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Takings in Disguise: The Inequity of Public Nuisance Receiverships in America's Rust Belt

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Takings in Disguise: The Inequity of Public Nuisance Receiverships in America's Rust Belt

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Abstract

Since they were created in the 1980s in Cleveland, Ohio, public nuisance receiverships have spread across the American Rust Belt. This Note critically analyzes the legal implications of public nuisance receiverships, which involve the intrusion onto private property for public purposes. Despite claims that these actions align with exceptions to due process or public nuisance principles, a deeper examination reveals their fundamental nature as government takings of private property. This Note dissects the legal framework within the context of the Fifth Amendment, debunking the applicability of the public nuisance exception, establishing that receiverships constitute takings, and highlighting conflicts with Anti-Kelo amendments. Additionally, this Note contrasts various state statutes' approaches and proposes a solution that preserves the benefits of receiverships while addressing their challenges. By emphasizing community involvement and exploring funding mechanisms, the article aims to foster equitable neighborhood redevelopment within a legally sound framework.

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I. *Introduction*

In 1982, Cleveland, Ohio was in the depths of a post-industrial slump.[1] Abandoned houses littered the city as residents fled to the suburbs or new cities with better job prospects.[2] The local government was demolishing thousands of houses,[3] and had even formed one of the first housing courts in the nation to deal with its epidemic of disputed and abandoned houses.[4]

In one instance, a property owner passed away intestate, and his family could not be reached.[5] The house was becoming a nuisance to the neighborhood, so a local development company petitioned the court to appoint it as a receiver for the property.[6] The company wanted possession not as owners, but as temporary caretakers.[7] This house stood in the way of development efforts in the neighborhood.[8] There was no statute to authorize this action, so the court invoked principles of equity to approve the developer's

1. *See* Melanie B. Lacey, *A National Perspective on Vacant Property Receivership*, 25 J. OF AFFORDABLE HOUS. 133, 143 (2016) (noting that Cleveland was facing "significant housing abandonment").

2. *See id.* (explaining that the issues with traditional code enforcement were exacerbated in Midwestern neighborhoods).

3. *See* Kermit J. Lind, *Collateral Matters: Housing Code Compliance in the Mortgage Crisis*, 32 N. ILL. UNIV. L. REV. 445, 468 (2012) (describing Cleveland's lack of success in remedying dilapidated properties through traditional measures like fines).

4. *See* Lacey, *supra* note 1, at 143 ("To alleviate court dockets and expedite a growing caseload relating to code enforcement, the state implemented one of the first housing courts in the country.").

5. *See* David Listokin et al, *Housing Receivership: Self-Help Neighborhood Revitalization*, 27 J. OF URB. & CONTEMP. L. 71, 80 n.23 (1984) ("[T]he abandoned property confronting Mrs. Avery, 9814 Anderson Avenue, was owned by an individual who died intestate, leaving at least 10 known heirs. The heirs are widely dispersed geographically, and have been generally unwilling to sell or repair the property.") (quoting *Union-Miles Proposes Receivership for Abandoned Buildings*, OHIO CDC NEWS 1 (Fall 1983)).

6. *See* Lacey, *supra* note 1, at 144 (explaining the Union-Miles Development Corporation's interest in removing the nuisance in the neighborhood).

7. *See id.* (noting that the Union-Miles Development Corporation did not want permanent possession, rather they wanted to be able to take action to abate the nuisance).

8. *See id.* ("The Union-Miles Development Corp. (UMDC) persuaded the newly formed housing court to appoint it as receiver over an abandoned, dilapidated house that interfered with ongoing efforts in a particular neighborhood.").

request.[9] The property was placed into a makeshift receivership so it could be rehabilitated, ultimately triggering increased attention to public nuisance receiverships as a potential solution for abandoned housing.[10]

This Note addresses public nuisance receiverships – a phenomenon that, although largely unknown to many even in the legal and redevelopment fields, represents an important intersection between public policy and private property rights. It begins by introducing the geographic backdrop of this discussion, the American Rust Belt. Then, Part III discusses public nuisance receiverships, Part IV gives background on the jurisprudence surrounding the Fifth Amendment's Takings Clause. In Part V, this Note analyzes public nuisance receivership statutes as potential forms of Takings and evaluate the differences between statutes. It concludes by proposing changes to the state statutes and funding, which take into account the goals of receiverships, as well as their potential for improvement.

II. Geographic Focus: Vacant and Abandoned Buildings in the Rust Belt

A. *The Rust Belt is an Ideal Setting for Studying Public Nuisance Receiverships.*

With Cleveland as the hometown of public nuisance receiverships, the American Rust Belt provides an exemplary backdrop for examining the process. This region comprises parts of New York, Pennsylvania, Ohio, West Virginia, Indiana, Illinois, and Wisconsin.[11] This area got its name from the abandoned factories, mills, and plants that dominate the cityscapes and define

9. *See id.* ("Because there was no applicable law, the hearing was adjudicated under equity jurisdiction.").

10. *See id.* ("Recognizing the potential of this legal process, the UMDC commissioned a national study of existing receivership legislation and programs, resulting in the drafting of a model statute.").

11. *See* Jeff Wallenfeldt, *Rust Belt*, ENCYC. BRITANNICA (last updated Jan. 20, 2023) ("[I]t is generally viewed as encompassing a large part of the Midwest (Indiana, Illinois, Michigan, Missouri, Ohio, and Wisconsin) along with Pennsylvania, West Virginia, and portions of New York.") [perma.cc/FT7M-B57Y].

the character of these communities.[12] This part of the country is sometimes pejoratively characterized as "flyover country," as many view these states as something to move through to get to their destination on the opposite coast.[13] Even Indiana's state motto, "The Crossroads of America,"[14] suggests to people this state is mostly good for getting to somewhere else.

In 2011, *Newsweek* named America's top ten "dying cities," seven of which were in the Rust Belt.[15] These cities faced sharp population and had very few young people remained or moved there to ensure their future.[16] However, millions of Americans still call the cities and towns of the Rust Belt home.[17] Generations have stayed in the shadows of the once-bustling factories, even as friends and neighbors left for greener pastures.[18] The Rust Belt has felt the struggle of abandonment, and its current residents are working to overcome this chapter and revitalize their communities.[19]

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12. *See id*. ("The choice of the word *rust* evoked the image of the abandoned decaying factories that were becoming increasingly common features of the region's landscape.").

13. *See* Gabe Bullard*, The Surprising Origin of the Phrase 'Flyover Country*,*'* NAT'L GEOGRAPHIC (Mar. 14, 2016) ("The term 'flyover country' is often used to derisively refer to the vast swath of America that's not near the Atlantic or Pacific Coasts. It sounds like the ultimate putdown to describe places best seen at a cruising altitude . . . .") [perma.cc/ VFT5-SSB2].

14. *See Indiana's State Bird, Flowers, Fossil and Hoosier. (Also, What's a Hoosier?)*, INDIANAPOLIS STAR ("In 1937, the Indiana General Assembly declared the state motto "The Crossroads of America.") [perma.cc/H8FJ-AT4N].

15. *See America's Dying Cities*, NEWSWEEK (Jan. 21, 2011) (including Grand Rapids, Michigan; Flint, Michigan; South Bend, Indiana; Detroit, Michigan; Pittsburgh, Pennsylvania; Cleveland, Ohio; and Rochester, New York) [perma.cc/BMS6-DBSE].

16. *See id*. (finding the 30 cities with the steepest population decline between 2000 and 2009 and then which of those had the biggest drop in residents under 18 to "see which cities may have an even greater population decline ahead").

17. *See QuickFacts*, U.S. CENSUS BUREAU (listing the combined population estimate of Wisconsin, Michigan, Indiana, Ohio, and Illinois at over 47 million residents) [perma.cc/XY2H-ZQGR].

18. *See id*. (showing that the Rust Belt, even with fluctuations, has maintained a large population over past decades).

19. *See Redevelopment in the Rust Belt: 'One County Can't Do It Alone*,' NAT'L ASS'N OF CNTYS. (Sept. 30, 2019) [hereinafter *One County*] (noting Allegheny County, Pennsylvania's continued redevelopment efforts) [perma.cc/CT5R-VHLD].

B. The Rust Belt's High Rate of Abandoned Buildings Stem from a Variety of Causes.

1. Post-Industrial Flight Drained Neighborhoods and Left Abandoned Buildings.

Before World War II, Rust Belt cities such as Buffalo, Detroit, Milwaukee, and Pittsburgh were once magnets for companies looking to open manufacturing facilities.[20] These factories became the backbone of the communities, employing large swaths of the population, influencing politics, and becoming mainstays of local culture.[21] Decades later, as corporations sought to modernize and save money, they moved their operations overseas and updated their technology, reducing the need for American workers.[22]

Today, Rust Belt cities comprise nine of the twenty-five highest vacancy rates among metropolitan areas.[23] The hundreds of thousands of people whose livelihood depended on these manufacturing centers were forced to find another job in the city or move away.[24] The city of Youngstown, Ohio has been described as America's fastest shrinking city as it lost well over half of its population when the steel plants closed.[25] Buffalo's population was

20. *See* Wallenfeldt, *supra* note 11 (identifying the natural resources, including iron ore, coal, and rivers for transportation that made the Rust Belt ideal for manufacturing).

21. *See id*. (describing how the identities of Rust Belt cities became tied to the industries located there, such as Detroit being branded as "Motor City").

22. *See* Simeon Alder, David Lagakos & Lee Ohanian, *The Decline of the U.S. Rust Belt: A Macroeconomic Analysis* 4–5 (Ctr. for Qualitative Rsch. Working Paper Series, Paper No. 14-05, 2014) (graphing the decrease in manufacturing employment in the Rust Belt between 1950 and 2000).

23. *See Vacant and Abandoned Properties: Turning Liabilities Into Assets*, U.S. DEP'T OF HOUS. & URB. DEV. (Winter 2014) [hereinafter *Turning Liabilities Into Assets*] (listing Detroit, Cleveland, Dayton, Indianapolis, Albany, Toledo, Akron, Cincinnati, St. Louis, and Columbus as members of the top twenty-five metropolitan areas with the highest vacancy rates) [perma.cc/A6HK-HVTJ].

24. *See* Wallenfeldt, *supra* note 11 (describing the large-scale flight from Cleveland and the influx of Michigan residents to Texas).

25. *See* Gerald D. Taylor, *Unmade in America: Industrial Flight and the Decline of Black Communities*, ALL. FOR AM. MFG., 6 (Oct. 2016) (noting that Youngstown has been "named both the poorest and the fastest shrinking city in the nation") [perma.cc/HU77-AMHH].

also cut in half, leaving 10,000 vacant and abandoned homes.[26] As families left for greener pastures, neighborhoods became littered with abandoned businesses and houses.[27]

2. Suburbanization Allowed Wealthier Residents to Flee Urban Areas.

At the same time as factories left town, the rise of the suburbanization also pulled families away from cities.[28] The growing accessibility of commuting to work from a single-family house with a backyard enticed those who could afford it.[29] In December 1963, the automobile manufacturer Studebaker closed the doors of its South Bend, Indiana headquarters after being a major employer in the city for decades.[30] South Bend lost 50,000 people in the following 50 years.[31] Meanwhile, the neighboring city, which also lost 40% of its manufacturing jobs, did not face a similar decline and the county surrounding the city grew in population. [32]

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26. *See The Rust Belt: A Forgotten Housing Crisis*, NBC NEWS (May 4, 2009) [hereinafter *Forgotten Housing Crisis*] ("In Buffalo, there are as many as 10,000 vacant, abandoned homes. Suburban sprawl, an aging population, and manufacturing losses have left the city with a population under 300,000 – about half of what it was during the 1950s.") [perma.cc/7U2F-82G4].

27. *See id*. ("[P]eople have been shoved out of the Rust Belt by the collapse of the manufacturing economy for more than a generation now . . . The cycle makes residents feel as abandoned as the vacant buildings that surround them.").

28. *See* Daniel Herriges, *You Can't Understand the Rust Belt Without Understanding Its Suburbanization*, STRONG TOWNS (Dec. 1, 2020) (detailing how the growth of suburbs has caused urban populations to decline since the 1950s) [perma.cc/NM7X-UNHB].

29. *See id*. (explaining that "well-to-do" residents went to the suburbs while continuing to work in the city).

30. *See* Jack Colwell, *Breaking the News: Studebaker Closing*, S. BEND TRIB. (Dec. 8, 2013) (recounting the reporter's experience when the Studebaker plant closed on the 50th anniversary) [perma.cc/7RXX-P73Y].

31. *See* Joe Molnar, *More People: How South Bend Lost 50,000 People in 50 Years*, WEST.SB (Aug. 11, 2020) (accounting for annexations in the calculation that the population within city limits dropped from over 132,000 to 86,000) [perma.cc/SU3T-KYL3].

32. *See id*. ("[T]he argument that South Bend would inevitably lose population due to loss of Studebaker and other manufacturers does not hold water. If losing well-paying, blue-collar jobs dooms a community to population decline, why did Mishawaka and the unincorporated areas of the county, such as Granger, grow over the past half-century?").

New, larger, and more private housing was built outside of city limits.[33] While the shuttering of major manufacturing hubs impacted the economic stability of these cities, the transition from urban to suburban life – aided and abetted by the development of the Interstate Highway System[34] – also transformed the neighborhoods that were left behind.[35]

3. The 2000s Recession and Zombie Foreclosures Exacerbated Existing Abandonment Issues.

The issue of abandoned housing was exacerbated more recently during the recession and housing crisis of the late 2000s.[36] The phenomenon of "zombie foreclosures" sent some houses into disrepair.[37] Banks would initiate foreclosure proceedings, but the process would stall for any number of reasons.[38] Some owners would physically abandon the property after receiving a notice of default or a borrower may pass away and leave their heirs an unaffordable mortgage.[39] Utility bills would go unpaid and damage to the property would go unfixed, leading to a public nuisance.[40] The lending bank was not interested in claiming ownership of a

33. *See* Herriges, *supra* note 28 (describing how the outdated characteristics of older housing stock drove homebuyers to look to the suburbs).

34. *See* Nathaniel Baum-Snow, *Did Highways Cause Suburbanization?*, 122 Q. J. ECON. 775, 776 (2007) ("[I]nnovations to the urban transportation infrastructure played a key role in influencing changes in the spatial distribution of the population in U.S. metropolitan areas between 1950 and 1990.").

35. *See* Joe Molnar, *More People: Suburbanization, Not Studebaker*, WEST.SB (July 27, 2020) (describing the impacts of residents' decisions to move to the suburbs impacted South Bend's neighborhoods) [perma.cc/37D7-N5Qx].

36. *See* Ryan Griffith, *Health and Safety Receivership: California's Cure for Zombie Foreclosures, Vacant, and Other Nuisance Properties*, 8 LINCOLN MEM'L UNIV. L. REV. 35, 35 (2021) ("In 2013, Reuters estimated that over 300,000 zombie foreclosure properties existed.").

37. *See id.* ("Zombie foreclosures are a consequence of the early 2000's mortgage crisis and a type of nuisance property.").

38. *See id.* at 36 ("Zombie foreclosures occur when a bank begins the foreclosure process but fails to finalize it.").

39. *See id.* (noting that borrowers may abandon a property for several reasons, including assuming the initial notice of default, death of the borrower and inability of the heirs to pay, or personal reasons).

40. *See id.* at 36-37 (describing unsanitary conditions which can occur when abandoned homes become shelters for unhoused persons).

public nuisance, leaving the property in the hands of an owner who has already shown an inability to pay.[41]

4. Structural Racism Subjugated Minority Racial Groups and Exacerbated Existing Housing Issues.

Deindustrialization also had a disproportionate impact on Black communities within these cities.[42] The accessibility of manufacturing jobs had allowed Black workers to begin to build wealth and enter the middle class.[43] The sudden loss of income and widespread economic distress hit many Black families hard, as they did not have the same safety nets as white families.[44]

Industrialization and suburbanization were also happening at the time of the Civil Rights Movement.[45] As segregation and discrimination became formally illegal,[46] extrajudicial actions continued to reinforce structural racism.[47] The remnants of past explicit racism continued to negatively impact marginalized

41. *See id.* at 37 ("The owner that was missing mortgage payments is unlikely to be able to afford to fix the property . . . Meanwhile, the bank is nowhere to be found.").

42. *See* Taylor, *supra* note 25, at 3 ("Unemployment rates for black workers have outstripped those for white workers at least since 1954 . . . and often by at least a factor of two.").

43. *See id.* at 2 (introducing the benefits of union-backed manufacturing jobs, such as the ability to purchase homes and invest in education for their children).

44. *See id.* at 3 (explaining that Black Americans lagged behind white workers in "several major wealth-building measures" which made them "more likely to fall into poverty, to be plunged into it more deeply, and to find it more difficult to recover in its aftermath").

45. *See id.* at 5 (describing how uproar over the Civil Rights movement contributed to both government-sanctioned and extrajudicial forms of racism, including the 'War on Drugs').

46. *See Civil Rights Act (1964)*, NAT'L ARCHIVES ("The [Civil Rights Act of 1964] outlawed segregation in businesses such as theaters, restaurants, and hotels. It banned discriminatory practices in employment and ended segregation in public places such as swimming pools, libraries, and public schools.") [perma.cc/8M6K-ALP9].

47. *See* Deborah Archer, *"White Men's Roads through Black Men's Homes": Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1281 (2020) (calling the entrenchment of existing segregation and racial zoning through highway construction a "Post-Jim Crow Racial Boundary Line").

communities.[48] Highways bisected and marooned historically Black neighborhoods, cutting families off from the quality of services enjoyed by white families on the other side of the highway.[49] Redlining drew formal boundaries between Black and white communities.[50]

This physical segregation, coupled with a lack of support and over-policing, destined Black neighborhoods to struggle with the impacts of suburbanization and deindustrialization more so than white neighborhoods.[51]

C. The Adverse Health and Economic Impacts of Vacant Abandoned Buildings on Surrounding Neighborhoods.

Vacant and abandoned properties have negative impacts on their surrounding neighborhoods, both on public health and economics.[52] Boarded-up housing has been associated with poor health of surrounding residents, even after controlling for sociodemographic factors.[53] Abandoned houses can be centers for

48. *See id.* at 1263–64 ("In reality, racially segregated cities are the result of many factors, including federal, state, and local housing policies; private housing discrimination; migration patterns; public education systems; employment opportunities; mortgage practices; and the country's interstate highway system.").

49. *See id.* at 1265 ("Often under the guise of 'slum removal,' federal and state officials purposely targeted black communities to make way for massive highway projects.").

50. *See* Candace Jackson, *What is Redlining?*, N.Y. TIMES (Aug. 17, 2021) (defining redlining as "race-based exclusionary tactics in real estate – from racial steering by real estate agent . . . to racial covenants in many suburbs and developments") [perma.cc/5XJP-QMUW].

51. *See* Taylor, *supra* note 25, at 4 ("The loss of personal wealth, the population loss and segregation caused by 'white flight', and the decline in municipal financial resources combined in deindustrialized communities to produce living conditions the likes of which had not been seen since the Great Depression.").

52. *See* Eugenia Garvin et al., *More Than Just an Eyesore: Local Insights and Solutions on Vacant Land and Urban Health*, 90 J. URB. HEALTH 412, 412–13 (2013) ("Poor neighborhood conditions are thought to lead to negative health outcomes, as well as to contribute to persistent racial and income-based health disparities.").

53. *See id.* at 413 (referencing a previous study of 107 cities that found that residents had "outcomes as divergent as gonorrhea rates, pre-mature mortality, diabetes, and suicide").

mold, fungus, and pests to thrive.[54] These conditions lead to adverse health impacts, such as respiratory illnesses, asthma, and learning and behavioral problems.[55] Those who live near abandoned housing have been found to have a decrease in immune responses.[56] Residents, especially children, who live near vacant properties are even more likely to suffer physical injuries in their neighborhoods.[57]

Living in a neighborhood with abandoned housing can also take a toll on residents' mental health.[58] The continued anger and frustration with being surrounded by a declining neighborhood wears on people who have little recourse against the situation. [59]

Vacant properties can drain economic resources on the surrounding neighborhood as well.[60] The cost of providing municipal services to neighborhoods with high levels of abandoned properties is increased because of elevated rates of fires, crime, and public maintenance to the buildings.[61] Even though these areas

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54. *See id.* at 418 (describing residents' concerns regarding trash build-up, as well as rodents and health hazards associated with them).

55. *See* ERWIN DE LEON & JOSEPH SCHILLING, URBAN BLIGHT AND PUBLIC HEALTH: ADDRESSING THE IMPACT OF SUBSTANDARD HOUSING, ABANDONED BUILDINGS AND VACANT LOTS 5 (Urb. Inst. Apr. 2017) (studying how substandard housing, abandoned houses and buildings, and vacant lots contribute to neighborhood health issues) [perma.cc/BZ43-HENA].

56. *See* Jennifer Guerra, *Abandoned Homes Affect Your Health. But Here's What Can Help*, MICH. RADIO (July 20, 2016) ("[L]iving in a neighborhood . . . with [a] high volume of abandoned houses and lots, can age your immune system.") [perma.cc/3Z97-K4XF].

57. *See* Garvin, *supra* note 52, at 419 (describing risks to living near abandoned homes such as fires, hypodermic needles, debris, and other sharp objects).

58. *See id*. at 419 ("Vacant land evoked a wide range of negative emotions from participants, including sadness and depression, often stemming from the buildup of trash on vacant land.").

59. *See id*. ("Others expressed anger and frustration over feeling powerless to change the physical condition of their neighborhood.").

60. See *Vacant Properties: The True Cost to Communities*, NAT'L VACANT PROPS. CAMPAIGN (2005) (quantifying costs associated with abandoned property "including city services . . . , decreased property values and tax revenues, as well as the costs born [sic] by homeowners and the issue of the spiral of blight") [perma.cc/PN5Y-NWJ7].

61. *See id.* at 3–6 ("Vacant properties have been neglected by their owners, leaving it up to city governments to keep them from becoming crime magnets, fire hazards, or dumping grounds.").

use a disproportionately high amount of tax dollars, they also have a disproportionately low tax base.[62] The vacant properties themselves are often delinquent on taxes and it is difficult for municipalities to recover this money.[63] Property values of surrounding homes and businesses are also dragged down by an abandoned property.[64] Researchers in Philadelphia found that, all else being equal, properties on blocks with abandoned buildings sold for thousands less than their counterparts on other blocks.[65] These lowered property values in turn lower the tax base of the neighborhood.[66]

D. The Rust Belt Suffers from a Lack of Affordable Housing.

While many homes sit empty and uninhabitable, residents are struggling to find an affordable place to live amid a housing crisis. Both home values and rental costs have increased dramatically across the country in recent years.[67] The typical home value has more than doubled in the past decade,[68] and the national median rent has increased by nearly 32% since 2017.[69] Existing rental

62. *See id.* at 7–10 ("Vacant properties reduce city tax revenues in three ways: they are often tax delinquent; their low value means they generate little in taxes; and they depress property values across an entire neighborhood.").

63. *See id.* at 7 (explaining that municipalities often cannot recover money from tax delinquent abandoned properties because of costs associated with obtaining the title, foreclosure, and demolition).

64. *See id.* at 9 ("Vacant properties generate little in taxes – but, perhaps more importantly, they rob surrounding homes and businesses of their value.").

65. *See id.* ("Philadelphia researchers also found that all else being equal, houses on blocks with abandonment sold for $6,715 less than houses on blocks with no abandonment.") (internal quotations omitted).

66. *See id.* (describing a University of Minnesota study which found that St. Paul was suffering from a lowered tax base because of abandoned housing).

67. *See Paycheck to Paycheck Winter 2022 Quarterly Update*, NAT'L HOUS. CONF. (aggregating data regarding the rise in typical home value, typical rent price, and wages and housing costs) [perma.cc/EPD4-RDV8].

68. *See id.* (showing that between March 1, 2012 and March 1, 2020 home values have increased from slightly over $150,000 to almost $330,000).

69. Peggy Bailey, *Addressing the Affordable Housing Crisis Requires Expanding Rental Assistance and Adding Housing Units*, CTR. ON BUDGET AND POL'Y PRIORITIES [perma.cc/DG34-W28P].

assistance programs only reach about one in four likely eligible households, leaving many renters struggling to make payments.[70]

The Rust Belt has not been immune from this lack of affordable housing. Like much of the country, the Rust Belt is facing a housing crisis.[71] Many houses that were affordable in past decades now sit abandoned and unfit for habitation.[72] Issues such as lead paint,[73] asbestos,[74] and a lack of structural integrity[75] plague many of these structures. The cost to remedy these issues can be out of a family's budget.[76] Federal programs exist to help ease this financial burden,[77] but the requirements are stringent and the process is time consuming.[78]

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70. *See id*. ("[F]ederal rental assistance only reaches about 1 in 4 likely eligible households . . . millions of families have long struggled to afford housing and meet other basic needs such as food, clothing, and transportation.").

71. *See* Austin Harrison & Dan Immergluck, *The Battle of the Belts: Vacancy in the Sun Belt and Rust Belt Since the Great Recession*, CTR. FOR CMTY. PROGRESS (Feb. 23, 2022) (categorizing about 15% of tracts in metro areas in the Rust Belt as "hypervacant") [perma.cc/LE3H-D4MG].

72. *See id.* (attributing weakened housing markets in the Rust Belt to vacant and abandoned housing).

73. *See* Aaron Mondry & Nina Ignaczak, *Lead Paint is a Major Threat to Kids. Old Detroit Homes are Full of It, But the City Keeps Selling Them*, OUTLIER MEDIA (Nov. 2, 2022) (describing older homes with lead paint in Detroit which are being sold at very low prices by the Detroit Land Bank and how impoverished Detroit residents must balance the risk of lead exposure against other threats like homelessness) [perma.cc/CE6J-YSBU].

74. *See* A. Franzblau et al., *Asbestos-Containing Materials in Abandoned Residential Dwellings in Detroit*, SCI. TOTAL ENV'T (Apr. 20, 2020), at 1, 7 (studying abandoned residential dwellings in Detroit and concluding that asbestos are likely present in 95% of them in the city).

75. *See Reducing Arson at Vacant and Abandoned Buildings*, U.S. FIRE ADMIN. (May 19, 2022) (describing abandoned buildings as dangerous because they lack structural integrity) [perma.cc/N3LC-WDBH].

76. *See* ALLAN MALLACH, THE EMPTY HOUSE NEXT DOOR: UNDERSTANDING AND REDUCING VACANCY AND HYPERVACANCY IN THE UNITED STATES 37 (2018) (finding that public action is needed to fix abandoned properties in poor areas).

77. *See HUD Offers Grants to Clean Up Lead-Based Paint Hazards*, U.S. DEP'T OF HOUS. & URB. DEV. (announcing that HUD is "making grants available to help eliminate dangerous lead-based paint hazards from lower income homes") [perma.cc/4666-S2L7].

78. *See FY 2022 Lead Hazard Reduction Grant Program*, U.S. DEP'T OF HOUS. & URB. DEV. (describing the targets of the Lead-Based Paint Hazard Reduction grant program as housing units built before 1960, and especially before 1940, with children between the ages of three and six located in historically low-income and minority neighborhoods) [perma.cc/3HTE-3TJ3].

The housing crisis especially impacts minority communities.[79] Black Americans have the lowest rate of homeownership compared to other racial groups.[80] In the Rust Belt, neighborhoods that are majority Black have "experienced a disproportionate amount of population and investment flight during the past 50 years."[81] Crises hit vulnerable communities hardest, and the housing crisis is no exception.

E. Redevelopment Initiatives Have Vital Importance in Rust Belt Cities.

The negative impacts of suburbanization and post-industrial flight on rust-belt cities cannot stop on their own.[82] Abandonment and urban blight can grow exponentially, as "[e]mpty housing feeds upon itself."[83] The more vacant housing in a neighborhood, the more residents want to leave and abandon their own property.[84] This makes neighborhood revitalization a crucial issue for local governments and community organizations.[85]

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79. *See* Courtney Connley, *Why the Homeownership Gap Between White and Black Americans is Larger Today Than It Was Over 50 Years Ago*, CNBC MAKE IT (Aug. 21, 2020, 9:21 AM) (chronicling the history of discriminatory policies and practices that created a substantial gap between white and Black homeownership) [perma.cc/TPP3-RM7J].

80. *See id.* (noting that, according to U.S. Census Bureau data, in 2020 the rate of Black homeownership was 47%, while white Americans had a rate of 76%; Hispanic Americans of 51.4%; and Asian, Native Hawaiian and Pacific Islander of 61.4%).

81. Jason Hackworth, *Why Black-Majority Neighborhoods are the Epicentre of Population Shrinkage in the American Rust Belt*, 112 TIJDSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE 44, 44 (2020).

82. *See Forgotten Housing Crisis*, *supra* note 26 ("[P]eople have been shoved out of the Rust Belt by the collapse of the manufacturing economy for than a generation now, and drawn to the temperate Sun Belt by more jobs and a lower cost of living.").

83. *Id.*

84. *See id*. ("Experts say as more houses stand vacant, property values and tax revenues drop. The drop in property values lead to fewer buyers, which lead to more vacancies.").

85. *See* One County, *supra* note 19 (describing the extensive measures taken by the government of Allegheny County, PA to find funding for redevelopment initiatives).

Over the past decade, Rust Belt cities such as South Bend, Indiana, Detroit, Michigan, and Flint, Michigan have launched initiatives to address the large number of abandoned homes.[86] These cities have undertaken the task of either demolishing or rehabilitating hundreds, if not thousands, of vacant and abandoned buildings.[87]

The goal of these initiatives was to raise property value, encourage tight-knit neighborhoods, and improve resident safety.[88] However, while many houses were saved, many more were demolished, leaving gaps in neighborhoods that were already becoming abandoned and removing potential opportunities for affordable housing.[89] These facially color-blind programs can have disproportionate impacts on minority residents.[90]

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86. *See* de Leon, *supra* note 55, at 16 (explaining how Detroit's Blight Removal Task Force, Flint's Blight Elimination Framework, and South Bend's 1,000 Houses in 1,000 Days program addressed thousands of derelict structures through remediation and demolition).

87. *See id*. (totaling Detroit's derelict properties to be addressed at over 80,000, Flint's at nearly 20,000 and South Bend's at over 1,000).

88. *See Turning Liabilities Into Assets*, *supra* note 23 (describing the strategies cities use to address and reuse abandoned properties).

89. *See* Dan Merica & Vanessa Yurkevich, *Pete Buttigieg Pushed an Aggressive Plan to Revitalize South Bend. Not Everyone Felt its Benefits*, CNN POLITICS (Apr. 13, 2019, 10:00 AM) (noting the controversy surrounding South Bend's plan to expedite the demolition of deteriorating housing, including accusations that the plan contributed to gentrification, as well as the failure of the plan to revitalize many neighborhoods in the city-) [perma.cc/2NHU-PELV].

90. *See id.*

"It has had some disproportionate impact" on minority communities, Gary Gilot, the president of Buttigieg's Board of Public Works, said in an interview. "But the decision was color-blind. It was the right thing to do to deal with the blight. You have to remove it. If you have a cancer, you have to deal with it."

III. Background of Public Nuisance Receiverships

A. Public Nuisance Receiverships

1. Receiverships Are Used to Protect Property in Situations Where the Owner is Unfit.

Receiverships are a legal avenue to place the property of one person or entity into the care of another.[91] The court must determine that a current property owner is in some way unfit to continue to hold the property, typically in cases of bankruptcy.[92]

A receiver is a very powerful independent manager, "completely displac[ing]" the owner and is able to "make[] large and small decisions [and] spend[] the organization's funds."[93] "Although receiverships began as temporary stewardships to protect assets, they eventually developed into a way for court-appointed officials to actively manage property under court supervision."[94] Typically, receiverships are used to save a person or business from bankruptcy, but the mechanism is not limited to the bankruptcy realm.

2. Public Nuisance Receiverships are Used to Remediate Public Nuisances.

While receiverships generally exist in the realm of private law, an increasing number of states have enacted statutes that provide receivership as a remedy for properties that are categorized as

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91. *See* Carla Tardi, *Receivership: What It Is, How It Works, Vs. Bankruptcy*, INVESTOPEDIA (Mar. 25, 2022) ("In a receivership, the court appoints an independent 'receiver' – or trustee – who effectively manages all aspects of a troubled company's business.") [perma.cc/F8SE-QVCB].

92. *See id*. (describing how receivership is primarily used to "assist creditors to recover funds in default and can help troubled companies to avoid bankruptcy").

93. Catherine Megan Bradley, *Old Remedies Are New Again: Deliberate Indifference and the Receivership in Plata v. Schwarzenegger*, 62 N.Y.U. ANN. SURV. AM. L. 703, 706 (2007).

94. *Id*.

public nuisances.[95] These statutes create a private right of action for a neighbor, government, nonprofit, or other entity to petition the court to appoint a receiver for the nuisance property.[96] The receiver then takes on the role of abating the public nuisance, either through remediation, sale, or another avenue.[97]

Receiverships can be used to abate issues that stem from nuisance buildings, from lowered property values in surrounding lots to public health,[98] as well as restoring historic buildings.[99] They can be spurred on by local advocacy groups,[100] who exclusively work on receivership cases or community organizations who want to see a property put to good use in their neighborhood.[101] When the government acts as the petitioner, it is often from a redevelopment perspective.[102] The local government may want to raise property values or encourage development that leads to new businesses and jobs.[103] Receivership are often a last

95. 310 ILL. COMP. STAT. 50/1–9 (1988); IND. CODE § 36-7-9-20 (2003); MICH. COMP. LAWS § 125.535 (1968); WIS. STAT. § 823.23 (2010); *see also* Lacey, *supra* note 1, at app. (listing state public nuisance receivership statutes).

96. *See* Lacey, *supra* note 1, at app. (detailing the provisions of public nuisance receivership statutes).

97. *See id.* (outlining parties allowed to act as receivers in different state statutes and their powers as receivers).

98. *See* Garvin, *supra* note 52, at 412–13 (discussing the negative impacts on health that abandoned property has on neighborhoods); Guerra, *supra* note 56 ("[L]iving in a neighborhood like Brightmoor, with its high volume of abandoned houses and lots, can age your immune system.").

99. *See Receivership for Historically Significant Properties*, CAL. RECEIVERSHIP GRP. (providing examples of historically significant properties that have been rehabilitated through receivership) [perma.cc/BYS8-9K9U].

100. *See California Receivership Group*, CAL. RECEIVERSHIP GRP. ("California Receivers Group is a health and safety receiver of distressed properties statewide.") [perma.cc/ZC88-5A8X].

101. *See How Communities Can Use Receivership to Stabilize Abandoned & Foreclosed Properties*, MASS. HOUS. P'SHIPS, 2 ("[Massachusetts Housing Partnerships] can provide technical assistance to communities that are interested in promoting receivership as a tool to address the problems of foreclosure and abandonment.") [perma.cc/EGE6-MRB9].

102. *See* Ryan Griffith et al., *Health and Safety Receiverships: The Cost Neutral Way to Abate Difficult Nuisance Properties*, LEAGUE OF CAL. CITIES, 1–2 (May 21, 2021) (advocating for use of public nuisance receiverships as a cost-effective way to conduct redevelopment on abandoned buildings) [perma.cc/H3WV-RPVK].

103. *See id.* at 1 ("These difficult nuisance properties endanger neighborhoods, decrease property values, cause constituents to lose faith in their

resort. The property owner must have shown themselves to be totally unwilling or unable to remediate the nuisance in the eyes of the court.[104] At that point, a court may find it appropriate allow a petitioner to commence a receivership action.[105]

B. The Process of Going Through a Receivership

A typical receivership process follows the following steps. First, the property falls into disrepair and violates the local building code or other municipal code.[106] Second, the government sends notices to fix these code infractions, but the issues are not remedied.[107]

Next, an eligible petitioner – often the local government itself – can request the court to appoint a receiver for the property.[108] When the court grants that request, it appoints a receiver who is allowed to begin work on the property.[109] That receiver temporarily takes possession of the property and may remediate issues, determine that it is best to resell the property as it is, or demolish the property.[110] The costs associated with the receiver, whether any work is actually done, become a lien on the property, which in

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city leadership, are a drain on municipal resources, and cause headaches city wide. These sort of nuisance properties leave entire cities frustrated and questioning what they can do.").

104. *See* Lacey, *supra* note 1, at 136 ("Vacant property receivership laws create standing for municipalities and community members to sue property owners who are unwilling to rehabilitate chronically blighted properties.").

105. *See id.* at 137 ("[A]ppointment of a receiver only [occurs] if a respondent property owner or lienholder fails to exercise its final opportunity to bring the property into code compliance.").

106. *See* Griffith et al., *supra* note 102, at 36–37 (describing how properties fall victim to zombie foreclosures).

107. *See* Listokin et al., *supra* note 5, at 110 (documenting that a hallmark of receivership statutes is to give interested parties "notice and ample opportunity to forestall the receiver's appointment").

108. *See id.* ("The receiver is appointed only if the interested parties do not perform the repairs, and a hearing on the matter is conducted.").

109. *See id.* (granting the receiver "power to abate the nuisance, correct the dangerous and defective conditions, and operate and maintain the premises in order to secure safe and habitable conditions").

110. *See id.* (noting that statutes allow receivers to "go beyond code abatement in order to improve the property").

turn becomes the responsibility of the owner.[111] The government may also add its fees, such as the cost of the petition and code enforcement expenses.[112] These liens supersede the other liens on the property and must be paid first, often directly after taxes.[113] The property's rent and other sources of income can be used to pay off this lien before resorting to a sale.[114] However, if the property is sold either by the original owner or the receiver, the receiver takes out their portion first, followed by the mortgager and other lienholders.[115]

C. Receivership Statutes

1. The Model Statute

Public nuisance receiverships began in the post-industrial Rust Belt in order to combat growing housing issues.[116] A local nonprofit development corporation, the Union-Miles Development Corporation (UMDC), convinced a housing court in Cleveland to appoint it as the receiver.[117] The process proved to be successful and UMDC was interested in how the practice could be expanded.[118]

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111. *See id.* at 82 ("Expenses would be paid from the building's profits with any shortfall constituting a lien on the property.").

112. *See* City of Fontana v. U.S. Bank, No. E076228, 2022 WL 1043647, at *6 (Cal. Ct. App. Apr. 7, 2022) (allowing the receiver and the City to attach their fees to the receiver's lien).

113. *See* Listokin et al., *supra* note 5, at 97–98 (listing statutes in which the receiver's costs are placed ahead of other lienors).

114. *See id.* at 98–99 ("[T]he receiver always must turn to the property's rents or income first.").

115. *See* Lacey, *supra* note 1, at app. (listing jurisdictions that place receivers' liens at the highest priority or second to taxes).

116. *See* Lacey, *supra* note 1, at 143–44 ("The need for legislation creating "vacant" property receivership originated in Cleveland during the 1970s when the city started to face significant housing abandonment.").

117. *See id.* at 144 ("The Union-Miles Development Corp. (UMDC) persuaded the newly formed housing court to appoint it as receiver over an abandoned, dilapidated house that interfered with ongoing development efforts in a particular neighborhood.").

118. *See* Lacey, *supra* note 1, at 144 ("Recognizing the potential of this legal process, the UMDC commissioned a national study of existing receivership

The development company commissioned a national survey conducted by Rutgers University Center for Urban Policy Research Professor David Listokin.[119] Listokin constructed a model statute based on the survey in the 1984 article "Housing Receivership: Self-Help Neighborhood Revitalization."[120]

In this proposal, Lostkin lists the applicable circumstances under which a property would be fit for receivership as "1) unfit for human habitation, or 2) nuisance or cause of sickness, 3) poses a dangerous condition or serves as a substantial threat to the safety of the occupants or to the public because of violation of a statute or ordinance concerning building, condition or maintenance."[121] Additionally, the petitioner "need not prove any specific, special, or unique damages to himself or his property from the alleged nuisance or dangerous condition in order to maintain a suit under the foregoing provision."[122]

The model statute also outlines the requirements to act as a petitioner, proposing that the "local authorities of the municipality, or . . . the building's tenants, or any owner or tenant of real property within fifteen hundred feet" be allowed to commence the process.[123] The delegation of a receiver is fairly broad, allowing "any proper local authority of the municipality (or tenant or group of tenants), a not-for-profit corporation (the primary purpose of which is the improvement of housing conditions), or any other capable or competent person or entity" to full this role.[124] Listokin's model statute gives the receiver a wide

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legislation and programs, resulting in the drafting of a model statute."). The contemporaneous method of using tax foreclosures was proving to be ineffective, as it was unable to address many of the nuisance properties, and developers and municipalities alike were in search of a better solution. *See* Listokin et al., *supra* note 5, at 76 (discussing the adjustments made to tax delinquency to more effectively address vacant property before the use of public nuisance receiverships).

119. *See id.* at 71 (acknowledging that the Article is "based on a larger study commissioned by the Union-Miles Development Corporation").

120. *See id.* at 105–11 (defining appropriate applicable circumstances, the receivership process, the receiver's duties, and receivership financing based on a national survey of statutes).

121. *Id.* at 105.

122. *Id.* at 105.

123. *Id.* at 105.

124. *Id.* at 106.

grant of power, allowing the receiver to "enter[] and take[] charge of the premises" and "do[] any such acts that may be necessary to abate the nuisance."[125]

In order to fund the repairs, the model statute requires the receiver to "draw first from the property's rent and profits."[126] If that money does not exist or is insufficient, the receiver may impose a lien on the property, one which often has first priority.[127]

Even though the model statute is almost forty years hold, its provisions are largely incorporated in current public nuisance statutes. Depending on the jurisdiction, receivers can take possession of the property,[128] collect rents from tenants,[129] incur expenses and create liens on the property,[130] enter into agreements related to the property,[131] and sell[132] the property.

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125. *Id.* at 107.

126. *Id.*

127. *See id.* ("If this income is insufficient, the municipality may, if funds are available, advance any sums required and thereupon shall have a lien against the property having priority with respect to all existing mortgages or liens.").

128. *See* 310 ILL. COMP. STAT. 50/5 (1988) (giving a court the authority to grant "temporary possession of the property" to the receiver); IND. CODE § 36-7-9-20(a)(1) (2003) ("The purpose of the receivership must be to take possession of unsafe premises for a period sufficient to accomplish and pay for repairs and improvement.").

129. *See* MICH. COMP. LAWS § 125.535(4) (1968) (declaring that the receiver "may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act").

130. *See id.* at § 125.535(5) (1968) ("When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof."); IND. CODE § 36-7-9-20(a)(5) (2003) (allowing the receiver to have a lien on the property equal to the amount expended in repairs).

131. *See* 310 ILL. COMP. STAT. 50/5 (1988) ("The [receiver] may, subject to court approval, enter into eases or other agreements in relation to the property.").

132. *See* IND. CODE § 36-7-9-20(a)(5) (2003) (permitting a receiver to sell the property at auction or for fair market value); WIS. STAT. § 254.595(3)(b) (2010) ("At the request of and with the approval of the owner, the receiver may sell the property at a price equal to at least the appraisal value plus the cost of any repairs made under this section for which the selling owner is or will become liable.").

2. Public Nuisances and Remediation

The overarching goal of public nuisance receiverships is to abate a public nuisance or to cure a public health concern.[133] Public nuisance receiverships generally use statutory definitions of public nuisances.[134] This includes definitions from state statures or local housing, building, and health codes.[135]

Some statutes and ordinances specifically target vacant or abandoned properties,[136] as these properties are very likely to fall into disrepair and create a nuisance in the neighborhood.[137] Local governments may have their own local codes and ordinances that more specifically define violations that create a public nuisance.[138]

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133. *See* Samsa *infra* note 137, at 201 ("When used thoughtfully, with economic revitalization in mind, this approach provides a unique way to reclaim abandoned properties and support sustainable growth.").

134. *See* Lacey, *supra* note 1, at 149 (listing jurisdictions that require the property to be placed on an official list of blighted properties).

135. *See Building & Zon*ing, CITY OF COLUMBUS (enumerating the state and local codes adopted by the City of Columbus, Ohio, including rules for plumbing, fire alarms, and accessibility). For instance, Illinois includes properties that would violate state laws addressing drugs and "street-gang related activity." *See* 310 ILL. COMP. STAT. 50/2(b) (2018).

'Nuisance' also means any property on which any illegal activity involving controlled substances (as defined in the Illinois Controlled Substances Act), methamphetamine (as defined in the Methamphetamine Control and Community Protection Act), or cannabis (as defined in the Cannabis Control Act) takes place or any property on which any streetgang-related activity (as defined in the Illinois Streetgang Terrorism Omnibus Prevention Act) takes place.

136. *See* MO. REV. STAT. § 82.1026 (2009).

The governing body . . . may enact ordinances to provide for the building official of the city or any authorized representative of the building official to petition the circuit court in the county in which a *vacant nuisance building or structure* is located for the appointment of a receiver to rehabilitate the building or structure, to demolish it, or to sell it to a qualified buyer. (emphasis added).

137. *See* Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. STATE L. REV. 198, n.143 (2008) ("Abandoned and vacant houses have no social value; on the contrary, they present a severe social danger. Moreover, abandoned homes cause significant damage to all surrounding property.").

138. *See* 720 ILL. COMP. STAT. 5/47-5 (1996) (allowing local governments to declare nuisances). In some localities, the police are tasked with enforcing codes and keep a registry of nuisance properties for stricter enforcement and monitoring. *See Use Nuisance List*, DAYTON POLICE DEP'T (outlining the City of

Under the common law, what constitutes a nuisance "eludes precise definition" and "depends on the peculiar facts presented by each case."[139] However, a through line of public nuisance decisions is the fundamental idea that an owner must use their property in a way that does not harm others.[140] The common law limits public nuisances to only those situations where the health and safety of an entire community is put at risk because of a specific property.[141] These are generally extreme cases, such as raw sewage spilling into a public right of way.[142]

While public nuisance receiverships typically use statutory definitions to categorize nuisances, the Supreme Court has used the common law definition in determining takings cases.[143] In

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Dayton, Ohio's nuisance property program which is overseen by the Police Department) [perma.cc/RSF7-WUM6]; *Chronic Problem Properties*, CITY OF S. BEND, IND. (describing the City's nuisance property registry which is overseen by the Police Department) **[**perma.cc/SPS9-UR5X**].** Even without a nuisance property registry, many police departments implement "broken windows policing," which pushes police officers to aggressively enforce minor violations, especially against minority communities. *See Shattering Broken Windows*, COLUM. L. SCH. (April 8, 2015) ("[T]he broken windows theory of criminal justice holds that seemingly minor instances of social and physical disorder in urban spaces can contribute to an atmosphere of lawlessness that encourages more serious crimes.") [perma.cc/U9U7-UPJN].

139. City of Chi. v. Beretta, 821 N.E.2d 1099, 1110 (Ill. 2004) (internal quotations omitted).

140. *See id.* at 1110–11 ("It is well settled, however, that public nuisance encompasses: 'that class of wrongs that arise from the unreasonable, unwarrantable or unlawful use by a person of his own property . . . working an obstruction of, or injury to, a right of another or of the public.'") (quoting H. WOOD, A PRACTICAL TREATISE ON THE LAW OF NUISANCES 1–3 (3d ed. 1893)).

141. *See Nuisance*, LEGAL INFO. INST. ("A public nuisance is when a person unreasonably interferes with a right that the general public shares in common.") [perma.cc/933R-3RDS].

142. *See e.g.*, Town of Delafield v. Sharpley, 568 N.W.2d 779, 780 (Wis. Ct. App. 1997) (enumerating the issues that constituted a public nuisance as "over ninety vehicles in varying degrees of disrepair on the properties; numerous batteries, radiators, junk and other car parts strewn around" as well as appliances); State v. Quality Egg Farm, 104 Wis.2d 506, 508–09 (Wis. 1981) (analyzing whether a farm that produced 15 tons of chicken manure per day was a nuisance to the neighboring homes and school).

143. *See* Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1031–32 (1992).

[A]s it would be required to do if it sought to restrain [Claimant] in a common-law action for public nuisance, South Carolina must identify background principles of nuisance and property law that prohibit the uses he now intends in the circumstances in which the property is presently found. Only on this showing

Lucas v. South Carolina Coastal Council,[144] the Court used the common law definition to determine whether a property was a public nuisance.[145] In carving out a public nuisance exception to the Takings Clause, the court left open the question as to whether public nuisance analyses should use the common law or statutory definition.[146] This unanswered question is vital to nuisance proceedings.[147] As Professors Carol Necole Brown and Dwight H. Merriam have explained, "If the nuisance exception to a categorical *Lucas* taking is limited to only common-law nuisances, then the only nuisances that can defeat a plaintiff's right to compensation under the *Lucas* categorical rule are those long-standing nuisances that we have already agreed on collectively as being nuisances."[148] The use of the common law definition for nuisances prevents state and local governments from creating statutes that would unfairly qualify buildings as nuisances that otherwise would not be.[149]

In the receivership action, the court tasks the receiver with abating the public nuisance.[150] Completion of remediation occurs

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can the State fairly claim that, in proscribing all such beneficial uses, the Beachfront Management Act is taking nothing.

144. *See id.* (defining the common law understanding of public nuisance).

145. *See id.* at 1030–31 (analyzing the "degree of harm to public lands and resources, or adjacent private property, posed by the claimant's proposed activities"); *see also* Carol Necole Brown & Dwight H. Merriam, *On the Twenty-Fifth Anniversary of* Lucas*: Making or Breaking the Takings Claim*, 102 IOWA L. REV. 101, 111 (2017) (explaining Justice Scalia's nuisance analysis using common law principles, as well as criticism in the *Lucas* dissents).

146. *See* Brown & Merriam, *supra* note 145, at 111 ("A second question is whether both statutory nuisances and common-law nuisances count when considering a defense to a *Lucas* claim or, instead, whether common-law nuisances are the only ones that should be considered.").

147. *See id.* at 111–12 (outlining the differences in outcomes that would result when using either the common law or statutory definition).

148. *Id.* at 111.

149. *See id.* at 111.

If statutory nuisances can also defeat a *Lucas* claim, then any legislature can pass nuisance statutes to 'pull the rug' right out from under a plaintiff who has already proven a *Lucas* claim by establishing a total deprivation of economically beneficial or productive use of land as a result of government regulation.

150. *See* WIS. STAT. § 823.23(3) (2010) (giving the receiver the authority to "take possession and control" of the property, "dispose of any or all abandoned

when the issues that made the property a public nuisance no longer exist.[151] This would include compliance with local building codes, if the structure is unsafe or attracting threats to public safety, or environmental codes, if there are issues with vegetation on the property.[152]

3. *How Receiverships Impact Property*

Receiverships can impact the property itself in a variety of ways. At a minimum, the introduction of a receiver leads to a temporary occupation of the property.[153] Ultimately, may even result in the sale of the property, thus dispossessing the owner.[154]

In order to complete the remediation, a receiver will need to occupy the property for the duration of the construction.[155] Receiverships themselves are temporary as some are only necessary until the property has been brought up to code and the nuisance has been abated.[156]

Some state statutes mandate that the receiver's lien supersedes other liens on the property. Indiana, Wisconsin, Pennsylvania, and Michigan require that the receiver's priority is second only to taxes.[157] The Ohio statute places the receiver's lien

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personal property," and "enter into contracts and pay for performance of any work necessary to complete the abatement.").

151. *See id.* at § (7)(b)(1) (listing one of the requirements for termination as "that the abatement has been completed.").

152. *See e.g.,* Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co., 254 Wis.2d 77, 141–42 (Wis. 2002) (finding that a stop sign obstructed by tree branches was a public nuisance as it was created a safety risk for drivers and pedestrians).

153. *See* WIS. STAT. § 823.23(3)(a)(1) (2010) (A receiver . . . shall have the authority to . . . : 1. Take possession and control of the residential property including the right to enter into and terminate tenancies, manage and maintain the property . . . charge and collect rents derived from the residential property . . . .").

154. *See* Lacey, *supra* note 1, at app. (listing states that allow for the sale or foreclosure of a property in receivership).

155. *See* WIS. STAT. § 823.23(3)(a)(1) (2010) (giving the receiver to "take possession and control" of the property).

156. *See* WIS. STAT. § 823.23(7) (2010) (detailing conditions for termination of the receivership).

157. *See* IND. CODE § 36-7-9-20 (2003); WIS. STAT. § 823.23 (2010); 68 PA. CONS. STAT. § 1101 (2009); MICH. COMP. LAWS § 125.535 (1968).

even above taxes, at the very highest priority.[158] This bumps other lienholders, such as the mortgager to a lower priority and makes it less likely they will be able to recoup the money they have loaned.[159]

Some state statutes allow the receiver to sell the property in their capacity as a receiver.[160] At the termination of the receivership, the court could direct the receiver to return the property to its original owner or sell the property.[161] The proceeds from the sale would be used to repay the liens on the property.[162] Since the liens have been reordered to place the receiver at or near the top, the receiver is more likely to get their money back than other lienholders.[163]

D. Local Governments Use Public Nuisance Receiverships to Efficiently Conduct Redevelopment.

1. Local Governments Use Public Nuisance Receiverships in Order to More Efficiently Use Time and Money.

Governments may want to undergo the receivership process rather than a traditional condemnation for a several reasons. First, receiverships tend to be more a more efficient for the abatement of the nuisance property.[164] Because the property never

158. OHIO REV. CODE ANN. § 3767.41 (2023).

159. *See* Lacey, *supra* note 1, at 136 (explaining that liens must be repaid in order of priority).

160. *See* OHIO REV. CODE ANN. § 3767.41(I)(1) (2023) (allowing the sale of a property after completion of remediation).

161. *See id. at* §§ 3767.41(I)(1)–(3) (outlining the procedure the court must follow to determine whether a property should be sold or not).

162. *See* 68 PA. CONS. STAT. § 1110(2) (2009) (allowing for termination of a receivership if "all obligations, expenses and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for").

163. *See* Lacey, *supra* note 1, at 136 (explaining that liens must be repaid in order of priority).

164. *See* Griffith et al., *supra* note 102, at 5 (describing eminent domain as a "costly, litigious, and difficult" and noting significant costs, as well as the difficulty in recovery, associated with demolishing a building). Receiverships can also be faster than other property transfer processes, such as quiet title which can

comes into their possession, local governments would be able to allocate fewer resources to the project, as long as the government is not the receiver.[165] This process results in a lower financial cost and lower overall involvement from the government.[166]

Second, receiverships could be viewed by local governments as a way to enforce remediation, and facilitate redevelopment, without using taxpayer money.[167] Receiverships are cost-neutral to the government, as a private receiver would undertake the initial cost of remediation and the financial burden would shift to the property itself.[168] Traditional uses of eminent domain powers or demolishing public nuisance properties can lead to years of costly litigation and may not actually help the neighborhood.[169]

2. Public Nuisance Receiverships are Framed as and Used as Tools of Redevelopment.

Public nuisance receivership statutes are meant to deal with serious code violations to protect the health and safety of surrounding residents.[170] Receiverships also have the potential to facilitate redevelopment by increasing property values, as abating a nuisance property alleviates the depression caused by that

take longer for a less unsatisfactory result. *See* Will Kenton, *Quiet Title Action: Definition, How It Works, Uses, and Costs*, INVESTOPEDIA (last updated Sept. 15, 2022) (describing the costs and benefits of quiet title actions) [perma.cc/EQ66-RDP5].

165. *See* Griffith et al., *supra* note 102, at 6 ("Cities are not responsible for paying receivers. A receiver is a neutral agent of the court and cannot be paid by any of the parties.").

166. *See id.* at 6–7 ("[N]ot only is the receivership cost neutral, but the city may also recover the administrative costs it incurs in the normal course of practice.").

167. *See id.* ("Most importantly, the once dilapidated property is abated and even assessed with a new tax base, which generates increased revenue for years to come.").

168. *See id.* at 6 (noting that receivers are paid through the property, not the government).

169. *See id.* at 5 (describing the longevity and cost that the City of New London went through in litigating an eminent domain claim in *Kelo v. City of New London*).

170. *See* Griffith et al., *supra* note 102, at 5 (explaining that public nuisance receiverships are able to deal with issues that result in nuisance properties such as deceased owners, zombie foreclosures, bankrupt owners, or slumlords).

nuisance.[171] By increasing property values and making neighborhoods more attractive, receiverships can be used to attract suburban residents to a city or to convince city-dwellers to stay.[172] Scholars have encouraged Rust Belt cities to take advantage of these receivership statutes in order to facilitate the redevelopment of abandoned or nuisance properties.[173]

While the goals of receiverships are certainly admirable, they also track with other government acts that can harm individuals and neighborhoods. The process of a public nuisance receivership mirrors that of condemnations and other exercises of the state's eminent domain powers. Traditionally, these kinds of acts disproportionately negatively impact groups that are already vulnerable.[174] Low-income households, renters, and minority racial groups are all at a disadvantage in these actions.[175]

Public nuisance receiverships are not exempt from this criticism, as they target owners who have already proven themselves incapable of handling repairs on their own.[176] While

171. *See id.* at 1 (listing the negative impacts that nuisance properties can have on a neighborhood, such as decreasing property values and draining municipal resources).

172. *See* James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 14 J. OF AFFORDABLE HOUS. & CMTY. DEV. L. 210, 215 (2004) ("[I]f the neighborhood were to become attractive suddenly, the former resident could reap a gain on resale right along with the speculator.").

173. *See id.* at 224–25 (arguing that the utilization of receivership actions would give the City of Baltimore an avenue for "community empowerment" through investments from large-scale developers); Samsa, *supra* note 137, at 201–13 (recommending that the City of Cleveland, Ohio take advantage of public nuisance suits in order to facilitate neighborhood redevelopment); Lacey, *supra* note 1, at 134–35 (outlining the benefits of receivership as a tool for redevelopment).

174. *See* Paul Bourdreaux, *Eminent Domain, Property Rights, and the Solution of Representation Reinforcement*, 83 DENVER U. L. REV. 1, 2 (2005) ("[A]dvocates for the poor argue that businesses with political and financial clout often are able to sway local governments into taking land (with monetary compensation, of course) from less powerful persons, including racial minorities, and then giving it to more influential groups, under the guise of economic growth.").

175. *See id.* at 25–26 (listing four eminent domain scenarios that are facially color-blind, but target minority communities).

176. *See* City of Fontana v. U.S. Bank, No. E076228, 2022 WL 1043647, at *1–2 (Cal. Ct. App. Apr. 7, 2022) ("The receiver's fees and the prevailing party's

the process is meant to be a temporary occupation to conduct repairs, the cost of a receivership can drive owners out and result in the permanent loss of their property.[177]

IV. Background of the Fifth Amendment Takings Clause

For cases regarding government interference with private property, the Fifth Amendment's Takings Clause of the U.S. Constitutions governs. The Clause guarantees that "private property [shall not] be taken for public use, without just compensation."[178] The Fifth Amendment requires (1) a taking, (2) for a public purpose, for which the government (3) must pay just compensation.[179] This is meant to protect the property rights of private citizens and the precedent in this area has generally focused on privately owned real property.[180]

A. *Physical Takings*

There are two main channels by which the government may conduct a taking, a physical seizure of the property and the restriction of use of a property.[181] The first form, physical takings, occur when the government interferes with the owner's right to exclude others from their property.[182] "These sorts of physical

attorney fees are within the costs authorized by [the statute]. Therefore, both [the receiver] and the City were properly given priority over the Bank.").

177. *See id.* at *1 (describing how the trial court "authorized the receiver to hire a real estate agent to list the House for sale in as-is condition").

178. U.S. CONST. amend. V.

179. *Id.*

180. *Condemnation*, LEGAL INFO. INST. (last updated July 2022) [hereinafter *Condemnation*] [perma.cc/X5NH-R2CF].

181. *See Takings*, LEGAL INFO. INST. (clarifying that "the taking may be physical, which means that the government literally takes the property from its owner" or "constructive (also called a regulatory taking), which means that the government restricts the owner's rights so much that the governmental action becomes the functional equivalent of a physical seizure") [perma.cc/NT24-KXXH]. Regulatory takings are not within the scope of this Note, as they are largely inapplicable to public nuisance receiverships.

182. *See* Cedar Point Nursery v. Hassid, 141 S. Ct. 2063, 2072 (2021) ("The right to exclude is 'one of the most treasured' rights of property ownership.")

appropriations constitute the clearest sort of taking"[183] and are unconstitutional without just compensation to the owner.[184] Physical takings are assessed under a per se rule: "The government must pay for what it takes."[185]

B. The Definition of "Public Purpose" Has Expanded in Supreme Court Jurisprudence.

In the Fifth Amendment, the Constitution requires that the land taken by the government goes to a "public use."[186] Traditionally, "public use" only encompassed purposes that directly served the public, such as a park, highway, or government building.[187] However, the Supreme Court has given this term increasing flexibility for redevelopment initiatives.[188]

In the 1953 Supreme Court case *Berman v. Parker*,[189] the petitioners argued that "[T]o take for the purpose of ridding the area of slums is one thing; it is quite another . . . to take a man's property merely to develop a better balanced, more attractive community."[190] The Court disagreed, upholding legislation which subjected occupied, non-nuisance property to condemnation based on the property's location.[191] The Court allowed the legislative

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(quoting Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 (1982)).

183. *Id.* at 2071.

184. U.S. CONST. amend. V.

185. *Cedar Point Nursery*, 141 S. Ct. at 2071.

186. U.S. CONST. amend. V.

187. *See Public Use*, JUSTIA ("[T]he prevailing judicial view was that the term "public use" was synonymous with "use by the public" and that if there was no duty upon the taker to permit the public as of right to use or enjoy the property taken, the taking was invalid.") [perma.cc/72VX-PPWJ].

188. *See* Berman v. Parker, 348 U.S. 26, 32–33 (1954) ("We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects."); Kelo v. New London, 545 U.S. 469, 488–90 (holding that the City's economic redevelopment plans were for a public use in accordance with the Fifth Amendment).

189. 348 U.S. 26 (1954).

190. *Id.* at 31.

191. *See id.* at 36 ("We think the standards prescribed were adequate for executing the plan to eliminate not only slums as narrowly defined by the District Court but also the blighted areas that tend to produce slums. Property may of

branch to take into account health, as well as aesthetic considerations, in redevelopment plans.[192]

The Supreme Court continued to expand the definition of "public use" in the landmark 2005 case, *Kelo v. City of New London*.[193] This decision allowed the City to take private property from one party and transfer it to another for redevelopment purposes.[194] The Supreme Court accepted the City's reasoning and held that this kind of redevelopment was a "public purpose" which is allowed under the Takings Clause.[195]

This decision was widely unpopular nationally across political, racial, class, and geographic lines.[196] The vagueness of "public purpose" and "redevelopment" caused unease as it would seem to allow takings for purely economic purposes.[197] Writing a concurrence in part for *Kelo* at the Connecticut Supreme Court, Justice Zarella stated: "Growing fears regarding the potential abuse of the eminent domain power cannot be dismissed as idle speculation on the part of commentators. As municipalities increasingly struggle to provide public services with limited financial resources, governmental authorities are encouraging more intensive economic development to generate additional tax

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course be taken for this redevelopment which, standing by itself, is innocuous and unoffending.").

192. *See id.* ("It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.").

193. 545 U.S. 469 (2005).

194. *See id.* at 478 ("[T]his is not a case in which the City is planning to open the condemned land . . . to use by the general public. Nor will the private lessees of the land in any sense be required to operate like common carriers, making their services available to all comers.").

195. *See id.* at 484 ("Because [the City's] plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.").

196. *See* Ilya Somin, Opinion, *The Political and Judicial Reaction to Kelo*, WASH. POST (June 4, 2015) ("The opposition cut across conventional partisan, ideological, racial, and gender divisions. This was a rare issue on which Rush Limbaugh, Ralph Nader, libertarians, and the NAACP were all on the same side.") [perma.cc/Q4W2-7S62].

197. *See* Kelo v. City of New London, 843 A.2d 500, 581 (Conn. 2004), *aff'd*, 545 U.S. 489 (2005), (Zarella, J., concurring in part and dissenting in part) ("Accordingly, there is a gathering storm of public debate as to whether the use of eminent domain to acquire property for private economic development in nonblighted areas is justified.").

revenue, to create new jobs and to jump start local economies."[198] Justice Sandra Day O'Connor also vocalized many people's fears in her dissent from *Kelo*, writing that "[n]othing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."[199]

The backlash to the *Kelo* decision was swift, with a majority of states passing Anti-*Kelo* legislation or even state constitutional amendments in the mid- to late-2000s.[200] The goal of these statutes was to limit the impacts of the *Kelo* decision by explicitly defining the properties that can be subject to a government taking, what purposes the property may be used for, and how the takings process would work moving forward.[201] For instance, Georgia's new law stated that economic development was not a "public use."[202] South Dakota banned the use of eminent domain "for transfer of any private person, nongovernmental entity, or other public-private business entity."[203] However, some of these anti-*Kelo* reforms turned out to be less substantial than as originally advertised.[204] Broad definitions and numerous exceptions included in the legislation allowed for condemnations to continue in largely the same manner as under *Kelo*.[205]

198. *Id.* at 581 (Zarella, J., concurring in part and dissenting in part).

199. *Kelo*, 545 U.S. at 503 (2005) (O'Connor, J., dissenting).

200. *See* Somin, *supra* note 196 ("As a result of this upsurge of popular anger, some 45 states have enacted eminent domain reform laws in the ten years since *Kelo* (most in the first three years after the ruling)."); Andrew P. Morriss, *Symbol or Substance? An Empirical Assessment of State Responses to* Kelo, 17 S. CT. ECON. REV. 237, 239–40 ("In the two years after the June 23, 2005 decision, legislation to restrict eminent domain powers was introduced in forty-six states, with multiple bills in many states, and forty-two states enacted legislation or constitutional amendments restricting the use of eminent domain.").

201. *See* Morriss, *supra* note 200, at 240–41 (discussing different approaches that states took in amending and introducing legislation to protect private property rights).

202. *See* GA. CODE ANN. 22-1-9(B) (2006) ("The public benefit of economic development shall not constitute a public use.")

203. S.D. CODIFIED LAWS § 11-7-22.1 (2006).

204. *See* Morriss, *supra* note 200, at 248–49 (attributing lack of substance in the Kelo backlash to voters' ignorance about eminent domain reforms and internal compromise within state legislatures).

205. *See id.* at 240 (describing how some legislation "no significant change in the substantive constraints on the exercise of eminent domain powers by the state or local governments").

Backlash, both in state legislatures and the general public, followed the expansion of the "public use" definition.[206] Advocates on both the left and the right have decried the gradual allowance by the Supreme Court of interference with private property rights.[207] The government's justification of redevelopment has left a bad taste in the mouths of those who value private property rights, as well as those who recognize the disparate impacts that eminent domain has on vulnerable communities.[208]

C. Just Compensation is Required by the Fifth Amendment.

Condemnation is the process by which the government exercises its takings power.[209] This is incorporated on the states through the Fourteenth Amendment, allowing all levels of government, from local to federal, to exercise this power.[210] The federal government is required by the Fifth Amendment to provide just compensation for a taking.[211] This is generally understood to be the fair market value of the property.[212] While this federal requirement sets the floor, state and local laws may vary, potentially increasing the amount that must be paid to the owner whose property right have been taken.[213]

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206. *See* Jonathan V. Last, *The Kelo Backlash*, CBS NEWS (Aug. 18, 2006) ("The Kelo decision attracted much attention and prompted state governments to rebuild protections the Supreme Court had obliterated.") [perma.cc/RB4A-MTL5].

207. *See id.* ("[T]here is no grassroots support for the expansive view of eminent domain. There are no citizen or corporate groups lined up to defend public seizures of private property.").

208. *See id.* (describing the limitations on eminent domain, such as in Georgia and South Dakota, to limit the practice to facilitate redevelopment).

209. *See id.* ("Condemnation in the legal sense refers to when a government exercises its eminent domain powers to seize private property for public use.").

210. *See* Chi., Burlington & Quincy R.R. Co. v. City of Chi., 166 U.S. 226, 255–56 (1897) (applying the Fifth Amendment's Takings Clause to the operation of a railroad in Chicago, Illinois).

211. U.S. CONST. amend. V.

212. *See Condemnation*, *supra* note 180 ("Generally, just compensation is determined by the fair market value of the condemned property.").

213. *See*, *e.g.*, MICH. CONST. art. X, § 2 ("If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125%

While takings jurisprudence is complex, the foundation is clear. The government may only invade private property for a public purpose, and the owner of that private property must be compensated.[214] Public nuisance receiverships fall under this basic construct of a taking.[215]

D. The Public Nuisance Exception

A major exception to the Takings Clause is the condemnation for public nuisances.[216] In a public nuisance condemnation, the state is not required to provide just compensation.[217] The Supreme Court has held that a legislature may use its police power to redevelop areas that have been designated as "blighted."[218] This can include aesthetic considerations, as well as the more standard health and safety reasoning.[219] As the Court noted in *Berman v. Parker*,[220] "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[221]

The state exercises its police power when addressing a public nuisance – a power which is notoriously hard to define.[222] In the

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of that property's fair market value, in addition to any other reimbursement allowed by law.").

214. *See* U.S. CONST. amend. V. ("[N]or shall private property be taken for public use, without just compensation.")

215. *Infra* Part V.

216. *See* Berman v. Parker, 348 U.S. 26, 33 (1954) ("If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.").

217. *See* Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1022 (1992) (stating that the State may use its police powers to "enjoin a property owner from activities akin to public nuisances").

218. *See Berman*, 348 U.S. at 35 ("Property may of course be taken for this redevelopment which, standing by itself, is innocuous and unoffending.").

219. *See id.* at 33 ("The values it represents are spiritual as well as physical, aesthetic as well as monetary.").

220. 348 U.S. 26 (1954).

221. *Id.* at 33.

222. *See* Berman v. Parker, 348 U.S. 26, 32 (1954) ("An attempt to define its reach or trace its outer limits is fruitless, for each must turn on its own facts.").

interest of protecting the public, the Court has given the government somewhat wide latitude for abating nuisances.[223]

However, courts have also restricted the government's power by using a common-law definition for nuisance in takings cases.[224] As discussed previously, showing that a property is a common law nuisance is much more difficult than showing a statutory nuisance.[225] The common law acts as the floor, upon which statutes, regulations, and ordinances build.[226]

V. Public Nuisance Receiverships Violate the Fifth Amendment's Takings Clause.

As public nuisance receiverships involve physical invasions of private property for a purported public purpose, they are best analyzed under the Fifth Amendment's Takings Clause. Despite arguments that they fall under due process or the public nuisance exception, these receiverships represent takings of private property by the government.

A. *The Public Nuisance Exception Does Not Apply to Public Nuisance Receiverships.*

Advocates for expanded use of public nuisance receiverships argue that property transfers under receiverships fall under the public nuisance exception to the Fifth Amendment's Takings Clause.[227] According to this argument, creating a public nuisance

223. *See id.* at 33 ("Here one of the means chosen is the use of private enterprise for redevelopment of the area . . . But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established.")

224. *See* Samsa, *supra* note 137, at 209–10 ("[Complying with the Fifth Amendment's ban on takings] can be accomplished by allowing the defendant property owner and creditor lienholders an opportunity to redeem the property before rehabilitation, by abating the nuisance personally, or after rehabilitation, by paying the costs of the repairs and reclaiming the property."); Kelly, *supra* note 173, at 218 (arguing that giving notice and opportunity for the owner to act satisfies the Due Process Clause).

225. *Supra* Part III.C.2.

226. *Id.*

227. *See e.g.*, Lacey, *supra* note 1, at 141–42 (stating that the requirement to notify lienholders of potential receivership and allowed owners to show "just

is not within a property owner's rights, so the abatement of a nuisance cannot be an infringement on those rights.[228]

In takings cases, courts have deferred to the common law definition of "nuisance" in determining whether a property rises to the level of this exception.[229] The bar for common law nuisance is very high.[230] Many public nuisance statutes have much lower requirements, which courts are unlikely to see as qualifying for the nuisance exception.[231] For instance, when the City of Seattle tried to condemn a restaurant for a violation of a drug nuisance statute, the court found that the City had actually undertaken a temporary takings.[232] Even though there was drug activity in the restaurant,

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cause" as to why a receiver should not be appointed eliminated Constitutional issues with public nuisance receiverships). Some proponents of public nuisance receiverships also argue that they fall under the Due Process Clause of the Fourteenth Amendment. *See e.g.*, Griffith, *supra* note 36, at 54 ("However, if voluntary compliance is not achieved, then due process is satisfied before a court takes the drastic step of appointing a receiver."). However, using the cover of due process mischaracterizes the goals and impact of public nuisance receivership. This framing contradicts the overall character of the law, which is often pitched as a tool for redevelopment. *See* Kelly, *supra* note 173, at 216–19 (encouraging Baltimore to engage in redevelopment by utilizing public nuisance receiverships). While redevelopment is an appropriate goal for a local or state government generally speaking, it is historically analyzed under the Takings Clause. *See* Kelo v. City of New London, 545 U.S. 469, 2664–68 (2005) (determining that economic development was an appropriate public purpose under the Takings Clause); Berman v. Parker, 348 U.S. 26, 35 (viewing Congress's major redevelopment plan for Washington, D.C. under the lens of takings).

228. See Kelly *supra* note 173, at 221 (noting that in Justice Scalia's *Lucas* opinion he wrote that "the rationale for a total taking must arise from the need to prohibit some activity that was *never* properly part of the owner's legitimate rights of ownership.") (emphasis in original).

229. *See* City of Seattle v. McCoy, 4 P.3d 159, 167 (Wash. Ct. App. 2000) (discussing a takings case in terms of common law nuisance).

230. *See id.* at 174 (finding that a restaurant was not a common law nuisance because the owners had taken reasonable steps to abate the illegal drug activities); *see also* State *ex rel.* Pizza v. Rezcallah, 702 N.E.2d 81,132 (Ohio 1998) (finding that property owners had taken good faith efforts to investigate and remove residents using illicit substances and so the property was not a nuisance under the common law).

231. *See* Brown & Merriam, *supra* note 145, at 116 ("[W]hen courts perceive that the statutory nuisance defenses are weak or unsupported, sometimes because they are inconsistent with common-law nuisance principles, then the likely result is that the *Lucas* claim will be successful.").

232. *See McCoy*, 4 P.3d at 171–72 ("The common law nuisance exception turns on whether the court finds, based on the evidence, that the owner has taken reasonable steps to abate the nuisance activity based upon the actual or

the owners were running a legal business and had taken reasonable steps to abate the illegal acts of patrons.[233] This reasonableness standard is much more forgiving to property owners than statutes, making it harder to qualify a property as a public nuisance.[234]

In arguing that public nuisance receiverships fall under the Fifth Amendment's public nuisance exception, proponents ignore the vast difference between a statutory nuisance and a common law nuisance. Courts favor a common law definition in takings cases, which many nuisance statutes do not meet.[235]

B. Public Nuisance Receiverships Are a Taking Under the Fifth Amendment.

If analyzed appropriately under the Fifth Amendment, public nuisance receiverships constitute a taking. Public nuisance receiverships take away the owner's right to exclude, as the court orders a third party to enter the property.[236] Often, the government is the party petitioning for this court-ordered invasion of private property.[237] In many states, the government can act as the receiver.[238] In this process the government petitions the court to

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constructive knowledge of the owner about the existence of the activity and/or the identity of the actor.").

233. *See id.* ("The McCoys' actions were found reasonable. Therefore, the City has not met its burden, under *Lucas,* of establishing a common law nuisance exception to the taking of the McCoys' property.").

234. *See* Brown & Merriam, *supra* note 145, at 116–17, 119 ("[W]hen courts perceive that the statutory nuisance defenses are weak or unsupported, sometimes because they are inconsistent with common-law nuisance principles, then the likely result is that the Lucas claim will be successful.").

235. *See id.* at 116–19 (describing cases in which the court did not accept a statutory definition as meeting the threshold for a public nuisance exception).

236. *See* Cedar Point Nursery v. Hassid, 141 S. Ct. 2063, 2072–73 (2021) ("Given the central importance to property ownership of the right to exclude, it comes as little surprise that the Court has long treated government-authorized physical invasions as takings requiring just compensation. The Court has often described the property interest taken as a servitude or an easement.").

237. *See e.g.*, MICH. COMP. LAWS § 125.534(1) (2003) (listing the "enforcing agency" as the only party eligible to commence a receivership action).

238. *See id.* at § 125.535(2) (1968) ("When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency . . . as receiver.").

appoint itself as a possessor of the property. This temporary taking can result in the original owner's complete loss of ownership, which moves the action into a total taking by the government.[239]

1. *Public Nuisance Receiverships Are a Total Physical Takings When the Property is Sold or a Foreclosure Occurs.*

Public nuisance receiverships could qualify as a total physical taking in multiple situations. In a total taking, the government has taken all property interests from the original owner.[240] A total taking would occur when the property is sold by the receiver, as is allowed under some state statutes.[241] In these states, the receiver is allowed to sell the property without the consent of the owner.[242] This proceeding is fundamentally a taking, as the state legislature and the court have allowed a third party to fully alienate the owner from their property without their consent.

Even when the statute may prevent a sale by the receiver, the owner may still be foreclosed on or can be forced to sell the property to repay the debt incurred by the receiver.[243] If the owner is unable to repay the receiver's costs immediately, those expenses are added to the property as a lien.[244] This is in addition to liens that already exist on the property, such as a mortgage, and often takes highest

239. *See e.g., id.* at § 125.534(7) (2004) (providing for the receiver's foreclosure on the property).

240. *See* Lynn E. Blais, *The Total Takings Myth*, 86 FORDHAM L. REV. 47, 53–59 (2017) (listing takings in which the property owner has lost all interest and must be compensated for the taking).

241. *See e.g.*, 68 PA. CONS. STAT. § 1109 (2014).

Upon application of the conservator, the court may order the sale of the property if the court finds that: (1) Notice and an opportunity to provide comment to the court was given to each record owner of the property and each lienholder. (2) The conservator has been in control of the building for more than three months and the owner has not successfully petitioned to terminate the conservatorship under section 10. (3) The terms and conditions of the sale are acceptable to the court, and the buyer has a reasonable likelihood of maintaining the property.

242. *See id.* (requiring only notice to lienholders to sell the property).

243. IND. CODE. ANN. § 36-7-9-20 (2003).

244. *See* WIS. STAT. § 823.23(5)(b) (2010) (imposing a judgement for the unpaid amount which "shall constitute a lien on the residential property").

priority among the existing liens.[245] This additional cost may be too much for an owner who has already shown themselves incapable of completing the necessary repairs.[246] The piling on of costs would cause an owner with limited or no income to fall behind on payments, forcing a sale by the owner or a foreclosure by a lienor.[247]

As the receiver is a lienor, some states allow for the receiver themselves to foreclose on a property in order to recoup their costs.[248] When the receiver forecloses, there is a judicial sale of the property to the receiver, making them the permanent owner.[249] A property with liens is generally unattractive to potential buyers, as they are an additional cost to be paid upon sale.

2. Public Nuisance Receiverships are a Temporary Taking.

Another possibility is that a temporary occupation in the form of a public receivership qualifies as a taking, even though it is not permanent. Takings jurisprudence has been expanded under *Cedar Point Nursery v. Hassid*,[250] in which the court ruled that a statute requiring landowners to allow labor organizers limited entrance was a taking in the form of an easement.[251] The Court

245. *See* Lacey *supra* note 1, at app. (laying out the state statutes that place receivers at the highest lien priority, including Missouri, Ohio, and Virginia).

246. *See* City of Fontana v. U.S. Bank, No. E076228, 2022 WL 1043647, at *1–2 (Cal. Ct. App. Apr. 7, 2022) (describing the situation of the property owners who were foreclosed on because they were unable to afford to keep their house after the installment of a receiver).

247. *See* Lacey, *supra* note 1, at 136 ("At termination, a court may direct a receiver to return the assets to the owner or sell them to satisfy debts").

248. *See* MICH. COMP. LAWS § 125.534(7) (2003) (allowing the court to order a foreclosure of the receiver's lien).

249. *See* James Chen, *What is Foreclosure?*, INVESTOPEDIA (last updated March 28, 2022) (Foreclosure is the legal process by which a lender attempts to recover the amount owed on a defaulted loan by taking ownership of the mortgaged property and selling it.").

250. 141 S. Ct. 2063 (2021).

251. *See id.* at 2079–80 ("The access regulation amounts to a simple appropriation of private property.").

invoked a *per se* rule – that the government must compensate the owner for a physical invasion of their property.[252]

In public nuisance receiverships, receivers are charged with fixing the property which necessarily requires the receiver, or an agent of the receiver, to physically enter the property.[253] The court-ordered invasion of the property that occurs during a public nuisance receivership, especially if petitioned by the government, closely mirrors fact pattern of *Cedar Point Nursery*.[254] These invasions are done without the consent of the property owner, as it is a court order. The owners right to exclude, the most important of the rights held by a property owner, has been cast aside.[255]

While the appointed receiver may not be a government entity, this does not break a takings claim. In *Cedar Point Nursery*, the people entering the private property were labor organizers authorized to enter by state law, not government officials.[256] The Court in *Cedar Point Nursery* found that an invasion by a non-government official for a few hours within a limited window of days mandated just compensation.[257] The labor organizers did not spend very long on the farms, pushing this action into the temporary rather than permanent sphere. Additionally, the organizers did not occupy the whole property for any amount of time, making this more in the realm of a partial taking rather than a full taking. If an invasion as limited in time and space as the one in *Cedar Point*

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252. *See id.* at 2079 ("None of these considerations undermine our determination that the access regulation here gives rise to a *per se* physical taking.")

253. *See* WIS. STAT. § 823.23(3)(a)(1) (2010) ("A receiver . . . shall have the authority to . . . : 1. Take possession and control of the residential property . . . .").

254. 141 S. Ct. 2063 (2021).

255. *See id*. at 2072.

The access regulation appropriates a right to invade the growers' property and therefore constitutes a *per se* physical taking. The regulation grants union organizers a right to physically enter and occupy the growers' land for three hours per day, 120 days per year. Rather than restraining the growers' use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude.

256. *See id.* at 2069 ("A California regulation grants labor organizations a 'right to take access' to an agricultural employer's property in order to solicit support for unionization.").

257. *See id.* (stating that the union organizers' entry was limited for up to three hours per day for 120 days of the year).

Nursery invokes the *per se* rule, a public nuisance receivership certainly requires just compensation to the owner.

C. Public Nuisance Receiverships Conflict with Anti-Kelo Amendments.

In addition to issues with the Fifth Amendment, public nuisance receiverships also conflict with the backlash to the decision in *Kelo v. City of New London*.[258] The central issue in *Kelo* was whether redevelopment was a suitable motivation for a taking.[259] Receiverships are being used as a tool of redevelopment by local governments which is what Anti-*Kelo* legislation and amendments seek to avoid.[260] The economic motivation for redevelopment in the takings of the *Kelo* case mirrors the motivations for public nuisance receiverships.

Shortly after *Kelo* was decided, the Ohio Supreme Court rejected the precedent in interpreting their state constitution.[261] In *City of Norwood v. Horney*,[262] the State Supreme Court ruled that a taking where the public benefit was purely economic does not satisfy the public use requirement of the Ohio Constitution.[263] The opinion emphasizes the lack of support the Supreme Court's

258. 545 U.S. 469 (2005).

259. *See id.* at 472 ("The question presented is whether the city's proposed disposition of this property qualifies as a 'public use' within the meaning of the Takings Clause of the Fifth Amendment to the Constitution.").

260. *See e.g.*, Griffith *supra* note 102, at 6–7 (proposing public nuisance receiverships as a cost-neutral option for local governments to conduct redevelopment).

261. *See* Ian Urbina, *Ohio Supreme Court Rejects Taking Homes for Project*, N.Y. TIMES (July 27, 2006) ("The Ohio Supreme Court ruled unanimously yesterday that a Cincinnati suburb cannot take private property by eminent domain for a $125 million redevelopment project.") [perma.cc/P5GX-TYNZ].

262. 853 N.E.2d 1115 (Oh. 2006).

263. *See id.* at 1123 ("We hold that although economic factors may be considered in determining whether private property may be appropriated, the fact that the appropriation would provide an economic benefit to the government and community, standing alone, does not satisfy the public-use requirement of Section 19, Article I of the Ohio Constitution.").

decision had across the country, as it explicitly reacted to *Kelo*'s perceived infringement on personal property rights.[264]

While abating public nuisances is well within the government's police power to protect health and safety, these receiverships are both framed and used as an economic redevelopment tool.[265] Possession of the property is transferred from one private party, the original owner, to either the government or another private party, such as a developer, with the goal of revitalizing the surrounding area.[266] While the intentions of these actions may be proper under *Kelo*, they closely reflect the type of action that caused a major backlash after that decision. Continuing to conduct public nuisance receiverships with the goal of redevelopment flies the face of Anti-*Kelo* legislation and amendments to state constitutions.

D. Public Nuisance Receivership Statutes Either Empower Neighborhoods or Imitate Takings by the Government.

The variety in statutory provisions brings out themes in reasoning and goals. One goal appears to be focused on empowering neighborhoods and the communities around them and some of these statutes fall much more in line with the use of receivership as a takings or an exercise of police power. This comes through in at least three different dimensions of public nuisance receiverships: (1) what persons or entities are allowed to petition the court to commence a receivership action, (2) who is allowed to act as the receiver, and (3) what powers the court grants the receiver.

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264. *See id.* at 1122–23 (discussing the relevance of the recent *Kelo* decision, the Ohio legislature's rejection of the decision, and the social and legal issues raised by *Kelo*).

265. *See* Kelly, *supra* note 173, at 219 (acknowledging that public nuisance receiverships are used for redevelopment, which is similar to eminent domain).

266. *See id.* at 211, 215 (promoting the use of private investment in receivership actions and observing that "renovation of the property appears to require a change in ownership").

These diverging themes are apparent when comparing the statutes of Michigan,[267] which resembles a taking, and Illinois,[268] which is more community-based. In Michigan only the government is allowed to act as petitioner to commence a receivership action[269] and is also specifically listed as an entity that may act as the receiver.[270]

This much more closely resembles a taking, as the government is petitioning the court to have the property transferred to itself, rather than an entity that would privately remediate the property. In contrast, Illinois only allows a nonprofit to act as the petitioner and only the petitioner may act as the receiver.[271] This places the property in the hands of an organization meant to serve the community.[272]

Additionally, in Michigan the existence of occupants does not matter to the receivership process[273] while only unoccupied buildings may be placed into receivership in Illinois.[274] This further emphasizes Illinois' commitment to using the receivership process as a community benefit. By requiring that the building not be occupied, the statute avoids displacing residents or renters. Illinois also prevents the sale of the property, while Michigan allows for foreclosure on the property.[275]

In comparing the statutes of Illinois and Michigan, the Michigan statute looks much more analogous to a takings, while the Illinois statute emphasizes community investment. The

267. MICH. COMP. LAWS § 125.535 (1968).

268. 310 ILL. COMP. STAT. 50 (1988).

269. Lacey, *supra* note 1, at app.

270. *See* MICH. COMP. LAWS § 125.535 (1968) ("When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency or officer, or any competent person, as receiver.").

271. 310 ILL. COMP. STAT. 50/3 (1988).

272. *See id.* at § 50/2(c) (defining organization as "any Illinois corporation, agency, partnership, association, firm or other entity consisting of 2 or more persons organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of its operation which has among its purposes the improvement of housing").

273. Lacey, *supra* note 1, at app.

274. *Id.*

275. *Id.*

framing of the Illinois statute more effectively serves the community surrounding the property.

VI. Solution

A. Considerations for Solution

1. The Positive Aspects of Receiverships Should Be Preserved in a Solution.

While public nuisance receiverships can be a valuable tool in the arsenal of state and local governments to address the problems of abandoned and decaying housing stock, there are numerous opportunities for reform to improve them. Notably, in crafting statutes that do not violate the Fifth Amendment, lawmakers should not cast aside the positives of current public nuisance receivership statutes. In states that allow a property's tenant to act as the petitioner, a renter is afforded more protection against a landlord who has not adequately maintained their property.[276] These provisions allow a tenant to act as a petitioner and gives them more recourse against an unsatisfactory landlord, which helps to correct the power imbalance between landlord and tenant.[277]

For statutes that allow non-profits to act as petitioners and receivers, the emphasis on community involvement takes the process outside of purely economic development. Specifically the Illinois public nuisance receivership statute,[278] which reinforces community involvement should be the model for statutes nation-wide. These statutes serve the purpose of revitalizing and protecting the neighborhood while avoiding a government taking of the property.

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276. OHIO REV. CODE ANN. § 3767.41(B)(1)(a) (2023).

277. *See* Robin M. White, *Increasing Substantive Fairness and Mitigating Social Costs in Eviction Proceedings: Instituting a Civil Right to Counsel for Indigent Tenants in Pennsylvania*, 125 DICK. L. REV. 795, 801–02 (outlining concerns related to landlords' power in the eviction process and tenants' lack of resources).

278. 310 ILL. COMP. STAT. 50/1, 50/3 (1988).

Additionally, public nuisance receiverships allow neighborhoods to avoid demolition and keep affordable housing on the market.[279] Receiverships can help keep property standing, [280] as well as encourage better quality housing and work spaces.[281]

2. Inequities Produced by Receiverships Should Be Avoided in a Solution.

Additionally the process should avoid continuing to overburden property owners who have already shown, through receivership proceedings, that they are financially unable to maintain the property.[282] The liens from receiverships can drive homeowners to sell their property, which can destroy dreams of passing down the property and building intergenerational wealth.[283]

Minority communities are disproportionately impacted by government takings actions, so appropriate modifications to the process would need to take into account past injustices and create an equitable solution.[284]

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279. *See* Merica & Yurkevich, *supra* note 89 (describing the negative impacts of demolishing 1,000 residences in South Bend, Indiana).

280. *See* Peggy Bailey, *Addressing the Affordable Housing Crisis Requires Expanding Rental Assistance and Adding Housing Units*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 27, 2022) ("Resources are needed to preserve the existing privately owned affordable housing stock.") [perma.cc/ZP85-GQR9].

281. *See id.* (proposing reforming project-based housing programs to encourage higher quality housing).

282. *See* City of Fontana v. U.S. Bank, No. E076228, 2022 WL 1043647, at *1–2 (Cal. Ct. App. Apr. 7, 2022) (detailing the state of the homeowner's property, along with their inability to conduct repairs).

283. *See* Jung Hyun Choi, Jun Zhu & Laurie Goodman, *Intergenerational Homeownership: The Impact of Parental Homeownership on Wealth on Young Adults' Tenure Choices*, URB. INST., 16 (2018) ("Because homeownership is an important tool for building future wealth, the intergenerational transfer of homeownership could further reinforce racial and ethnic wealth disparities.").

284. *Supra* subparts II.D., II.E.; section II.B.4.

B. A Better Version of Public Nuisance Receiverships Would Resolve Public Nuisance Exception Issues and Focus on Neighborhood Self-Investment.

While recognizing protecting properties from disrepair in the first place is always preferable, receivership as it stands now may be altered to better serve both the property owners and the surrounding neighborhood.

1. A New Model Receivership Statute

Keeping in mind both the positives and the drawbacks of the current state of public nuisance receiverships, the process moving forward should strive to involve and improve the community surrounding the property.

Statutes that name nonprofits as petitioners and receivers are best constructed to achieve this goal.[285] This would keep the investment local, as it would be a neighborhood caring for itself. Local nonprofits would likely also better understand the needs and priorities of the community than a city, county, or state government.[286] This problem is also best addressed at the local level, as community leaders, both in the governments as well as in the nonprofit and private sectors, have a better idea of what is needed in their neighborhoods.[287] Revisions to the public nuisance receivership should also defer to the common law definition of nuisance, rather than a statutory definition which can vary by state and locality. This would keep the process solidly within the bounds of the Fifth Amendment's Takings Clause's public nuisance

285. *See* 310 ILL. COMP. STAT. 50/3 (1988) (listing only nonprofits with the intention to use the property as low- and moderate-income housing after rehabilitation as appropriate petitioners and receivers).

286. *See* Samsa, *supra* note 137, at 202 ("As functioning community advocates, CDCs are better than municipal governments at understanding individual neighborhoods. This understanding allows CDCs to develop insightful strategies in acquiring abandoned and vacant homes and reintroducing them to productive use.").

287. *See id.* at 201–02 ("[S]ystematic, strategic acquisition of delinquent properties requires an intimate knowledge of the particular community's needs.").

exception.[288] If the state is abating a common law nuisance, the receivership would not be a taking at all.[289] It would also ensure that only properties that are actually risks to public health and safety enter receivership, raising the bar from "unsafe."[290] This would also create a more consistent model and cut back on a local governments ability to pass statutes purely to aid development, rather than actually abate nuisances.

Implementing these proposed changes to the statutes would bring them in line with the Fifth Amendment's Takings Clause and implement public policy that would better serve communities struggling with nuisance properties.

2. Addressing Statutory Nuisances Through Alternative Means

Cities still have an interest in addressing statutory nuisances in addition to common law public nuisances. If the property is not vacant and abandoned, in order to avoid a temporary taking, the owner must agree to the receivership, or alternatively, be compensated.[291] If the receiver's funding is from a grant, rather than from the owner, accepting a receiver would be much more palatable. This consent would keep the owner's right to exclude intact and preserve their interest in the property.[292]

The Illinois model of involving nonprofits reaches toward the admirable goal of community engagement, but local and state

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288. *See* Brown & Merriam, *supra* note 145, at 116–19 (documenting that courts tend to use the common law definition of nuisance when determining whether a property is a public nuisance).

289. *See* Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1031 (1992) (directing the lower court to determine whether the state's nuisance law aligned with a common law definition in order to determine if there had been a taking).

290. *See* IND. CODE. §§ 36-7-9-4, 36-7-9-20 (2003) (referring to properties that warrant a receiver as "unsafe," which encompasses properties "dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance").

291. *See* U.S. CONST. amend. V ("[N]or shall private property be taken for public use, without just compensation.").

292. *See* Lee Anne Fennell, *Escape Room: Implicit Takings After* Cedar Point Nursery, 17 DUKE J. CONST. L. & PUB. POL'Y 1, 14 ("To invite someone in is not a violation of your property rights but rather an instantiation of them. This logic holds even if the party invited in is the government, or someone whose presence is authorized by the government.").

governments must ensure that those organizations have the funding to conduct needed remediations.[293] State and local governments could continue to support nuisance abatement efforts through receivership by offering block grants[294] or revolving loans[295] to local nonprofits to act as receivers. This would remove the need for the receiver to add a lien to the property and increase the eventual sale price.

Block grants to trusted community institutions would give them the resources and flexibility to rehabilitate residential properties in a way that most effectively serves the community.[296] At the federal level, the Department of Housing and Urban Development's Community Development Block Grant Program[297] provides flexible funding opportunities for housing and community spaces.[298] Eligible activities for the grant include "rehabilitation of residential and non-residential structures,"[299] which would encompass the responsibilities of receivers. The goals of this program are to primarily serve low- and middle-income people,

293. *See* Amanda Stevens, Receivership as a Tool for Preservation and Revitalization (Sept. 16, 2020) (M.S. thesis, University of Pennsylvania) (on file with the Weitzman School of Design, University of Pennsylvania) ("Not every organization has the capacity to fund major rehabilitation projects, and although there is never a guarantee, the more risk can be limited in an investment, the more likely community organizations will be willing to get involved.").

294. *See* Will Kenton, *Block Grant Definition*, INVESTOPEDIA (last updated Sept. 24, 2022) ("A block grant is an annual sum of money that is awarded by the federal government to a state or local government body to help fund a specific project or program.") [perma.cc/C2BJ-S5AD].

295. *See* JULIE M. LAWHORN, CONG. RSCH. SERV., IF11449, ECONOMIC DEVELOPMENT REVOLVING LOAN FUNDS (ED-RLFS) 1 (2020) ("Federally funded economic development RLFs (ED-RLFs) are one of many tools that public agencies and non-profit organizations use to make loans to finance small business growth, deploy capital to underserved markets, and incentivize development activity.").

296. *See* Kenton, *supra* note 294 ("This form of federal assistance is often associated with supporting social welfare projects, such as Medicaid, public housing, education, and job training.").

297. *Community Development Block Grant Program*, U.S. DEP'T OF HOUS. & URB. DEV. (last updated Dec. 22, 2022) [perma.cc/C8BW-NAMP].

298. *See id.* ("The Community Development Block Grant (CDBG) Program provides annual grants on a formula basis to states, cities, and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons.").

299. *Id.*

prevent "slums or blight," and to address urgent community development needs because of a serious threat to public health or welfare.[300] Funding a non-profit receiver making repairs to a common-law nuisance is a perfect fit for this funding option.

While block grants are generally flexible, local governments issuing the grants could put some restrictions on the nonprofits' use in order to protect low-income property owners and renters.[301] Potential restrictions include prohibiting foreclosure on the property by a lienor or sale of the property by the receiver.[302] The goal of this restriction would be to protect the investment into property that a family has made and to protect the establishment of intergenerational wealth.[303] Another potential restriction on the receiver would be to prohibit the eviction of tenants or the requirement to relocate tenants if the building is unsafe for habitation. As tenants are already vulnerable, implementing extra measures to protect them would further equity within this process.[304]

Block grants would be ideal for residential properties, but revolving loans would likely be a better way to deal with commercial or rental properties. Since those properties can generate income through rent or other activities, they would be

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300. *See id.* (requiring activities to "benefit low- and moderate-income persons, prevention or elimination of slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community").

301. *See id.* (allowing grantees to develop their own plans to use the CDBG money).

302. *See* 310 ILL. COMP. STAT. 50/9 (1988).

If an owner takes no action to regain possession of the property in the 2-year period following entry of an order granting temporary possession of the property to the organization, the organization may file a petition for judicial deed and upon due notice to the named defendants, an order may be entered granting a quitclaim judicial deed to the organization providing that the property shall be used for low and moderate income housing for at least a 10-year period after the deed is granted.

303. *See* Choi et al., *supra* note 283, at 1 ("Historically, homeownership has been an important wealth-building asset. Wealth accumulation is financially beneficial not only to the homeowners themselves but can also be transferred to their children.").

304. *See* White, *supra* note 277, at 801–03 (articulating the need for greater protections for tenants such as a right to counsel).

able to repay a loan. Block grants do not need to be repaid, but using a revolving loan would increase the amount of money available to undergo neighborhood revitalization.[305] Utilizing revolving loans would diversify the funding for these actions and would allow the government to use block grants on properties that would be unable to repay the loan.

VII. Conclusion

The Rust Belt undoubtedly needs a solution to address the vacant and abandoned buildings that dot their skylines; however, the current state of public nuisance receiverships is not the way forward. The Rust Belt needs an option that better addresses the dangers of inequity that surround eminent domain actions and trickle into public nuisance receiverships. Public nuisance receiverships do not fall into the public nuisance exception of the Fifth Amendment's Takings Clause, as they operate under statutory nuisances, and the physical invasion of private property calls for just compensation under *Cedar Point Nursery v. Hassid*.[306]

Redefining the nuisance standard to a common law nuisance and limiting the scope of public nuisance receiverships to truly abandoned properties would settle inconsistencies with the Fifth Amendment and Anti-*Kelo* legislation. Additionally, developing community-focused processes would protect both the original homeowner and their surrounding neighbors.

305. *See* LAWHORN, *supra* note 295, at 1 ("The main advantage of using an RLF compared to other program design options is that the RLF can be configured in a way to be "self-replenishing," thereby reducing the need for annual appropriations or up-front federal credit subsidies.").

306. 141 S. Ct. 2063 (2021).