No. 25-60090

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CYNTHIA FISHER; ESTHER PAYTON, *ALSO KNOWN AS FAYE*; EDWARD WILLIAMS; MACEDONIA MISSIONARY BAPTIST CHURCH; ROBERT ZELLNER, *AND* FRANCELIA CLAIBORNE,

Plaintiffs-Appellants,

v.

CITY OF OCEAN SPRINGS, MISSISSIPPI,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Mississippi, No. 1:23-cv-00265,
Judge Taylor B. McNeel.

BRIEF FOR AMICI CURIAE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. AND OWNERS' COUNSEL OF AMERICA IN SUPPORT OF PLAINTIFFS-APPELLANTS

CAROLYN M. HOMER
MORRISON & FOERSTER LLP
2100 L Street, NW, Suite 900
Washington, DC 20037
Telephone: (202) 887-1500
CMHomer@mofo.com

Counsel for Amici Curiae

June 18, 2025

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiffs-Appellants:
Cynthia Fisher
Esther Payton, also known as Faye
Edward Williams
Macedonia Missionary Baptist Church
Robert Zellner
Francelia Claiborne

Counsel for Plaintiffs-Appellees:
C. Elizabeth Feder-Hosey
FEDER-HOSEY LAW
Dana Berliner
Suranjan Sen
Dylan Moore
INSTITUTE FOR JUSTICE

Defendant-Appellee:
Defendant-appellee is a governmental party.

Amici Curiae:
Owners' Counsel of America
National Federation of Independent Business Small Business Legal Center, Inc.

Counsel for Amici Curiae:
Carolyn M. Homer
MORRISON & FOERSTER LLP

Dated: June 18, 2025

Respectfully submitted,

/s/ Carolyn M. Homer

Carolyn M. Homer

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

IDENTITY AND INTEREST OF AMICI[1]

Owners' Counsel of America ("Owners' Counsel") is a 501(c)(6) business association dedicated to defending the property rights of individual private property owners. Owner's Counsel is an invitation-only association of lawyers who represent property owners defending their constitutional rights in the nation's courtrooms in eminent domain, inverse condemnation, and regulatory takings cases, including in redevelopment cases where property is claimed to be "blighted" as in the case at bar. Collectively, Owners' Counsel's members have hundreds of years of practical experience, and track records of success protecting the constitutional rights of private property owners.

The National Federation of Independent Business Small Business Legal Center, Inc. ("NFIB Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. ("NFIB"), which is the nation's leading small business association. NFIB's mission

[1] This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. Counsel for Amici certify that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than Amici and their counsel have contributed money for this brief.

is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all fifty state capitals, the interests of its members.

Owners' Counsel and NFIB (collectively, "Amici") are dedicated to addressing issues that can negatively impact their community members. Complex statutory schemes that threaten to deprive individuals of their property rights are one such issue. Amici submits this brief to assist the Court in understanding the statutory notice and challenge requirements with respect to blight designations under urban redevelopment statutes in other U.S. states apart from Mississippi.

INTRODUCTION AND SUMMARY OF ARGUMENT

Many states have enacted statutes authorizing local governments to revitalize blighted areas—commonly referred to as *urban renewal* or *urban redevelopment* laws, depending on the jurisdiction. These statutes grant states the power to declare areas "slum" or "blighted" that allegedly "constitute a serious and growing menace" to the state and the welfare of its residents.[2] Once a state declares an area "slum" or "blighted" (commonly referred to as a "blight designation"), the states are authorized

[2] *See, e.g.*, MISS. CODE ANN. § 43-35-5 (2025).

to acquire the area, typically through the exercise of eminent domain, for "rehabilitation" under the urban renewal statutes.[3]

Such is the case in Mississippi. But while Mississippi does not provide individual notice to property owners affected by a blight designation and bars their ability to challenge the designation after ten days, other states afford greater procedural protections to property owners.

This brief provides illustrative examples of protections afforded to property owners in other states with respect to blight designations, including individualized notice of the blight designation and an adequate opportunity to challenge it. For example, some states require that local governments personally notify property owners when their property is subject to a blight designation and permit property owners to challenge the designation before an urban redevelopment plan is adopted. Other states permit property owners to challenge a blight designation later in time when the state exercises its right of eminent domain to take property designated for an urban redevelopment plan.

[3] *Id*.

ARGUMENT

The "declaration of blight is one of the early steps in an urban renewal project,"[4] and subsequently buttresses a state's argument that a taking through its exercise of eminent domain or condemnation constitutes public use.[5] While a blight designation itself is not generally considered a "taking,"[6] it is often a prelude to the exercise of eminent domain and may serve as a finding to support the public use requirement. Accordingly, proper notice and opportunity to challenge the blight designation is critically important to enable property owners to protect their rights when their properties are included in an urban redevelopment plan.

As Justice Thomas noted in his dissent in *Kelo v. City of New London*, the burden of urban redevelopment plans often falls disproportionately on poorer communities with less political influence:

---

[4] *Wash. Mkt. Enters. v. City of Trenton*, 343 A.2d 408, 414 (N.J. 1975).

[5] *See Kelo v. City of New London*, 545 U.S. 469 (2005).

[6] *See, e.g.*, *Wash. Mkt. Enters.*, 343 A.2d at 412 ("We recognized as a practical matter that a declaration of blight caused a depreciation of the property involved, but we held that such diminution in value was not a taking in the constitutional sense. Since the redevelopment project might be abandoned by the municipality, it followed that no legally cognizable damage existed, at least until an actual taking occurred through exercise of the power of eminent domain."); *Reel Pipe & Valve Co. v. Consol. City of Indianapolis-Marion Cnty.*, 633 N.E.2d 274, 278 (Ind. Ct. App. 1994) ("However, a property owner has no constitutionally protected right to participate in a legislative decision which may or may not lead to future eminent domain proceedings."), *cert. denied*, 513 U.S. 1058 (1994).

> So-called "urban renewal" programs provide some compensation for the properties they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them from their homes. Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful.[7]

At a minimum, the property owners subjected to blight designations should be entitled to receive individual notice of the designation and afforded a reasonable opportunity to challenge it. As discussed below, many U.S. states provide such protections to private property owners.

A. States Providing Individualized Notice Of A Blight Designation To Property Owners And An Opportunity To Challenge.

Public notice of a blight designation alone is insufficient because it fails to adequately protect the property interests of affected owners who may not receive actual or timely notice before the time to challenge the designation has elapsed. The Tenth Circuit recognized this. In 2018, the Tenth Circuit held that notice of a blight designation "had to be mailed, emailed, or personally served."[8] This is because an

[7] *See Kelo,* 545 U.S. at 521–22 (Thomas, J., dissenting).

[8] *M.A.K. Inv. Grp., LLC v. City of Glendale*, 897 F.3d 1303, 1312 (10th Cir. 2018).

owner's "ability to preserve its *property right* in the *statutory right of review* depend[s] on its knowledge of the simple fact the blight finding *exist[s]*."[9]

At least six states require that property owners receive individualized notice when their property is or may be designated as "blighted" by a local governing authority. These states include at least Colorado,[10] Massachusetts,[11] Nevada,[12] New Jersey,[13] Utah,[14] and Wisconsin.[15] These states generally inform owners of the blight designation and provide the opportunity to challenge it at a public hearing or by filing a legal action.

Colorado. Before designating properties as blighted, Colorado commissions a study to determine if a property is a slum or blighted and can be appropriately designated for an urban renewal project. Within thirty days of commissioning this study for an area, the state is required to notify property owners by mail. If Colorado

---

[9] *Id*. (emphasis in original).

[10] *See* COLO. REV. STAT. § 31-25-107 (2025).

[11] *See* MASS. ANN. LAWS ch. 121B, § 47 (LexisNexis 2025).

[12] *See* NEV. REV. STAT. ANN. § 279.580 (LexisNexis 2025).

[13] *See* N.J. REV. STAT. § 40A:12A-5–6 (2025).

[14] *See* UTAH CODE ANN. §§ 17C-1-806–807, 17C-2-102, 17C-2-302 (LexisNexis 2025).

[15] *See* WIS. STAT. § 66.1333 (2025).

determines the property is blighted, it must notify the property owner within seven days of making the blight determination.[16] The property owner can challenge the blight determination by filing a civil action in district court within thirty days of the date the determination of blight is made.[17]

Massachusetts. In Massachusetts, property owners must be notified by mail after an urban renewal agency determines that their property is blighted and subject to an urban renewal plan. The urban renewal agency is prohibited from taking the property by eminent domain for thirty days after the notice is sent, allowing the

---

[16] COLO. REV. STAT. § 31-25-107(1)(b) ("within thirty days of commissioning a study to determine whether an area is a slum, blighted area, or a combination thereof in accordance with the requirements of subsection (1)(a) of this section, the authority shall provide notice to any owner of private property located in the area that is the subject of the study by mailing notice to the owner by regular mail at the last-known address of record. . . . Within seven days of making such determination, the authority or the municipality, as applicable, shall also provide notice of the determination to any owner of private property located in the area that is the subject of the study by mailing notice to the owner by regular mail at the last-known address of record.").

[17] COLO. REV. STAT. § 31-25-105.5(2)(b) (2025) ("Any owner of property located within the urban renewal area may challenge the determination of blight made by the governing body pursuant to subparagraph (I) of paragraph (a) of this subsection (2) by filing, not later than thirty days after the date the determination of blight is made, a civil action in district court for the county in which the property is located pursuant to C.R.C.P. 106(a)(4) for judicial review of the exercise of discretion on the part of the governing body in making the determination of blight. Any such action shall be governed in accordance with the procedures and other requirements specified in the rule; except that the governing body shall have the burden of proving that, in making its determination of blight, it has neither exceeded its jurisdiction nor abused its discretion.").

owner time to file a petition in state court challenging the blight determination.[18] Massachusetts courts have acknowledged that property owners have this remedy before an urban renewal plan is adopted.[19]

Nevada. Nevada requires that property owners receive individualized notice of a public hearing where they can challenge the adoption of an urban redevelopment plan. At the public hearing, property owners can oppose the proposed

[18] MASS. ANN. LAWS ch. 121B, § 47 ("[A]n an urban renewal agency may . . . take by eminent domain . . . land constituting the whole or any part or parts of any area which, after a public hearing of which the land owners of record have been notified by registered mail and of which at least twenty days notice has been given by publication in a newspaper having a general circulation in the city or town in which the land lies it has determined to be a decadent, substandard or blighted open area and for which it is preparing an urban renewal plan . . . no such taking or acquisition shall be effected until the expiration of thirty days after the urban renewal agency has notified the land owner of record by registered mail . . . Within thirty days after publication of the notice of such determination, any person aggrieved by such determination may file a petition in the supreme judicial or superior court sitting in Suffolk county for a writ of certiorari against the urban renewal agency to correct errors of law in such determination, which shall be the exclusive remedy for such purpose").

[19] *See, e.g.*, *Cumberland Farms, Inc. v. Montague Econ. Dev. & Indus. Corp.*, 650 N.E.2d 811, 816 (Mass. App. Ct. 1995) ("Owners of record of real property determined under G.L. c. 121B, § 47, to be decadent, substandard, or blighted open area, may, by the terms of the statute, test that determination by certiorari."); *Reid v. Acting Comm'r of Dept. of Cmty. Affs.*, 284 N.E.2d 245, 247–48 (Mass. 1972).

redevelopment plan by disputing "the existence of blight in the proposed redevelopment area."[20]

New Jersey. New Jersey's current statutory scheme responds to *Harrison Redevelopment Agency v. DeRose*, 942 A.2d 59 (N.J. Super. Ct. App. Div. 2008). Previously, New Jersey's statute lacked any individualized mechanism to notify property owners of a blight designation.[21] Consequently, the court in *DeRose* found the notice provisions "f[e]ll short of fundamental guarantees of due process, both under the Federal Constitution as well as the Constitution of [New Jersey]."[22] The

---

[20] NEV. REV. STAT. § 279.580(2)–(3) ("The notice of hearing must include . . . statement of the day, hour and place where any person . . . [w]ho denies the existence of blight in the proposed redevelopment area or the regularity of any of the proceedings, may appear before the legislative body and show cause why the proposed plan should not be adopted. . . . Copies of the notice must be mailed to the last known owner of each parcel of land in the area designated in the redevelopment plan, at his or her last known address as shown by the records of the assessor for the community.").

[21] *See DeRose*, 942 A.2d at 86.

[22] *See, id*. at 87; *id.* at 62–63 ("We hold that, unless a municipality provides the property owner with contemporaneous written notice that fairly alerts the owner that (1) his or her property has been designated for redevelopment, (2) the designation operates as a finding of public purpose and authorizes the municipality to acquire the property against the owner's will, and (3) informs the owner of the time limits within which the owner may take legal action to challenge that designation, an owner constitutionally preserves the right to contest the designation, by way of affirmative defense to an ensuing condemnation action. Absent such adequate notice, the owner's right to raise such defenses is preserved, even beyond forty-five days after the designation is adopted.").

notice was not "'reasonably calculated' to apprise property owners of the true nature of the government's actions" and did not "afford them a 'real chance' to contest those actions."[23] Ultimately, without proper notice, "far too many citizens are left in the twilight zone of ignorance."[24] The New Jersey state legislature recognized the due process concerns implicated by inadequate notice to property owners.[25] Today, New Jersey property owners are entitled to individualized notice following the adoption of a resolution designating their property within a proposed condemnation redevelopment area.[26] This notice must inform property owners of their statutory

---

[23] *Id*. at 87.

[24] *Id*.

[25] *See* S. 215-2447, at 12 (N.J. 2013) ("The bill would also amend the [Local Redevelopment and Housing Law ('LRHL')] to address the due process concerns raised in the Appellate Division decision *Harrison Redevelopment Agency v. DeRose*, 398 N.J. Super. (App. Div. 2008) concerning the adequacy of notice to property owners that a redevelopment area determination authorizes the taking of property by condemnation. The bill would enhance the LRHL notice provisions to require municipalities to advise property owners within a proposed redevelopment area of the municipality's intention to use or not use eminent domain to facilitate a redevelopment plan at the outset of the investigation as well as providing specific notice of such designation. Unless a municipality notifies owners of property located in a proposed redevelopment area that the designation will allow the municipality to take property located in the area by eminent domain, the LRHL will not authorize the use of eminent domain").

[26] N.J. REV. STAT. § 40A:12A-6(b)(5)(d) ("Notice of the determination shall be served, within 10 days after the determination, upon all record owners of property located within the delineated area, those whose names are listed on the tax assessor's records, and upon each person who filed a written objection thereto and

right to initiate legal action challenging the designation within forty-five days of the owner's receipt of the notice.[27]

Utah. In Utah, the redevelopment agency must adopt a resolution finding certain areas a "development impediment" prior to adopting an urban renewal project. The agency cannot adopt an urban renewal project until a hearing is held regarding the development impediment determination. The agency must provide notice by mail at least thirty days before the hearing to the property owners affected by the determination.[28] The property owners are also permitted to review the

---

stated, in or upon the written submission, an address to which notice of determination may be sent").

[27] N.J. REV. STAT. § 40A:12A-6(b)(5)(e) ("legal action to challenge the determination must be commenced within 45 days of receipt of notice and that failure to do so shall preclude an owner from later raising such challenge").

[28] *See* UTAH CODE ANN. §§ 17C-2-102(1)(a) ("(a) In order to adopt an urban renewal project area plan, after adopting a resolution under Subsection 17C-2-101.5(1) the agency shall: (i) unless a development impediment determination is based on a determination made under Subsection 17C-2-303(1)(b) relating to an inactive industrial site or inactive airport site: (A) cause a development impediment study to be conducted within the survey area as provided in Section 17C-2-301; (B) provide notice of a development impediment hearing as required under Chapter 1, Part 8, Hearing and Notice Requirements; and (C) hold a development impediment hearing as described in Section 17C-2-302;"), 17C-1-806(1)(b)(i) ("(b) at least 30 days before the hearing, mailing notice to: (i) each record owner of property located within the project area or proposed project area").

agency's evidence supporting the development impediment determination.[29] At the hearing, property owners can contest the existence of a development impediment within the proposed project area.[30] If the impediment determination is approved, it can be challenged within thirty days by bringing an action in a court with jurisdiction.[31]

---

[29] UTAH CODE ANN. § 17C-2-302 ("(2) The agency shall allow record owners of property located within a proposed urban renewal project area the opportunity, for at least 30 days before the hearing, to review the evidence of a development impediment compiled by the agency or by the person or firm conducting the development impediment study for the agency, including any expert report.").

[30] UTAH CODE ANN. §§ 17C-2-302 ("(1) In each hearing required under Subsection 17C-2-102(1)(a)(i)(C), the agency shall: (a) permit all evidence of the existence or nonexistence of a development impediment within the proposed urban renewal project area to be presented; and (b) permit each record owner of property located within the proposed urban renewal project area or the record property owner's representative the opportunity to: (i) examine and cross-examine witnesses providing evidence of the existence or nonexistence of a development impediment; and (ii) present evidence and testimony, including expert testimony, concerning the existence or nonexistence of a development impediment."), 17C-1-807(1) ("(c) the record owner of property within the proposed project area has the right to present evidence at the development impediment hearing contesting the existence of a development impediment . . . (e) a person contesting the existence of a development impediment in the proposed project area may appear before the board and show cause why the proposed project area should not be designated as a project area").

[31] UTAH CODE ANN. § 17C-2-304 (LexisNexis 2025) ("(1) If the board makes a development impediment determination under Subsection 17C-2-102(1)(a)(ii)(B) and that determination is approved by resolution adopted by the taxing entity committee, a record owner of property located within the proposed urban renewal project area may challenge the determination by bringing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration. (2) A person

Wisconsin. In Wisconsin, a redevelopment authority must conduct a public hearing to determine whether property qualifies as blighted prior to acquiring it.[32] Notice of the hearing must be sent to each property owner by mail at least twenty days prior to the hearing.[33] As an interested party, the property owner can "express their views on the authority's proposed determination."[34] If the authority determines property is blighted, the property owner can object by filing a written statement with the authority no later than fifteen days after the public hearing.[35] The written

---

shall file a challenge under Subsection (1) within 30 days after the taxing entity committee approves the board's development impediment determination.").

[32] WIS. STAT. § 66.1333(5)(c)(2) ("Before acquiring blighted property under subd. 1. or 1g., the authority shall hold a public hearing to determine if the property is blighted property.").

[33] WIS. STAT. § 66.1333(5)(c)(2) ("Notice of the hearing, describing the time, date, place and purpose of the hearing and generally identifying the property involved, shall be given to each owner of the property, at least 20 days before the date set for the hearing, by certified mail with return receipt requested.").

[34] WIS. STAT. § 66.1333(5)(c)(2) ("In the hearing under this subdivision, all interested parties may express their views on the authority's proposed determination, but the hearing is only for informational purposes.").

[35] WIS. STAT. § 66.1333(5)(c)(2) ("If any owner of property subject to the authority's determination that the property is blighted property objects to that determination . . . that owner shall file a written statement of and reasons for the objections with the authority before, at the time of, or within 15 days after the public hearing under this subdivision.").

statement must be filed to preserve the property owner's right to commence an action contesting the authority's determination.[36]

***

Actual notice to property owners is important because "[w]ithout the minimal step of actual notice," property owners are "left unaware of the potentially looming condemnation action" and have "little reason to even investigate whether it could challenge the blight determination that authorizes that action."[37]

B. States Permitting Challenge Of Blight Designation At The Time Of An Eminent Domain Proceeding.

Mississippi affords property owners only a single, narrow opportunity to contest a blight determination—aggrieved property owners have ten days after the local governing authority renders a blight determination to file an appeal challenging the determination.[38] If the initial appeal is unsuccessful—or never filed—the city's determination is conclusive and permanent, rendering the blight designation final for all future purposes.[39] As a result, at the time of condemnation in Mississippi,

---

[36] WIS. STAT. § 66.1333(5)(c)(2) ("The filing of that statement is a condition precedent to the commencement of an action to contest the authority's actions under this paragraph.").

[37] *M.A.K. Inv. Grp.*, 897 F.3d at 1312.

[38] *See* MISS. CODE ANN. § 11-51-75 (2025).

[39] *See id*.

property owners have no legal recourse to challenge a prior blight designation, even if blight conditions no longer exist.

The timing and availability of legal recourse to challenge a blight designation can fundamentally determine whether property owners have a meaningful opportunity to protect their rights. Unlike Mississippi, other states provide property owners facing condemnation the opportunity to challenge a blight designation during the eminent domain proceedings. For purposes of illustration, this section highlights four states that permit challenge of a blight designation at the time of a government taking – Missouri,[40] Ohio,[41] Pennsylvania,[42] and Virginia.[43]

---

[40] MO. REV. STAT. § 523.261 (2025) ("[A]ny legislative determination that an area is blighted, substandard, or unsanitary shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith and shall be supported by substantial evidence. A condemning authority or the affected property owner may seek a determination as to whether these standards have been met by a court of competent jurisdiction in any condemnation action filed to acquire the owner's property or in an action seeking a declaratory judgment").

[41] OHIO REV. CODE ANN. § 163.09 (2025) ("When an answer is filed pursuant to section 163.08 of the Revised Code and any of the matters relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are specifically denied in the manner provided in that section, the court shall set a day . . . to hear those matters. Upon those matters, the burden of proof is upon the agency by a preponderance of the evidence.").

[42] *See* 26 PA. CONS. STAT. § 306 (2025).

[43] *See* VA. CODE ANN. § 36-27(B) (2025).

This recourse is distinct from a statutory right to challenge a blight designation at the time it is made. The Tenth Circuit recognized that "a *cause of action* to have the blight determination *reversed* is not the same thing as *being able to argue* the property is not blighted in a future condemnation action."[44] The former—seeking to invalidate the blight designation—is a separate legal challenge that can stop a condemnation before it starts. The latter, by comparison, is "no cause of action at all"; it is merely a reactive defense, raised after condemnation proceedings are already underway—"a last-ditch defense, instead of a nip in the bud."[45]

Missouri. Missouri permits property owners to challenge a blight designation during condemnation proceedings.[46] Under section 523.261 of the Missouri Revised Statutes, a legislative determination that an area is "blighted, substandard, or unsanitary" must be supported by substantial evidence and "shall not be arbitrary or capricious or induced by fraud, collusion, or bad faith."[47] Property owners may seek judicial review on whether these standards have been met, either by raising the issue

---

[44] *M.A.K. Inv. Grp.,* 897 F.3d at 1317.

[45] *Id*.

[46] *See* MO. REV. STAT. § 523.261; *see also Centene Plaza Redevelopment Corp. v. Mint Props.*, 225 S.W.3d 431, 432 (Mo. 2007).

[47] MO. REV. STAT. § 523.261.

as a defense in a condemnation action or by filing a separate declaratory judgment action.[48]

Ohio. Ohio property owners have a statutory right to challenge the necessity of a taking during condemnation proceedings. Under section 163.09(B)(1) of the Ohio Revised Code, if a property owner files an answer specifically denying the necessity of the appropriation, the court must hold a hearing to determine whether the agency has met its burden of proof.[49] A property owner has a right to an immediate appeal if the court finds in favor of the agency on the question of the necessity of the appropriation, including appropriation on the basis that the property is a blighted parcel or part of a blighted area or slum.[50]

---

[48] *See id*.

[49] OHIO REV. CODE ANN. § 163.09(B)(1) ("When an answer is filed pursuant to section 163.08 of the Revised Code and any of the matters relating to relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are specifically denied in the manner provided in that section, the court shall set a day . . . to hear those matters. Upon those matters, the burden of proof is upon the agency by a preponderance of the evidence").

[50] OHIO REV. CODE ANN. § 163.09(B)(3) ("An owner has a right to an immediate appeal if the order of the court is in favor of the agency in any of the matters the owner denied in the answer"); OHIO REV. CODE ANN. § 163.09(B)(1)(a) ("A resolution or ordinance of the governing or controlling body, council, or board of the agency declaring the necessity for the appropriation creates a rebuttable presumption of the necessity for the appropriation if the agency is not appropriating the property because it is a blighted parcel or part of a blighted area or slum").

***Pennsylvania*.** Pennsylvania permits property owners to file preliminary objections to a declaration of taking during the condemnation proceedings. Under title 26, section 306 of the Pennsylvania Code, preliminary objections to the declaration of taking are the exclusive method for challenging the legality of the taking and the sufficiency of the security.[51] Under this provision, property owners have objected to the sufficiency of the evidence supporting the blight designation.[52]

Virginia. Virginia gives property owners a meaningful opportunity to challenge a blight designation in a condemnation proceeding. Under section 36-27(B) of the Virginia Code, prior to the adoption of any redevelopment plan, the local governing authority must mail property owners a notice advising the owner of his right to appear in any condemnation proceeding to present "any defense" to the

---

[51] 26 PA. CONS. STAT. § 306(a)(1) ("Within 30 days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking.").

[52] *See In re Condemnation by Redevelopment Auth. of Lawrence Cnty.*, 962 A.2d 1257, 1260 (Pa. Commw. Ct. 2008) ("In reviewing a common pleas court decision on preliminary objections to a condemnation, our inquiry looks to whether sufficient evidence supports the findings of fact or whether the court committed an error of law. Review of a certification of blight and subsequent taking is limited to a determination that the [redevelopment authority] has not acted in bad faith, not acted arbitrarily, has followed the statutory procedures, and has not violated any constitutional safeguards.").

government taking.[53] Such defenses include the opportunity to challenge the blight designation at the time of the taking.[54]

***

In contrast to the states discussed here, Mississippi significantly limits a property owner's ability to protect against unjustified or abusive government takings. States that require individualized notice to affected parties, that allow challenges at the time of condemnation, that impose elevated burdens of proof, or that ensure a right to appeal, reflect a more protective posture toward property rights—one that guards against overreach and ensures that public use justifications are meaningfully scrutinized.

CONCLUSION

For these reasons, Amici respectfully request the Court to give due consideration to these facts in rendering its judgment.

---

[53] VA. CODE ANN. § 36-27(B) ("[A]n authority shall send by certified mail . . . a notice advising such owner that . . . such owner will have the right to appear in any condemnation proceeding instituted to acquire the property and present any defense which such owner may have to the taking.").

[54] *Norfolk Redevelopment & Hous. Auth. v. C & C Real Est., Inc.*, 630 S.E.2d 505, 509–10 (Va. 2006) ("This standard is dictated by the statutes governing conservation plans which allow the use of eminent domain only for the specific public purposes of eliminating deteriorating properties or arresting the blighting influence. If a property no longer meets that criteria, acquisition by condemnation pursuant to a conservation plan would no longer be authorized").

Dated: June 18, 2025

Respectfully submitted,

/s/ Carolyn M. Homer

CAROLYN M. HOMER
MORRISON & FOERSTER LLP
2100 L Street, NW, Suite 900
Washington, DC 20037
Telephone: (202) 887-1500
CMHomer@mofo.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system on June 18, 2025.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: June 18, 2025

/s/ Carolyn M. Homer
Carolyn M. Homer

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 4998 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, including serifs, using Microsoft Word in Times New Roman 14-point font.

Dated: June 18, 2025

/s/ Carolyn M. Homer
Carolyn M. Homer