hazardous to the public health.[66] Rather, the city had merely determined it was in need of economic development.[67]

2. Statutory Protections.—Given this jurisprudence on the

55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.* at 35.
59. *Id.* at 33.
60. *Id.* at 36.
61. 545 U.S. 469 (2005).
62. *Id.* at 475.
63. *Id.* at 474–75.
64. *Id.* at 475.
65. *Id.* at 483–84.
66. *Id.* at 483.
67. *Id. See also* Brief of the Defendant–Appellee, City of New London, on the Appeal and as Cross-Appellants with Appendix at 1, Kelo v. City of New London, No. 16742 (Conn. 2002), 2002 WL 34155034, at *1 (noting the city's desire to increase the tax base of the area and create jobs).

constitutionality of blight removal and eminent domain more generally, it is clear that if citizens wish to constrict the power of the government to take their property, they should focus on legislative reform. That is, in fact, what states did—or at least, attempted to do—after *Kelo*. *Kelo* was met with political outcry that resulted in many states amending their eminent domain statutes or their constitutions.[68] However, though four states have entirely outlawed blight removal,[69] many of the changes (or "reforms") the other states have made aren't very effective at protecting property owners from eminent domain, and some still don't protect from blight removal at all.

In a survey of all state statute reforms, a recent article found that even though forty-four states have enacted reform after *Kelo*, many states still explicitly allow for economic-development takings if they are targeted at removing blight.[70] Twenty-three states have statutes that allow nonblighted property to be taken for a blight removal plan when it is in a blighted area.[71] Of the states that have a blight removal exception to their overall ban on economic-development takings, thirty-six of them employ vague definitions of blight.[72] In fact, the Supreme Court of Ohio recently held one such statute void for vagueness.[73]

Some statutes still allow property to be taken under a wide array of situations, even when they are not quite so vague. For example, Texas's definition of a "[b]lighted area" includes "an area that is not a slum area, but that, because of . . . defective or inadequate streets, street layout, or accessibility . . . results in an economic or social liability to the municipality."[74] This statute has a clearly broad sweep, which shouldn't be

68. *See* Ilya Somin, *The Limits of Backlash: Assessing the Political Response to Kelo*, 93 MINN. L. REV. 2100, 2111–12 tbls.1 & 2 (2009) (summarizing several surveys of citizens' reactions, primarily negative, to the *Kelo* decision); Merriman, *supra* note 36, at 1351 tbl.1 (noting that 44 states have passed eminent domain reform since the Kelo decision).

69. Merriman, *supra* note 36, at 1352–53, 1353 n.120.

70. *Id.* at 1351 tbl.1.

71. *Id.*

72. *Id.* For examples of the vague terms involved in these statutes, see *id.* at 1352.

73. Norwood v. Horney, 853 N.E.2d 1115, 1146 (Ohio 2006). This statute would have allowed the municipality to take property that was in a "deteriorating area." *Id.* at 1143–44. In reaching it's decision, the court noted that "'deteriorating area' is a standardless standard. Rather than affording fair notice to the property owner, the Norwood Code merely recites a host of subjective factors that invite ad hoc and selective enforcement—a danger made more real by the malleable nature of the public-benefit requirement." *Id.* at 1145.

74. TEX. LOC. GOV'T CODE ANN. § 374.003(3) (West 2005). The full definition provides:

> "Blighted area" means an area that is not a slum area, but that, because of deteriorating buildings, structures, or other improvements; defective or inadequate streets, street layout, or accessibility; unsanitary conditions; or other hazardous conditions, adversely affects the public health, safety, morals, or welfare of the municipality and its residents, substantially retards the provision of a sound and healthful housing environment, or results in an economic or social liability to the municipality. The term includes an area certified as a disaster area as provided by Section 374.903.

Id. For another example of a specific, yet wide-ranging blight definition see Merriman's analysis of

surprising, considering that those who are most affected by these blight removal projects are not as likely to be as effective lobbyists as developers are.

B. Blight Removal and Disparate Impact

The law may be very different in the case of communities where a blight removal project will disparately impact racial or ethnic minorities. It has been well established under the Supreme Court's equal protection jurisprudence that disparate impact alone is not enough to state a claim under the Fourteenth Amendment's Equal Protection Clause.[75] Rather, to make a constitutional claim, these communities would have to show intent by the condemning authority to discriminate against their race or ethnicity.[76] Clearly, absent a "smoking gun" document, this intent would be very hard to prove. Therefore, a claim that a blight removal plan is discriminatory under the Constitution would not have a high likelihood of success.

Though racial and ethnic minorities would have an uphill battle winning a constitutional claim, the Supreme Court recently held that disparate impact claims are cognizable under the Fair Housing Act (FHA) in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[77] Though the allegations at issue in *Texas Department of Housing* did not involve blight removal, this decision could affect the ability of communities to bring claims under the FHA for certain blight removal projects in the future. The FHA states that it is illegal "[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[78] "[O]therwise make unavailable" has been construed to include scenarios in which a plan "limits the availability of affordable housing."[79] Therefore, since "because of race" has now been construed to include disparate impact on race, some communities may be able to challenge the lawfulness of blight removal plans, depending on the population of the community and the

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the Alaska statute. Merriman, *supra* note 36, at 1361 tbl.1.

75. Washington v. Davis, 426 U.S. 229, 239 (1976).

76. *See id.*

77. 135 S. Ct. 2507, 2525 (2015). This Note will not discuss the state statute equivalents of the Fair Housing Act because such discussion is beyond the scope of this Note and would likely be redundant of much of the federal Fair Housing Act discussion. Furthermore, the FHA does not require state action in order for the plaintiff to have an actionable claim. However, this Note will not detail when a plaintiff would make such a claim because all eminent domain projects are enacted by the state and delving into actions that were not state action is beyond the scope of this Note.

78. 42 U.S.C. § 3604(a) (2012).

79. Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly, 658 F.3d 375, 381 (3d Cir. 2011) (citing Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 928–29, 938–39 (2d Cir. 1988); Smith v. Town of Clarkton, 682 F.2d 1055, 1059, 1062–64 (4th Cir. 1982); and Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 130 (3d Cir. 1977)).

availability of other housing.[80]

However, though the Court in *Texas Department of Housing*[81] held that disparate impact is cognizable under the FHA, their decision makes it unclear, at best, whether or not it will be able to combat blight removal projects. In making its decision, the Court failed to articulate a clear standard for when disparate impact will be actionable under the FHA.[82] Rather, the Court analogized the standard to be used in FHA cases to the "business necessity" standard in Title VII jurisprudence and stated that the government will "be allowed to maintain a policy if they can prove it is necessary to achieve a valid interest."[83] The Court also noted that "statistical disparity alone" would not be enough to show disparate impact and that the FHA will not force officials to displace "valid governmental policies" or "reorder their priorities."[84] Therefore, it is quite possible that under this decision, a government's decision to remove a blighted area or neighborhood in order to bring economic development to the community will not be considered a "disparate impact."[85]

C. These Protections as a Whole are Inadequate

The following discussion applies the current legal standards of eminent domain and blight removal from subparts A and B of this Part to determine how protected certain communities are and whether more protection is needed.

1. The Community with No Disparate Impact.—Many states allow the government to use an array of reasons for tearing down "blighted" areas. Therefore, in communities where blight removal will not cause a disparate impact on racial or ethnic minorities, property owners will have no cause for complaint. As discussed above, property owners cannot rely on the Constitution unless they are denied "just compensation" pursuant to the Fifth Amendment.[86] If this condition is satisfied, property owners and other residents are left to the mercy of their state's laws governing blight removal.

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80. The Third Circuit allowed precisely this kind of claim in it's *Mount Holly* decision. *Mount Holly Gardens Citizens in Action*, 658 F.3d at 384–85. *See also* Edward Imperatore, *Discriminatory Condemnations and the Fair Housing Act*, 96 GEO. L.J. 1027, 1043–46 (2008).

81. Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507 (2015).

82. *Id.* at 2325.

83. *Texas Department of Housing*, 135 S. Ct. at 2522–23.

84. *Id.* at 2522.

85. As noted above, courts and scholars had already interpreted the FHA to allow such claims before the *Texas Department of Housing* decision. However, it is unclear how courts will interpret the FHA now that the Supreme Court has "clarified" what disparate impact means in this context. *See supra* notes 79–80 and accompanying text.

86. *See supra* note 60 and accompanying text.

As noted above, thirty-six states that have blight removal exceptions to their general ban on economic-development takings have statutes with very vague definitions of blight.[87]

Even when the statute at issue is not too vague, properties may be deemed blighted under many circumstances.[88] Furthermore, twenty-three states allow nonblighted property to be taken in a blighted area.[89] Therefore, in these communities it is clear that there is very little protection against abuse of the blight removal power. In the end, the law has not really become more protective of property rights since *Berman*. One's property can be taken even if it is not blighted, but just in a blighted area. Furthermore, depending on the relevant government entity's definition of blight, the property within the "blighted area" may not even need to be dangerous (whether structurally, medically, or due to its social impacts).

2. A Community Where Disparate Impact is Present.—In a community where a blight removal project causes or may cause disparate impact on racial or ethnic minorities, there *might* be more protection against harmful blight removal. However, this all depends on how courts will apply the *Texas Department of Housing* decision to blight removal projects, which remains to be seen.[90]

V. Proposed New Protections

At this point, two things should be clear: (1) blight removal can have dramatic and negative impacts on the poor,[91] and (2) there are currently many states in which there are very few legal protections against unjustified blight removal or blight removal's effects.[92] Therefore, there should be added protections put in place to protect the poor from blight removal. This Part addresses suggested ways in which this could be done legislatively.

The proposed protections in this Part include procedures that would encourage the condemning authority to consider alternative solutions to problems caused by rundown buildings and other areas that are typically thought of as "blighted." This discussion will also analyze protections that could be put in place for residents when blight removal is determined to be the only reasonable method of accomplishing the government's goals. This discussion assumes that blight removal may be necessary at times and that the government will not want to close off the option to remove blight entirely. The proper level of government to enact these suggested legislative

87. *See supra* note 72 and accompanying text.
88. *See supra* note 74 and accompanying text.
89. *See supra* note 71 and accompanying text.
90. *See supra* notes 79–85 and accompanying text.
91. *See supra* Part III.
92. *See supra* Part IV.

protections will be addressed at the end of this Part.[93]

A. Thorough Investigation Into Alternatives

My first proposal is to implement a procedure that would force the condemning authority to seriously consider alternative methods of dealing with the issues associated with blight outside of removal. In order to make this consideration effective, the procedure should require several levels of review including: (1) A detailed analysis of past plans that were implemented in any other similar area of the U.S. to remove blight and introduce economic development and what the outcomes of those plans were; (2) the condemning authority should have to consider the costs of alternatives to blight removal, such as renewal; and (3) the condemning authority then should have to compare the costs and benefits of removal and relevant alternatives, with directions from the legislature regarding how to choose among the options. For instance, the legislature could specify that if the cost of the relevant alternative were 30% more than the cost of the removal plan, then the condemning authority should choose the removal plan.

As to the first requirement, there has been enough dissatisfaction with past plans that the condemning authority should at least try to learn from its own or others' mistakes. If similar plans in the same or similar areas have not performed well over the years, there is no reason the condemning authority should feel free to act the part of the outdated definition of insanity and do the same thing over and over again expecting a different result. Even if the condemning authority were not proposing a plan that was identical to a previously failed one, it should have to determine if the similarities in the plans will likely lead to some of the same results. In so doing, not only may citizens be saved from harmful blight removal plans, but the condemning authority may also end up coming up with a plan that will actually help the current residential community.

Though there is little literature in the area of renewal, a recent study found that it has had positive effects in Louisville, Kentucky.[94] Though citizens had considered completely tearing down one area of the city and starting over, they opted to renew buildings and try to draw investment to the community through various less destructive methods.[95] The authors of this study used data about the neighborhood and surrounding areas from a span of twenty years and found that the renewal project had success: crime rates dropped, housing foreclosures were low, and home ownership and property values rose.[96] The authors further noted that this renewal project managed to

93. *See infra* subpart V(D).

94. Wesley L. Meares et al., *Can Renewal Happen Without Removal? Case Study of a Poor Black Neighborhood on the Rebound*, 46 COMMUNITY DEV. 111, 112 (2015).

95. *Id.* at 115–16.

96. *Id.* at 112, 116.

avoid displacement of the primarily black population, which has been a usual effect of other redevelopment programs.[97]

Given this success, condemning authorities should seriously consider the costs of renewal, along with the effectiveness of any other similar renewal projects that have been tried, and compare those costs and benefits to those of the proposed removal project. When deciding between the two, the condemning authority should also carefully consider the factors that are less obviously monetary. A nonexclusive set of such factors could include not forcing out the current population, not demolishing people's homes when there are better options available, and maintaining the public's trust.[98] Furthermore, the positive outcome of the Louisville renewal project reinforces the notion that any community development project would be better off with more community involvement, which is another thing that legislatures could try to add to the blight removal decision process (for instance, by requiring that a certain percentage of the community vote for the blight removal plan).

After the condemning authority has done research into these options, it could then decide whether or not removing the "blighted" property would be the most judicious decision. This careful investigative and comparative procedure is very important to any legislature that wishes to restrict blight removal while not outlawing it entirely. The legislature that enacts a procedure such as this could give specific guidelines for how to choose between removal and any proposed alternatives. As noted above, the legislature could require that after estimates of costs and benefits are made, a less destructive alternative should be favored over removal if it is within a certain percentage of the removal cost. It is important to note that the removal cost would also include any costs the condemning authority would need to internalize due to any other protective legislation. Such costs are discussed in the next subpart.

B. Internalization of Costs

If the condemning authority satisfies the procedure in subpart A above and is able to effectively show why blight removal is the best option for the area in question, the government should have to internalize many of the costs that are currently incurred by the residents. As discussed above, there are many costs that residents are forced to internalize that are not part of the "just compensation" guaranteed to property owners by the Fifth Amendment.[99] A protection that would shift some of these costs to the government would serve two main purposes: Firstly, it would force the condemning authority to

97. *Id.* at 112.

98. *See supra* subpart III(B).

99. *See supra* subpart III(A).

consider more seriously whether blight removal is really the most economic option in the procedure discussed above, because the condemning authority could not discount as easily costs that it must internalize itself. This method of forced internalization is used in some kinds of energy regulation to encourage companies not to pollute, as well as encourage them to research how to create less pollution while operating.[100]

Secondly, it would reduce the harms that are felt by the citizens who are removed from their homes. Depending on which costs the condemning authority internalizes, it could make the whole effect (other than social and psychological harms) of the forced move almost negligible. If the government protects its citizens to that degree, it will also make it less likely that many citizens will experience the level of cynicism felt towards the government discussed above.[101]

Governments should, therefore, at a bare minimum, internalize the following costs: (a) Relocation costs—the government should pay property owners and renters a reasonable amount to move their belongings from their current residence to their new residence; and (b) comparably affordable housing—the government should have to find property owners and renters comparably affordable housing. If the government cannot find comparably affordable housing, it should have to vouch for the difference between what the resident was paying and the next most affordable place of housing it can find.

This may sound like it will be exorbitantly expensive, but that is part of the point. If the government cannot pay these costs, how does it expect the people who are so far down the economic ladder that they live in rundown areas to bear them? Furthermore, these costs are yet another expense the government will have to bear that it would need to take into consideration in the procedure detailed above. Therefore, these requirements would also, hopefully, convince governments in many cases to tear down only those structures that are truly a threat to the area—such as buildings that are falling apart, abandoned buildings being used for drug-dealing, etc.—rather than condemning entire areas. This would lead to less displacement of residents, which would alleviate the total negative effects felt by residents associated with typical blight removal projects.

C. Narrower and More Serious Definitions of Blight

Governments could also protect their citizens from abuses of blight

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100. *See, e.g.*, Cynthia L. McNeill, Note, *The States Square Off in* Arkansas v. Oklahoma*—and the Winner Is . . . the EPA*, 70 DENV. U. L. REV. 557, 578 (1993) ("Imposition of strict retroactive liability forces polluters to internalize externality costs. Leaving industry with no choice but to reduce pollution provides incentive to develop least-cost methods for pollution control." (footnotes omitted)).

101. *See supra* subpart III(B).

removal by having much narrower definitions of blight. As noted previously, thirty-six states that have a blight removal exception to their overall ban on economic-development takings employ a vague definition of blight.[102] This allows a condemning authority to deem someone's property "blighted" for many reasons that have nothing to do with any immediate danger to the public. As such, it gives too much power to the condemning authority and opens the door to too much subjectivity in incredibly important decisions.[103] In order to protect property owners and the government's own reputation for fairness, the government should give a clear definition of blight that minimizes the opportunity for abuse and corruption. Therefore, when writing a blight removal exception, the legislature should be careful to use objective criteria rather than subjective labels like "deteriorating area."[104]

Furthermore, the government should restrict its definition of blight to truly dangerous areas, such as buildings that are falling down or abandoned buildings being used for illicit activity. As noted above, even when some statutes are specific, they still allow areas to be deemed "blighted" in ways that do not seem dangerous enough to merit removal.[105]

The last way in which the government should restrict definitions of blight is how much property the condemning authority would be allowed to take around the blighted area. As noted previously, twenty-three states currently allow the government to take property that is not itself blighted if it is in a blighted area.[106] There are a few ways that legislatures could choose to deal with this issue. One way would be to ban taking any property that does not qualify as blighted by itself. If the condemning authority makes a determination that at times it will be necessary to take nonblighted property in a blighted area, the legislature could carefully define under what circumstances this would be allowed. For instance, the legislature could require that there be a finding that it would be most efficient to develop the entire area at once. However, given past jurisprudence, this could make it too easy for the condemning authority to take someone's property to really count as a "protection." Alternatively, the legislature could require that a certain percentage of the property in the area, for instance, 90%, must qualify as blighted in order to take the nonblighted property as well. The first option would obviously be most protective of property owners, but the third may be the protection most likely able to pass through a legislature.

In conclusion, in order to properly protect its citizens, the legislature

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102. *See supra* note 72 and accompanying text.

103. *See supra* note 73 and accompanying text ("'[D]eteriorating area' is a standardless standard. Rather than affording fair notice to the property owner, the Norwood Code merely recites a host of subjective factors that invite ad hoc and selective enforcement. . . .").

104. *See supra* note 73 and accompanying text.

105. *See supra* note 74 and accompanying text.

106. *See supra* note 71 and accompanying text.

should take great care in how it defines "blight." The definition should be narrow enough that it does not become too subjective. It should limit itself to very serious issues with properties, rather than allowing nonhazardous properties to be deemed blighted. Additionally, in order to protect residents or property owners that merely live or own land in areas where other structures are blighted, the legislature should consider various options to protect those residents, including banning taking their property under a blight plan altogether. If this would not be passable in that legislature, it could also consider requiring that the condemning authority demonstrate that a certain percentage of the overall area is already "blighted" under the relevant statutory definition before being allowed to develop the entire area as a whole.

D. How to Implement These Protections

The question now becomes: What branch or level of government is in the best position to put these protections into affect? In this subpart, I briefly discuss some of the most viable options.

The protections set out above need to be put into action by branches of government that have authority to make rules or statutes regarding blight removal. Therefore, the courts are not a viable option because they do not have this authority. Granted, courts have authority to make rules by deciding issues of law, but the jurisprudence they currently have to work with would not justify a ruling that the law already requires any of the proposed changes.

As for agencies, federal agencies that are in charge of blight removal projects or initiate them could issue rules to put the proposed changes into effect. For instance, in *Berman v. Parker*, the authority that decided blight removal was necessary was the District of Columbia Redevelopment Land Agency.[107] If the Agency had adopted the proposed changes, it may have come to a different conclusion as to whether or not blight removal was necessary in that case.

Legislatures should also put the proposed changes into effect. Congress is not likely to be able to pass meaningful legislation due to its current polarization. Furthermore, most of the proposed changes are untested, and requiring the entire country to put them into effect rather than allowing parts of the country to experiment with different changes would not be a good idea. Therefore, the rest of this discussion focuses on local and state government.

The benefits of state and local governments enacting these protections are several. For one, they are closer to their populations and have a better idea of what their people need. Furthermore, a long-standing justification for federalism is the idea that states can act as laboratories to determine what the

107. Berman v. Parker, 348 U.S. 26, 29 (1954).

"best" way of doing something may be. In the subparts above, I detailed many different kinds of protections and various ways that they could be accomplished. Given that we still know very little about the optimal structure that would allow serious blight issues to be taken care of but still protect citizens, allowing state and local governments to experiment seems like a wise approach to the issue. Furthermore, the likelihood of at least some state or local governments enacting meaningful protection against blight removal seems more likely than Congress agreeing on any one satisfactory law.

Given the benefits of having very localized governments decide what their citizens need, it may seem like all of this legislation should be left to the local governments. However, just as with any level of government, local governments can make very bad blight removal legislation or decisions. For instance, the condemning authority in *The Hill* was the city government.[108] Therefore, states should craft legislation that gives their citizens the protection they need while allowing local governments the freedom to personalize legislation to the needs of specific cities. In order to do this, state legislatures should decide what minimal protection they think is necessary to protect all of their citizens, then allow local governments to make their laws more protective if they wish to do so.

In the end, we know so little about what kinds of protections would be optimal in this area or even politically viable that it would be best for states and local governments to take the lead in trying to reign in the power to condemn blighted property. As noted above, many states already attempted to restrict economic-development takings after *Kelo*.[109] Though most states have unsatisfactorily protective laws when dealing with blight removal, they may hopefully begin to see that they need to rewrite these provisions. Furthermore, when states change their laws they should be sure to allow for local governments to make laws that are more protective of citizens if they wish. If the federal government wishes to get involved, it could consider offering funding to states or local government if they will use it for some of the costs mentioned above.

VI. Conclusion

It has been demonstrated that the government's current wide-ranging power to condemn housing via blight removal projects can have significant, long-lasting effects on the low-income people who are disproportionately affected by these projects. Due to the Supreme Court's Fifth Amendment and Fourteenth Amendment jurisprudence, as well as states' individual constitutional provisions on governmental takings, there is very little

108. *See* THE HILL, *supra* note 7.

109. *See supra* section IV(A)(2).

constitutional protection against these takings. Current statutes also provide very little protection against blight removal. Therefore, state and local governments should act to put an end to this unchecked power. Legislatures should force condemning authorities to seriously consider alternatives to condemnation. They should also rewrite their definitions of "blight" so that they are no longer as vague and far-reaching as they currently are. Legislatures should also rethink how often to allow nonblighted property in a blighted area to be condemned, if ever. Furthermore, in instances in which blight removal is appropriate, legislatures should demand that governments internalize most of the costs that are currently forced on property owners and residents, many of whom are not well equipped to deal with sudden financial burdens. Only then can the legislature free itself of the burden that it currently carries—the fact that it has allowed the government to push these costs on those who are least able to carry them, thereby potentially forcing them to continue in the same economic class in perpetuity.

—Emma Westbrook Perry