NOT JUST A CASTLE IN THE SKY: A LEGAL REMEDY FOR RACE-BASED TAKINGS IN VIRGINIA

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INTRODUCTION

"A man's home may be his castle, but that does not keep the government from taking it."[1]

James and Barbara Johnson, residents of the formerly bustling Shoe Lane community, know the reality of governmental takings all too well. The Johnsons watched as their Newport News, Virginia, neighborhood was chipped away by the city council for the expansion of Christopher Newport University (CNU).[2] What was once a growing, middle-class neighborhood filled with ranch-style homes is now a memory, its true essence confined to photo albums and scrapbooks.[3] Looking at the site today in comparison to the neighborhood they loved, the Johnsons lamented: "Young folks don't know anything about what used to be here.... We all felt it was taken because it was a *Black* neighborhood."[4] The Johnsons' assessment was correct—a task force has been assembled to investigate the erasure of this Black community.[5] The "egregious wrong"[6] that was the taking of Shoe Lane was the natural outgrowth of the coupling of racism and the condition of eminent domain law. Without

1. John Fee, *Eminent Domain and the Sanctity of the Home*, 81 NOTRE DAME L. REV. 783, 786 (2006) (quoting Hendler v. United States, 952 F.2d 1364, 1371 (Fed. Cir. 1991)).

2. *See* Brandi Kellam & Louis Hansen, *Erasing the "Black Spot": How a Virginia College Expanded by Uprooting a Black Neighborhood*, PROPUBLICA (Sep. 5, 2023, at 05:00 ET), https://www.propublica.org/article/how-virginia-college-expanded-by-uprooting-black-neighborhood [https://perma.cc/F3VG-9VCW]. ProPublica published a series highlighting the Shoe Lane community and how it was forever changed by the expansion of Christopher Newport University. *Uprooted: Virginia Universities Have Expanded by Dislodging Black Communities*, PROPUBLICA, https://www.propublica.org/series/uprooted [https://perma.cc/NG9U-6REB]. The series consists of interviews with descendants of families who were displaced and highlights the Johnson family, who still lives in Shoe Lane. Kellam & Hansen, *supra*.

3. *See* Kellam & Hansen, *supra* note 2 (showing photographs of the Johnsons' dining room table covered with photographs and newspaper clippings of what used to be the Shoe Lane community).

4. *Id.* (emphasis added).

5. *See* Jim Hanchett, *President Kelly & Mayor Jones Name Newport News-Christopher Newport Task Force Members*, CHRISTOPHER NEWPORT UNIV.: NEWSROOM (Apr. 3, 2024), https://cnu.edu/news/2024/04/03-cnu-city-joint-task-force/ [https://perma.cc/3PUP-LEQ6].

6. Kellam & Hansen, *supra* note 2.

adopting new legal standards for blight-based takings, Virginia risks leveling other Black communities for "public use."[7]

The Fifth Amendment of the United States Constitution limits the government's eminent domain power.[8] Through eminent domain, the government can take private property for public use, so long as it provides "just compensation."[9] Historically, Virginia's public higher education institutions have used eminent domain, or the threat of eminent domain, to take homes from minority communities for the sake of expanding their campuses.[10] They have succeeded under Virginia's statute categorizing "the elimination of blight" as a "public use[ ]."[11] After the homes were taken, the former property owners were given "just compensation" based on the properties' fair market value.[12]

During the mid-1900s, proving blight was not difficult.[13] This ease of proof resulted in the uprooting of Black communities throughout the Commonwealth.[14] Not only was proving blight too easy, but the so-called just compensation provided to the homeowners was insufficient.[15] Just compensation based on fair market value is problematic because it does not account for the sentimental value of the home and the severance of a meaningful community where people feel like they belong. It severely undercompensates those who are forced to find new homes to restart their lives, make new memories, and forge new relationships.

Virginia should implement three major changes to address the issue of abusing eminent domain power to take residential properties: (1) adopt a new statute that shifts the burden of proof for blight to the government, (2) include sentimental value and community value in its just compensation calculation, and (3) consider

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7. U.S. CONST. amend. V.
8. *Id.*
9. *Id.*
10. Louis Hansen, *Virginia's Public Universities Have a Long History of Displacing Black Residents*, PROPUBLICA (Sep. 11, 2023, at 05:00 ET), https://www.propublica.org/article/these-virginia-universities-expanded-by-displacing-black-residents [https://perma.cc/HR7R-RSWR].
11. VA. CODE ANN. § 1-219.1 (2025).
12. *Id.*; *see* Hansen, *supra* note 10.
13. *See* Hansen, *supra* note 10.
14. *See id.*
15. *See id.*

returning taken property or implementing retroactive payments to wronged homeowners.

This Note argues that Virginia must adopt this three-pronged approach to both address its history of taking minority residential property to expand its higher education institutions and recognize the sanctity of the home by making it more difficult to take under the elimination of blight justification. Part I will address federal and state statutes and case law surrounding physical takings and the eminent domain power. Part I will also discuss Virginia's history of racial discrimination in housing, the Shoe Lane Community in Newport News, and CNU's expansion into the neighborhood for the elimination of blight. Part II will present the first prong of this Note's three-pronged approach to correcting Virginia's abuse of its eminent domain power to take residential properties: adopting stricter statutory blight standards. Part III will present the second prong: a new formula for calculating increased just compensation. Part IV will outline the third prong: a model for owner or descendant return. Lastly, Part V will address counterarguments and explain why the three-pronged approach is Virginia's best option to both prevent and rectify unjust takings of minority residential communities in the name of eliminating blight.

I. BACKGROUND

A. Federal Law on Takings

The United States Constitution and constitutional jurisprudence repeatedly recognize the home as a different form of property from others. For example, the First Amendment allows for the possession of certain literature in the home that is not permitted in other spaces.[16] The Third Amendment protects individuals from having soldiers quartered in their homes.[17] The Fourth Amendment establishes unique rules that govern home searches.[18] Why, then, is it so easy for the government to take residential property through its eminent domain power? To properly recognize the value of the

16. *See* Fee, *supra* note 1, at 786.
17. *See id.*
18. *See id.* at 786-87.

home, the standard for taking residential property should be substantially higher than the protection provided by the Constitution.

The Fifth Amendment of the United States Constitution prohibits takings of private property for public use without just compensation.[19] However, the U.S. Supreme Court has expanded the bases on which the government can justify taking residential property by broadening the definition of public use.[20] These developments call into question whether the Constitution truly protects the home. For example, in *Berman v. Parker*, the Court held that Washington, D.C.'s, use of eminent domain power to take private property for urban renewal (better understood as blight removal) was permissible.[21] *Berman* addressed the District of Columbia Redevelopment Act of 1945, which made it the "policy of the United States" to protect citizens through acquiring blighted properties.[22] The Court held that eliminating blight was a public use that satisfied the Fifth Amendment's limitation on eminent domain power.[23]

In its landmark decision, *Kelo v. City of New London*, the Court further expanded *Berman*, holding that promoting economic development was a long-accepted function of the government.[24] The Court decided that takings were consistent with the public use clause so long as they were "rationally related to a conceivable public purpose."[25] If the taking was rationally designed to benefit the government, the taking was for public use and therefore constitutional.[26] These decisions laid the groundwork for the Virginia

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19. U.S. CONST. amend. V.

20. *See* Berman v. Parker, 348 U.S. 26, 35 (1954).

21. *See id.*

22. *Id.* at 28 (quoting District of Columbia Redevelopment Act of 1945, Pub. L. No. 79-592, § 2, 60 Stat. 790 (1946)).

23. *See id.* at 33 ("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.").

24. *See* 545 U.S. 469, 489-90 (2005) (noting that over a century of case law affirmed economic development as a public use). *Kelo* led many states to adjust their statutory frameworks governing eminent domain. *See* Fee, *supra* note 1, at 789. Many believed *Kelo* broadened governmental power too excessively. *See id.* at 784.

25. *Kelo*, 545 U.S. at 490 (Kennedy, J., concurring) (quoting Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 241 (1984)).

26. *See* Fee, *supra* note 1, at 788.

government to take properties from minorities in order to expand its public institutions of higher education.

B. Virginia Law on Takings

Prior to the U.S. Supreme Court's holdings in *Berman* and *Kelo*, the Virginia Supreme Court held in *Hunter v. Norfolk Redevelopment & Housing Authority* that the elimination of blight was a public use sufficient to allow the government to take private property.[27] Since *Kelo*, the standard for blight in Virginia has not changed.[28] Virginia defines blighted property as "any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards."[29]

Additionally, the Virginia Supreme Court has held that once a condemnor deems an area blighted, the burden of proving the area is not blighted falls on the private property owner if they want to keep their home.[30] Once residential property is deemed blighted and the government seeks to take it for public use, the government is required to pay just compensation.[31] Just compensation is based on the fair market value of the property,[32] a measure that fails to appropriately value the home.[33]

Historically, Virginia has used blight to justify taking residential property from minority communities.[34] A deeper look into Virginia's history of racial discrimination in housing, and more specifically, into the taking of the Shoe Lane community, provides helpful background for understanding how these blight standards have harmed minorities and why Virginia should adopt stricter standards

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27. *See* 78 S.E.2d 893, 901 (Va. 1953).

28. *See* VA. CODE ANN. § 36-3 (2025).

29. *Id.*

30. *See* Runnels v. Staunton Redev. & Hous. Auth., 149 S.E.2d 882, 885 (Va. 1966).

31. *See* Norfolk Redev. & Hous. Auth. v. C & C Real Est., Inc., 630 S.E.2d 505, 509 (Va. 2006).

32. *Id.* at 511.

33. *See infra* Part III.A.

34. *See* Hansen, *supra* note 10 ("In the second half of the 20th century, the establishment and expansion of public universities across Virginia uprooted hundreds of Black families, hindering them from accumulating wealth in the most American way—homeownership.").

to prevent this harm in the future. The next Section of this Note does just that.

C. Virginia's History of Racial Discrimination in Housing

Throughout the twentieth century, Virginia cities attempted creative ways to segregate neighborhoods with the goal of preventing Black people from living in middle-class communities. In 1924, following Virginia's prohibition on interracial marriage, the City of Richmond banned anyone from living on a street where they were ineligible to marry a majority of its current residents.[35] In its official planning documents, Norfolk designated "African American areas" and used these designations to inform its spot zoning decisions.[36] This practice continued until at least 1987.[37] Additionally, Norfolk used property tax assessments to extract higher tax payments from its Black residents.[38] By overassessing Black communities and underassessing white ones, local governments could excessively tax Black homeowners' properties.[39] These practices alone demonstrate that Virginia has a troubled history of housing discrimination. When exploring how Virginia's higher education institutions targeted and exploited Black communities for expansion, it becomes apparent that Virginia must address its racial housing history through legal remedies, beginning with Shoe Lane and similar communities.

University expansion through eminent domain and pressured-purchases disrupted Black commercial and residential communities such as Vinegar Hill and Gospel Hill in Charlottesville, and Lambert's Point in Norfolk.[40] The University of Virginia (UVA) in Charlottesville and Old Dominion University (ODU) in Norfolk were considered more valuable than the neighborhoods destroyed in their wake, and Virginia's political climate, coupled with federal eminent

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35. RICHARD ROTHSTEIN, THE COLOR OF LAW 47 (2017) (detailing one of many federal housing policies that entrenched segregation throughout the nation).

36. *Id.* at 47-48.

37. *Id.*

38. *See id.* at 170.

39. *See id.*

40. *See* Hansen, *supra* note 10 ("They either acquired properties through legal takings, or families sold them because they faced the prospect of an eminent domain seizure.").

domain law and Supreme Court decisions, made it easy for Virginia's government to "forcibly purchase private property for almost any project defined as a public benefit."[41] Former residents were left brokenhearted and felt they were "collateral damage."[42] These communities were uprooted due to Virginia's blight standards—standards that allowed for homes to be taken based on "scant" evidence.[43]

In Vinegar Hill, Black people were purchasing property as early as 1870.[44] Vinegar Hill prospered, having a gross income of $1.6 million by 1959.[45] Despite this evident prosperity, in the 1960s Charlottesville still deemed Vinegar Hill "run-down" and asserted its eminent domain power against it.[46] In 1969, the Charlottesville Redevelopment and Housing Authority tried to secure federal funding to take the Gospel Hill neighborhood, home to around twenty-five middle-class Black families.[47] When that failed, Gospel Hill was instead targeted by the University of Virginia through private purchases.[48] Lambert's Point in Norfolk became a mostly Black, middle-class community by the late 1950s.[49] In 1963, residents were informed that the City was going to acquire twenty-one acres of residential property through eminent domain and sales to construct ODU.[50] In less than a year, many families were forced out of their homes and had to search for new communities.[51]

Virginia's trend of taking residential property for university expansion did not stop with UVA and ODU. The land that now

41. *Id.*

42. *Id.*

43. *Id.* (explaining that although condemning authorities had to prove part of a neighborhood was blighted before asserting its eminent domain power, the evidence could be as slight as a neglected home or business).

44. Jordy Yager, *Urban Renewal in Charlottesville*, ENCYCLOPEDIA VA. (Sep. 19, 2024), https://encyclopediavirginia.org/entries/urban-renewal-in-charlottesville/ [https://perma.cc/A93N-QXCB].

45. *Id.*

46. *See* Hansen, *supra* note 10.

47. *See* Yager, *supra* note 44.

48. *See id.*

49. *See* Hansen, *supra* note 10.

50. *See id.*

51. *See id.* For more information on Lambert's Point, including an interactive map housing stories from past and current residents, see MAPPING LAMBERT'S POINT (2025), https://www.mappinglambertspoint.org/project.html [https://perma.cc/34D4-MJVA].

holds CNU in Newport News, Virginia, used to be a thriving, middle-class Black community called Shoe Lane.[52] In 1960, this 110-acre community—located beside an affluent white community—encompassed a church, ranch-style homes, and twenty Black families.[53] Out of fear of more Black families moving to the area, the Newport News City Council used its eminent domain power to seize the nucleus of Shoe Lane.[54] The State used this seized land as the new home of the College, despite the many protests from homeowners.[55] Not only did the City disintegrate a thriving Black community, it also failed to pay the homeowners just compensation for the loss of their homes.[56] In 2023, a CNU professor cited the City's goal as "remov[ing] the Black community."[57]

The treatment of Shoe Lane has garnered attention in Virginia, with CNU President William G. Kelly and Newport News Mayor Phillip Jones creating a task force in 2024 to study the erasure of this community.[58] The task force was charged with approaching the research into CNU's expansion through Shoe Lane with "integrity, diligence, and open minds."[59] However, the Newport News task force has been accused of being opaque in its investigations.[60] Task force meetings are closed to the public, and the task force lacks representation of actual Shoe Lane residents, past or present.[61] Though the families of Shoe Lane are supposed to have some say in the final recommendations, one remaining homeowner felt the community was truly "overlooked" when the City neglected to select a member

52. *See* Kellam & Hansen, *supra* note 2.

53. *See id.*

54. *See id.*

55. *See id.*

56. *See id.* (stating that the City paid homeowners 20 percent less than what they were owed under just compensation).

57. *Id.*

58. Hanchett, *supra* note 5.

59. *Id.*

60. *See* Brandi Kellam, *Virginia Panels Begin Investigating Black Communities Displaced by Universities*, VA. MERCURY (Sep. 19, 2024, at 05:32 ET), https://virginiamercury.com/2024/09/19/virginia-panels-begin-investigating-black-communities-displaced-by-universities/ [https://perma.cc/393F-5FY3]. The task force has not responded to requests for information on confirmed family interviews and the community has not received correspondence from the task force detailing plans for inclusion of Shoe Lane residents and descendants. *Id.*

61. *See id.*

from Shoe Lane for the task force.[62] The task force's goal is to build a "comprehensive understanding" of what took place to ensure better treatment in the future.[63] However, without strong legal protections such as stricter blight standards, increased just compensation, and owner or descendant return, Virginia risks repeating its troubled racial housing history. The next Part of this Note will dive into the first prong of this three-pronged proposal: reimagining blight in Virginia.

II. PRONG I: REIMAGINING BLIGHT IN VIRGINIA

If the home is truly one's castle, Virginia must do more to protect it. Virginia acknowledges that the right to private property is a "fundamental right."[64] But Virginia fails to treat residential property as such. To remedy this, Virginia should create a stricter statutory standard for blight, thereby easing the harm done by the use of eminent domain on residential property and protecting the home from unjust government takings.

A. Virginia's Current Standard

Virginia's current statutory standard allows for the taking of private property for the "elimination of blight provided that the property itself is a blighted property."[65] Virginia has the elimination of blight standard because blight can decrease economic value, contribute to the spread of disease, and negatively affect the health and morals of society.[66] But what exactly is blight? The answer to this question can significantly alter which properties are at risk of being taken.

In *Bristol Redevelopment & Housing Authority v. Denton*, the Virginia Supreme Court held that to qualify as blighted, a property

62. *Id.*

63. Brandi Kellam, *Task Force to Consider "Restorative Justice" for Black Families Uprooted by Virginia University's Expansion*, PROPUBLICA (Jan. 29, 2024, at 17:00 ET), https://www.propublica.org/article/christopher-newport-university-black-community-uprooted-task-force [https://perma.cc/C8TB-NQW8].

64. VA. CODE ANN. § 1-219.1(A) (2025).

65. *Id.*

66. *See* Bristol Redev. & Hous. Auth. v. Denton, 93 S.E.2d 288, 291 (Va. 1956).

must be in a specified physical condition as provided by statute *and* be "detrimental to the safety, health, morals or welfare of the community."[67] Housing authorities and city councils cannot approve takings of private property unless the property meets these standards, and courts have the right to review their determinations and render the property not blighted if necessary.[68] In *Bristol*, the Court found that the area in question did not satisfy this standard and did not allow the taking to proceed.[69] The buildings in question were "not so dilapidated, obsolescent, overcrowded, lacking in ventilation, light and sanitary facilities as to be detrimental to the safety, health, morals or welfare of the community."[70] By enforcing reasonable restrictions, the court prevented certain properties from being deemed blighted.

On its face, Virginia's standard for taking property for the elimination of blight appears strict. But how did Virginia get from the cautious ruling in *Bristol* to diminishing the Vinegar Hill, Gospel Hill, Lambert's Point, and Shoe Lane communities? If Virginia's blight standard was truly as strict as it appears, how did these thriving, Black communities satisfy it? The answer is in the burden of proof for blight.

B. Burden of Proof for Blight

In *Bristol*, Virginia's Supreme Court cited its *Hunter* decision, which held that the taking of private property for redevelopment was a public use subject to judicial review.[71] However, *Hunter* also held that the declaration of blight is "presumed to be right."[72] Even before *Bristol*, Virginia's courts had a built-in scapegoat for deeming properties blighted. Unless the evidence against blight was so strong, as it was in *Bristol*, courts could assume the condemning authority was correct in its assessment that the private property

67. *Id.* at 293 (quoting VA. CODE ANN. § 36-49 (2026)).
68. *See id.*
69. *See id.* at 295.
70. *Id.* at 294.
71. *See id.* at 291, 294 (citing Hunter v. Norfolk Redev. & Hous. Auth., 78 S.E.2d 893 (Va. 1953)).
72. 78 S.E.2d at 899.

was blighted.[73] After *Bristol*, the Virginia courts confirmed that the burden of proving a property not blighted is placed upon the condemned owner.[74] The trial judge in *Runnels v. Staunton Redevelopment & Housing Authority* determined that the property owner had the "heavy" burden of proving the area not blighted because the "exercise of municipal power in this case [was] clothed with a presumption of validity."[75] The Virginia Supreme Court affirmed, holding that it was the property owner's responsibility to demonstrate that the Authority's blight determination was arbitrary and unwarranted.[76] The court found that the most significant detriment of the property was to the welfare of the community—a "dilapidated" area being next to a business district was "inherently detrimental to the economic welfare of the community."[77] This heavy burden on the condemned follows the national standard, allowing for the government to take a man's castle based on "the mere hope" that the new property use will be more beneficial than its prior use.[78]

The deference courts give to condemning agencies puts homeowners at a significant disadvantage in saving their homes from being stripped away by the government. Former and current homeowners from Shoe Lane know this all too well. When the Newport News City Council voted 5-2 to dismantle Shoe Lane, residents initiated legal fights to prevent the decision from uprooting their lives.[79] Audrey Perry-Williams, who knew several residents of Shoe Lane (including some who were very influential in her life, such as her teacher), recalled the decision by stating, "They weren't huts, they weren't shacks, they were beautiful homes that people used to live in."[80] Perry-Williams also emphasized that the decision

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73. *See id.*

74. *See* Runnels v. Staunton Redev. & Hous. Auth., 149 S.E.2d 882, 885 (Va. 1966).

75. *Id.* at 884.

76. *See id.* at 885.

77. *Id.* at 886.

78. Fee, *supra* note 1, at 788.

79. Emily Harrison, *Black Neighborhood in Newport News Was Dismantled in the 1960s to Make Way for What's Now Christopher Newport University*, 13 NEWS NOW (Feb. 10, 2024, at 10:10 ET), https://www.13newsnow.com/article/news/local/black-history/black-neighborhood-newport-news-dismantled-to-make-way-for-christopher-newport-university/291-d01ab906-a170-4f3f-a604-c44fda93f650 [https://perma.cc/WZG5-XS7H].

80. *Id.*

was racially motivated—the City wanted the land because it did not want Black people near the elitist, white neighborhood.[81] A deferential blight standard allows condemnation to succeed despite racist motivations.

CNU's leadership confirmed Perry-Williams's sentiment: President Anthony Santoro, who served from 1987 to 1996, called the Shoe Lane seizure an "egregious wrong" and a "deliberate attempt to get rid of a Black community."[82] The current CNU president, Bill Kelly, has acknowledged the school's troubled history and contributed to the creation of the task force designed to study this history.[83] These acknowledgements are fine for first steps, but there must also be legal remedies to both rectify Shoe Lane and prevent this history from repeating itself. Adjusting Virginia's blight standard is central to accomplishing this goal.

C. Looking to Other States' Remedies for Blight

Virginia can look elsewhere for inspiration on fixing its blight standard to protect homeowners from unwarranted government intrusion. Following *Kelo*, states passed a wave of reforms with only seven states failing to enact new legislation.[84] Virginia redefined blight as a condition that poses a danger to health and safety.[85] Other examples of these reforms include: detailed definitions of blight to narrow the satisfying criteria (though this method was not always effective), removing blight as a condition for condemnation takings, a checklist approach that required certain criteria to satisfy blight, and a parcel-by-parcel determination in which individual properties are examined for blight as opposed to an area-wide determination.[86] As this Note will explain, these reforms reflect that

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81. *See id.*

82. Kellam & Hansen, *supra* note 2. Despite Santoro's sentiment that the taking was wrong, under his leadership, the University still sought parts of Shoe Lane that were not usurped by the original taking. *Id.* It tried to purchase the remaining homes rather than use eminent domain, upsetting the homeowners and causing a lawsuit that challenged its authority to expand further into the neighborhood. *Id.* This lawsuit was dismissed. *Id.*

83. *See* Kellam, *supra* note 63.

84. *See* Martin E. Gold & Lynne B. Sagalyn, *The Use and Abuse of Blight in Eminent Domain*, 38 FORDHAM URB. L.J. 1119, 1151 (2011).

85. *See id.* at 1155.

86. *See id.* at 1152-53, 1155-57.

the Fifth Amendment is simply a floor for limiting eminent domain, but states can take, and have taken, further measures to protect their citizens' homes. Virginia could use the approaches taken by other states as examples to remedy its eminent domain practices, but ultimately shifting its burden of proof for blight is the best method.

Many states across the United States have implemented two general models of reform: removing blight as a condition for takings and redefining blight as a condition that threatens health and safety.[87] However, these reforms fall short of protecting the home. On its face, removing blight as a condition for takings sounds promising. Unfortunately, removing blight as a condition does not reduce eminent domain—it simply removes a barrier the government must cross, thereby making the taking easier.[88] So, having a blight condition is better than not having one, but there is still much improvement needed. Among its many failures, the blight standard relies on subjective value judgments that protect middle-class communities while harming poor communities.[89] While middle-class communities benefited from the post-*Kelo* blight reform, poor and minority areas did not.[90] Virginia took a common approach, defining blight as a condition that poses a threat to public health and safety.[91] The major issue with this approach is that it remains subjective, leaving the standard vulnerable to abuse.[92] The subjectivity of blight determinations may be a difficult barrier to overcome, as it seems like an inherently subjective measure, but that does not preclude the standard from becoming stricter.

More specific examples of reform follow from states such as Georgia, Minnesota, West Virginia, and Ohio. Georgia's redevelopment law additionally requires providing notice to the property owner.[93] The notice must be in writing and detail the specific harm

87. *See id.* at 1152-56.

88. *See id.* at 1153.

89. *See id.* at 1165.

90. *See id.* Columbia Law School Professor Thomas Merrill noted that, in practice, the blight precondition seems to assure the middle class that their homes will not be targeted while zeroing in on poor and minority communities. *Id.*

91. *See id.* at 1155.

92. *See id.* at 1156.

93. *See id.* at 1166 (citing GA. CODE ANN. § 22-1-1 (2006)).

the property is causing that the property owner has failed to rectify.[94] Another model Virginia could follow is Minnesota's formulation, requiring a parcel-by-parcel determination that the targeted structure is substandard unless there is no feasible alternative to remediate blight.[95]

West Virginia allows property owners who want to challenge blight determinations to get a review from the circuit court.[96] The condemning agency then must satisfy a long list of requirements before proceeding with the taking.[97] If Virginia had enacted West Virginia's first requirement, Shoe Lane would likely still be a growing community. The condemning agency would have been required to show that the project could not proceed without the condemnation of the property at issue.[98] Newport News would have failed this standard because there were at least five potential sites for the construction of CNU.[99] When the city council narrowed its decision to two potential sites for the college, a different neighborhood, Roys Lane, was the significantly cheaper choice; Roys Lane would have cost $121,000, whereas Shoe Lane cost $235,000.[100] Not only was there an alternative site to Shoe Lane, the alternative site was more financially practical. Roys Lane was also the more popular choice among attendees of the council meeting held to hear residents' opinions.[101] But because the city council's goal was to "erase the Black spot," Shoe Lane was chosen instead.[102] Had the city council been forced to determine the taking of Shoe Lane was its *only* option for university expansion, Shoe Lane could not have been taken as blight elimination.

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94. *Id.*

95. *See id.* (citing MINN. STAT. ANN. § 117.075 (West 2008)).

96. *See id.* at 1167-68 (citing W. VA. CODE ANN. § 16-18-6A (West 2006)).

97. *See id.* at 1168.

98. *See id.*

99. *See* Kellam & Hansen, *supra* note 2.

100. PHILLIP HAMILTON, SERVING THE OLD DOMINION: A HISTORY OF CHRISTOPHER NEWPORT UNIVERSITY, 1958-2011 (2011). For more information on Professor Hamilton and his research, see *Directory, Phillip F. Hamilton*, CHRISTOPHER NEWPORT UNIV., https://cnu.edu/people/phamilt/ [https://perma.cc/YG9C-VKG3].

101. *See* Kellam & Hansen, *supra* note 2.

102. *Id.*

Five states have held that courts must review eminent domain statutes with heightened scrutiny.[103] Ohio, for example, abrogated a city ordinance allowing for deteriorating areas to be taken because it found the standard to be "standardless."[104] In determining that the deteriorating area standard was too speculative, the court emphasized the importance of being "vigilant in ensuring that so great a power as eminent domain, which historically has been used in areas where the most marginalized people live, is not abused."[105] Heightened scrutiny would provide property owners a fighting chance to protect their fundamental rights to their homes. Considering there were other viable locations for CNU and that Shoe Lane was a middle-class community, heightened scrutiny could have saved those castles.

The several methods adopted by these states serve as reminders that the Fifth Amendment is a floor for eminent domain—states can implement stricter standards to protect their citizens' homes. Virginia has several models it can follow to improve its blight standards. However, shifting the burden for proving blight is the best method because the shift will remove the presumption of validity granted to the government's determinations that a property is blighted and instead require the government to prove a property is blighted before it is permitted to strip someone's home from them.

D. The Need to Shift the Burden

Though Virginia can look to several other states for examples to remedy its blight standards and prevent a reoccurrence of the Shoe Lane problem, this Note argues that the best method to do so is shifting the burden of proof to the government, making the government responsible for demonstrating that properties are blighted. Virginia currently requires property owners to prove their homes are not blighted once a condemning agency deems them as such.[106] Challengers must establish by clear and convincing proof that the

103. *See* Gold & Sagalyn, *supra* note 84, at 1168.
104. City of Norwood v. Horney, 853 N.E.2d 1115, 1145 (Ohio 2006).
105. *Id.*
106. *See* Runnels v. Staunton Redev. & Hous. Auth., 149 S.E.2d 882, 885 (Va. 1966).

determinations were invalid.[107] Because of the deference given to condemning agencies, this already high standard of proof is even more difficult for challengers to achieve.[108] Rather than requiring challengers to prove their properties not blighted during legal proceedings, the burden should be on the condemners to prove the properties blighted. This burden shift would, at the very least, respect the notion that private property is a fundamental right. If the government wants to target a homeowner, the government should put up the fight.

If the burden of proof remains on the property owner, the evidence standard should be lowered to a preponderance of the evidence, meaning the property owner would only have to prove to a fact finder that their property is likely not blighted.[109] This method is not as strong as shifting the burden entirely because it does not solve the deference problem. Therefore, though this option is better than Virginia's current standard, shifting the burden to the government to prove by clear and convincing evidence that the property is blighted is the best solution.

For Virginia to truly treat the home as one's castle, it must adjust its statutory standards for blight. The current standard allowed for Shoe Lane and other minority communities to be uprooted by institutions of higher education.[110] Virginia can look to other states for inspiration, especially to Ohio's heightened scrutiny review of eminent domain regulations.[111] It is vital, though, for the Commonwealth to shift the burden of proof from the condemned to the condemner. Shifting the burden is the best method to correcting Virginia's blight standards because it removes the presumption of validity granted to the government and respects the home as different from other properties. If Virginia chooses to keep the burden on the homeowner, it must reduce the burden of proof to the preponderance of the evidence standard. If not, the fundamental right to private property ceases being fundamental.

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107. Norfolk Redev. & Hous. Auth. v. C & C Real Est., Inc., 630 S.E.2d 505, 509 (Va. 2006).

108. *See id.* at 509-10 (noting that C & C had a heavy burden to overcome the strong presumption of validity that the targeted property was blighted).

109. *See Preponderance of the Evidence*, BLACK'S LAW DICTIONARY (12th ed. 2024).

110. *See supra* Part I.C.

111. *See* City of Norwood v. Horney, 853 N.E.2d 1115, 1143 (Ohio 2006).

III. PRONG II: CORRECTING THE UNJUST JUST COMPENSATION

In this Part, this Note details the second prong of the proposed three-pronged approach: a new formula for calculating just compensation in Virginia that recognizes fair market value *and* sentimental value. This Part begins with an explanation of the current just compensation requirement, then explains current models for changing just compensation, and concludes with this Note's argument for a new calculation.

A. "Just" Compensation

The eminent domain power is limited by the requirement of just compensation.[112] The current standard for measuring just compensation is the fair market value of the property.[113] Virginia has fallen short of this standard, another fact former residents of Shoe Lane know all too well. Newport News paid residents 20 percent less for their homes than the value set by an independent appraiser.[114] The Council was able to find a new appraiser who valued the land at $290,000, a significant decrease from the $360,000 total found by the independent appraiser.[115] One former resident, Dwayne Johnson, asked the task force to "compensate families for underpayments and loss of property value."[116]

It is clear, though, that even fair market value itself falls short of providing actual just compensation. When discussing payment for Shoe Lane's erasure, Johnson said, "[D]o we think it will be meaningful in that it actually is reflective of our losses? I don't know."[117] Even if Newport News adequately—at least by the law's standards—compensated the residents it was displacing, the City would have still fallen short of healing those homeowners. To

112. *See* U.S. CONST. amend. V; VA. CONST. art. 1, § 11; *Norfolk Redev. & Hous. Auth.*, 630 S.E.2d at 509.

113. *Norfolk Redev. & Hous. Auth.*, 630 S.E.2d at 511; *see* State Highway & Transp. Comm'r v. Linsly, 290 S.E.2d 834, 838 (Va. 1982).

114. Kellam & Hansen, *supra* note 2.

115. *Id.*

116. Kellam, *supra* note 63. Dwayne Johnson has also asked for punitive damages. *Id.*

117. *Id.*

adequately compensate homeowners in the future, Virginia must adopt a new standard for just compensation. Fair market value is the floor of what is required by the Constitution—Virginia cannot allow it to be the ceiling. Through an analysis of other models for just compensation, it becomes apparent that Virginia must raise its value. To calculate this new value that would better satisfy just compensation, the Commonwealth must consider: (1) the fair market value of the property, (2) how long the property was owned, and (3) the history of the community surrounding the property.

B. Models of Increased Just Compensation

Other scholarship suggests models for increasing just compensation. In her Note, Danielle B. Ridgely argues that Virginia's legislature should codify just compensation as 150 percent of the property's fair market value.[118] This adjustment is aimed at addressing the unquantifiable sentimental value of the home, accounting for the notion that if an owner valued the fair market value of the home more than possession of the home, the owner would simply sell the home.[119] In a different proposal, Professor Brian Angelo Lee argues for "equitable compensation," a flexible remedy that recognizes the situational differences in takings of private property.[120] He argues that many of the elements of eminent domain law—property, taken for, and public use—are binary, meaning they have yes or no answers as to whether the elements are satisfied.[121] Controversy then results when cases on the line are forced into one box or another.[122] Lee continues, arguing that the

118. Danielle B. Ridgely, Note, *Will Virginia's New Eminent Domain Amendment Protect Private Property?*, 26 REGENT U. L. REV. 297, 320 (2013). Ridgely points to other states, namely Indiana and Michigan, that have bright line rules for just compensation. *Id.* Indiana recognizes the home as inherently more valuable, requiring compensation of 150 percent of fair market value. *Id.* Michigan requires 125 percent of fair market value. *Id.*

119. *See id.* at 321.

120. *See generally* Brian Angelo Lee, *"Equitable Compensation" as "Just Compensation" for Takings*, 10 BRIGHAM-KANNER PROP. RTS. J. 316 (2021) (discussing the history of takings law, specifically addressing different forms of equity, and ultimately concluding that equity allowing for flexibility in determining financial compensation is the best method to adequately compensate for differences between private properties).

121. *Id.* at 317.

122. *See id.* at 317-20 (noting how *Kelo* was a controversial case because the Court had to decide whether the taking was for a public or private use when the taking instead had notes

just compensation is the one flexible element because, when deciding what compensation to give, the question is "how much," not "whether" to give.[123] It is thought that equitable remedies could "solve first-order policy problems."[124] Lee notes that the flexibility provided by equitable compensation could provide standardized approaches depending on the situation—the flexibility can be limited so just compensation is not completely arbitrary.[125] He highlights that when a situation does not neatly fit into a takings category, compensation can be adjusted up or down to reflect this deviation.[126]

C. A New Model for Just Compensation

Though Ridgely and Lee's proposals increase just compensation, they do not adequately compensate for sentimental value. A uniform increase would still result in homeowners being undercompensated. For example, a rigid 150 percent cap for living in a historical community does not account for an individual who has lived there for forty years in comparison to someone who lived there for one year. It also fails to consider the range of historical and cultural significance of different communities. Equitable compensation is more in line with this Note, but as demonstrated by the factors that follow, Lee's model needs specific guidelines to ensure the new just compensation model achieves equity. The factors Virginia must consider when calculating just compensation are the fair market value of the property, how long the property was owned, and the history of the community surrounding the property. This totality of the circumstances test (1) accounts for the current legal standard and ensures a baseline for financial compensation, (2) considers one aspect of homeownership that can contribute to the sentimental

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of both).

123. *See id.* at 322-23.

124. *Id.* at 332 (quoting Samuel L. Bray, *The System of Equitable Remedies*, 63 UCLA L. REV. 530, 534 (2016)).

125. *See id.* ("[T]he flexibility needed to mitigate problems created by the binary nature of takings doctrine could be more general, offering standardized approaches for different types of situations.").

126. *See id.*

value of the home, and (3) protects against the erasure of minority communities.

The first factor Virginia must consider is fair market value. Although fair market value cannot sufficiently compensate for takings of residential property, it is a necessary floor. The government must be deterred from taking property by knowing it has to pay fair market value, otherwise the government would abuse eminent domain without consequences.[127] The government is forced to consider the social costs of taking, increasing the likelihood that the government will take only when the project is socially justified.[128]

Sentimental value is impossible to quantify because of the multitude of components that contribute to transforming a property into one's castle. However, one major component—how long one has owned their home—can be quantified. Therefore it is the second factor Virginia must consider. For example, someone who has lived in a home for as long as the Johnsons have lived in their Shoe Lane property[129] could reasonably be assumed to have more sentimental value attached to their home than someone who has lived in a home for only a couple of years. Of course, someone who has lived in a home for any amount of time would have some sentimental value attached to it—a first-time home buyer may be more attached to their home, even if just residing in it for a year, than someone who has bought multiple homes before. But there must be a reasonable cutoff for compensation of sentimental value. This measure could be one of them.

The last factor Virginia must consider for the totality of the circumstances test is the history of the community surrounding the property. This factor is especially important due to Virginia's history of segregation and redlining.[130] Additionally, Virginia's disparate

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127. *See* Fee, *supra* note 1, at 803-04 (noting that the current just compensation requirement "prevents the public from loading upon one individual more than his just share of the burdens of government" (quoting Monongahela Navigation Co. v. United States, 148 U.S. 312, 325 (1893))).

128. *See id.* at 804.

129. *See supra* note 2 and accompanying text. The Johnsons still live in Shoe Lane but have only the memories of what used to be their community. *See id.*

130. *See generally* ROTHSTEIN, *supra* note 35, at 45-48 (describing how different cities in Virginia discriminated against Black people in zoning and other residential property laws).

treatment of minority residences in the context of university expansion justifies this consideration. Revisiting Shoe Lane illuminates this crucial point.

The "egregious wrong"[131] that was the taking of Shoe Lane for the development of CNU was possible in part because Newport News was not required to account for the bustling history of the community. Shoe Lane was a middle-class Black neighborhood that originated in the late 1800s.[132] When the City—motivated by its fears of increasing Black prosperity so close to a white neighborhood—began seizing Shoe Lane, segregation was prevalent.[133] When residents protested the seizure, the news, fabricated by whites, declared the residents' motivation as antieducation, whereas the residents simply wanted to protect the homes and community they built—a community that meant something to them because of all they endured to have it.[134] Shoe Lane was "systematically dismantled" because of who lived there.[135] Therefore, Virginia must systematically change just compensation to fix it, including increasing compensation for communities with histories such as Shoe Lane's.

This Note recommends a much-improved just compensation formula that encompasses fair market value as a baseline with added percentages for sentimental value:

131. Kellam & Hansen, *supra* note 2.

132. *See* Logan Jaffe, *The Family Photographs That Helped Us Investigate How a University Displaced a Black Community*, PROPUBLICA (Apr. 23, 2024, at 05:00 ET), https://www.propublica.org/article/family-photos-of-shoe-lane-destruction [https://perma.cc/E57Z-Y986].

133. *See id.*

134. *See id.*

135. *Id.*

Ownership Period	
1-10 years	10%
11-20 years	20%
21-29 years	30%
30-39 years	40%
40+ years	50%
Community History	
Racially marginalized[136]	10%
25-75 years old	10%
76-124 years old	20%
125+ years old	30%

Shoe Lane was racially marginalized because it resulted from segregationist policies. It is vital that the Virginia legislature adopt this definition for "racially marginalized" to prevent any ambiguity in the determination that a neighborhood was marginalized.

Under this formula, the Johnsons would be entitled to 190 percent of the fair market value of their property. The baseline fair market value starts them at 100 percent; they have owned the property since 1964,[137] which adds 50 percent; Shoe Lane was a racially marginalized community as a product of segregation, which adds 10 percent; and the community was constructed prior to 1900,[138] which adds 30 percent. This calculation would go a step further toward protecting the interests of property owners whose homes are threatened by eminent domain. It respects what it means for a property to be a home and places a heavier burden on the government if it chooses to take it.

For compensation to truly be "just," it must respect the fair market value and the sentimental value of the home. Virginia's current standard for just compensation falls short of that mark by neglecting sentimental value. Virginia must implement this Note's formula for sentimental value that adds financial compensation based on how long the property was owned and the history of the

136. For the purposes of this Note, "racially marginalized" refers to communities that were created because of unequal housing policies based on race. For example, communities subject to redlining or formed due to segregationist laws would be "racially marginalized." *See id.*

137. *See id.*

138. *See id.*

community surrounding the property. By applying Prong II, Virginia would be well on its way to improving its eminent domain practices. The last step Virginia should take is returning taken land back to its rightful owners or their descendants. The next Part of this Note provides a model for such action.

IV. PRONG III: RETURNING TAKEN LAND—THE MODEL OF BRUCE'S BEACH

The final prong of this Note's three-pronged approach is returning taken land back to its rightful owners or their descendants. This prong is essential to Virginia's new model because while the first two prongs are forward-looking, returning taken land redresses past injuries. For example, the harm imposed on the Johnsons' neighbors would not be rectified by correcting the blight standard and increasing just compensation but would be redressed by returning their land to them. Here, Virginia could look to California, specifically the community of Bruce's Beach, as a model for this prong.

Among over four hundred beaches in California[139] lies Bruce's Beach.[140] What started as a small parcel of land purchased by Willa and Charles Bruce in 1912 blossomed into a beach resort enjoyed by Black families.[141] During a time when Black families were not permitted on most of the state's beaches, Bruce's Beach provided a safe haven for them to relax.[142] Despite harassment from disapproving white neighbors, Bruce's Beach thrived for ten years; but similar to Shoe Lane, Bruce's Beach became victim to abusive eminent domain practices.[143] George Fatheree, the Bruce family's attorney, noted that Willa Bruce was just half a generation removed from slavery and was able to do the unthinkable—become an

139. *See How Many Beaches Are in California? An Overview of the Golden State's Coast*, CALIFORNIA.COM (Apr. 5, 2024), https://www.california.com/how-many-beaches-are-in-california-an-overview-of-the-golden-states-coast/ [https://perma.cc/Z4HB-KW6S].

140. *See* Courtney Lindwall, *A Once-Thriving Black-Owned Beach is Returned to Its Rightful Owners*, NRDC (Feb. 10, 2023), https://www.nrdc.org/stories/once-thriving-black-owned-beach-returned-its-rightful-owners [https://perma.cc/5TTJ-PDZH].

141. *See id.*

142. *See id.*

143. *See id.*

entrepreneur and develop a flourishing beachfront property.[144] White people felt threatened by this, creating the perfect atmosphere for eminent domain abuse.[145] Manhattan Beach city officials condemned Bruce's Beach, claiming to be constructing a public park, but instead left the property undeveloped for many years.[146] This purposeful erasure of a Black community went unaddressed until July 20, 2022, when Los Angeles County (L.A.) legally returned Bruce's Beach to the Bruce family.[147]

Returning Bruce's Beach to the family's descendants was no easy task—the process took over a year[148] and was the work of a task force dedicated to developing a factual synopsis of the Bruce's Beach timeline.[149] But the community was dedicated to correcting this historical wrong, and demonstrated to the rest of the nation that this mistake could and should be addressed.[150] California passed SB 796, amending the prior law that restricted LA's use of granted lands from California's Department of Parks and Recreation (DPR) and prohibited the sale and transfer of those granted lands.[151] After SB 796's passage, the Anti-Racism, Diversity, and Inclusion Initiative (ARDI) and County Counsel began the process of transferring the property back to the Bruce family.[152] With the help of a law

144. *See* L.A. COUNTY CHIEF EXECUTIVE OFFICE, *Returning Bruce's Beach: A 100-Year Journey to Justice*, at 2:30 (Vimeo, Oct. 19, 2022, at 21:11 ET) [hereinafter *Returning Bruce's Beach*], https://ceo.lacounty.gov/ardi/bruces-beach/ [https://perma.cc/T3WY-KUKY].

145. *See* Lindwall, *supra* note 140 (explaining that white neighbors harassed the Bruces and their patrons until city officials finally condemned and seized Bruce's Beach under the "guise of eminent domain").

146. *See id.*

147. *See The History of Bruce's Beach*, LA CNTY. LIBR., https://lacountylibrary.org/ bruces-beach/ [https://perma.cc/DBX4-ZK8Y].

148. *See id.*

149. *See generally* CITY OF MANHATTAN BEACH, HISTORY ADVISORY BOARD REPORT (2021), https://file.lacounty.gov/SDSInter/lac/1127087_Bruce_sBeachHistoryReport_FINALRevised_10-25-2021.pdf [https://perma.cc/NVU8-RXXR] (explaining the Bruce's Beach timeline and the process for creating it). For more detailed information on the motions submitted by the LA County Board of Supervisors, see *Returning Bruce's Beach*, *supra* note 144, at 13:00.

150. *See Returning Bruce's Beach*, *supra* note 144, at 10:30.

151. *See* CNTY. OF L.A. CHIEF EXEC. OFF., REPORT BACK ON RETURNING BRUCE'S BEACH TO ITS RIGHTFUL OWNERS AND NEXT STEPS IN RETURNING BRUCE'S BEACH TO ITS RIGHTFUL OWNERS (ITEM NO. 8, AGENDA OF APRIL 20, 2021, AND ITEM NO. 3, AGENDA OF JULY 13, 2021) 1-2 (2022) [hereinafter CEO REPORT], https://file.lacounty.gov/SDSInter/bos/bc/1126216_BoardMemo-ReportBackonReturningBruce_sBeachtoitsRightfulOwners_6.21.22.pdf [https://perma.cc/4LFR-Q44A].

152. *See id.* at 2 (detailing the process of amending the deed for the land).

firm and genealogists, L.A. searched for Willa and Charles's closest living heirs to return the beach to and located their great-grandsons.[153] The County hired an appraiser to properly assess the property's value and provided the family with several options for transferring the property back to them.[154] L.A. was intentional about being transparent with the Bruce family, an effort that culminated into a ceremony honoring the correction of a wrong driven by racial animus.[155]

When the return of Bruce's Beach to the Bruce family was challenged in court, the court held in favor of the Bruces, but even more than that, deemed combating racism a public purpose.[156] The return of Bruce's Beach was considered unprecedented at the time, but now can serve as a beacon for other states, such as Virginia, to correct the wrongs faced by many Black communities. For taken land that fares similarly to how Bruce's Beach did for years after the taking, the model is simple: Follow California's lead. For more developed land, it may not be that easy.

University expansion presents a unique challenge for returning land to descendants. Whereas Bruce's Beach went undeveloped for several years after its unjust taking,[157] universities have developed the taken land to the point of unrecognizability.[158] This difficulty does not suggest impossibility, it simply means Virginia must work harder to correct past wrongs. Bruce's Beach provides Virginia with stepping stones: recognition of the past wrong, a *transparent* task force dedicated to correcting the past wrong, state legislative action to create a framework under which a legal team could take action

153. *See Returning Bruce's Beach*, *supra* note 144.

154. *See* CEO REPORT, *supra* note 151, at 4-5. LA had constructed a Lifeguard Administration Building on the Bruce family's land. *Id.* at 4. The County entered into a detailed lease agreement for this property so it could continue using the building. *See Returning Bruce's Beach*, *supra* note 144.

155. *See Returning Bruce's Beach*, *supra* note 144, at 16-20. This level of transparency should be used by the task force created to investigate Shoe Lane. Instead, the task force has been accused of being opaque. *See supra* Part I.

156. *See* Order Denying Pet. for Writ of Mandate, Ryan v. L.A. Cnty. Bd. of Supervisors, Case No. 21STCV38353 1, 7 (Cal. Super. Ct. 2022); *id.* The video embedded into *Returning Bruce's Beach* includes interviews with several individuals involved in the process of returning the property to the Bruce family. *See id.* This video provides insightful information from those directly involved.

157. Lindwall, *supra* note 140.

158. *See* Hansen, *supra* note 10.

to transfer the property, and genealogists to locate the proper descendants.

For taken land that has been highly developed, such as CNU, descendant return can take different forms. The Shoe Lane families cannot use the land for their homes but should have their rightful ownership respected. The best way to respect the descendants of Shoe Lane while recognizing the infeasibility of returning the land for residential use is to conduct an honorary transfer of title to Shoe Lane's descendants with an agreement that Virginia will pay the descendants the value calculated in Part III of this Note. The honorary transfer of title would follow most of the Bruce's Beach model, less the actual transfer of the ownership interest, to ensure that the action is not simply a land acknowledgement, but rather a tangible act of respect for Shoe Lane's descendants.

Virginia would need to (1) recognize the taking of Shoe Lane as a past wrong, (2) develop a task force and employ genealogists to study the history of the community and locate Shoe Lane's descendants, and (3) pay the descendants the rightful compensation. The compensation calculation factors, based on the time of the taking, should be as follows: (1) fair market value minus what the original owners received, (2) ownership period, and (3) community history. This model is the best method for descendant return of developed land because it demonstrates that Virginia sees the families it wronged, recognizes that it wronged those families, and is doing the best it can to rectify the wrong. For the Shoe Lane descendants, this retroactive payment would honor their rightful interest in the property taken by abusive eminent domain practices. Through Bruce's Beach, California has shown that it can never be too late to do the right thing. Virginia must fall in line and use Bruce's Beach as an inspiration for returning land back to its rightful owners, or honoring the families whose land is completely unrecognizable.

V. COUNTERARGUMENTS AND IMPLICATIONS

The purpose of deeming blight elimination a public use is to protect the health and welfare of communities and prevent the

depreciation of property values.[159] Blight is a real problem in Virginia, and some cities are struggling to work within the standards already in place to remedy it.[160] Local officials throughout the Commonwealth want Virginia to address blight, finding that the presence of blight alone can lead to increased levels of stress, depression, and self-harm among residents.[161] Others suggest that blight is a definitional problem; blight can refer to environmental, social, legal, and economic issues, all with differing implications.[162] Without a narrow definition for blight, cities and states cannot properly address spaces that actually contribute to the decline of urban areas.[163] Though blight is a real problem, this Note serves as a reminder that blight is easily abused as a standard. A uniform definition of blight does not solve Virginia's problem because it does not change the legal ramifications behind blight. It fails to properly address the deference problem and ease with which the government can abuse blight to disadvantage minority communities.[164]

To improve just compensation, some argue that more money is not the answer. For one, "[i]t is difficult to know how much value someone places on a property."[165] If the compensation is too excessive, then some suggest that individuals may seek out properties near condemnation, engaging in "destructive rent-seeking."[166] Additionally, more money fails to address the stripping of autonomy from property owners.[167] Instead, for properties where public use is unclear—meaning members of society may not accept

159. *See* THE VACANT PROPS. RSCH. NETWORK, CHARTING THE MULTIPLE MEANINGS OF BLIGHT 20, 25 (2015).

160. Wyatt Gordon, *Fighting Blight: How Cities Across Virginia Are Addressing Abandoned Property*, VA. MERCURY (Jan. 31, 2024, at 12:22 ET), https://virginiamercury.com/2024/01/31/fighting-blight-how-cities-across-virginia-are-addressing-abandoned-property/ [https://perma.cc/DY62-WTRT] (addressing cities such as Petersburg and Richmond, whose city officials are struggling to gain support for remedying blight).

161. *Id.*

162. *See generally* THE VACANT PROPS. RSCH. NETWORK, *supra* note 159, at 42 (noting how the current definitions of blight do not properly address the causes of blight or ensure the remediation of these properties).

163. *See id.*

164. *See supra* Part II.

165. *See* Lee Anne Fennell, *Taking Eminent Domain Apart*, 2004 MICH. ST. L. REV. 957, 993.

166. *Id.* at 994.

167. *Id.*

the taking—property owners could opt in to the taking in exchange for tax benefits.[168] But what about homeowners who do not opt in? More research, which goes beyond the scope of this Note, would be needed to determine whether those who choose to opt in are more likely to sell their homes in the first place. But it does not seem like a stretch to say those who choose to opt in to a taking do not feel the same community impact that residents like the Johnsons would feel. Those who do not opt in still face the threat of eminent domain, and without increased compensation, their rights as homeowners will not be adequately respected.

Some argue that Bruce's Beach is an inadequate model for repairing racial discrimination in housing.[169] The argument centers around Bruce's Beach not being an appropriate model for reparations because it does not address the depths of the wealth gap between Black and white people in America.[170] For example, it is estimated that true reparations for Black people in California would cost the state $700 billion.[171] These large economic discrepancies are simply out of the state's budget.[172] Bruce's Beach was the first of its kind, however, and it is one step in the right direction. Logistically, it is the most difficult prong of the three-pronged approach, especially where university expansion is involved. But difficulty is not a sufficient reason to keep Virginia from trying. Where Virginia can implement a Bruce's Beach-like return, it should. Where expansion has simply eroded this possibility, Virginia could use the

168. *Id.* at 995-96. Fennell proposes a system in which people check off a box indicating consent for their property to be taken for private transfer purposes when paying their personal property taxes. *Id.* People would then tailor the price of the transfer and tax breaks would be adjusted accordingly. *Id.* Fennell postulates that this scheme would address the autonomy issue left by increased financial compensation. *Id.* at 995.

169. *See* Andrew W. Kahrl, *Why the Bruce's Beach $20 Million Sale Isn't a Model for Reparations*, NBC NEWS (Jan. 10, 2023, at 09:30 ET), https://www.nbcnews.com/think/opinion/bruces-beach-20-million-sale-isnt-model-reparations-rcna64991 [https://perma.cc/6L7G-DQAZ].

170. *See id.*; A. Kirsten Mullen & William A. Darity Jr., *Why Bruce's Beach May Be an Outlier in Terms of Reparations for Black Americans*, L.A. TIMES (Feb. 2, 2022, at 03:10 ET), https://www.latimes.com/opinion/story/2022-02-02/bruces-beach-reparations-black-property-returned [https://perma.cc/F4Q9-6TNJ].

171. *See* Mullen & Darity, *supra* note 170 (discussing the wealth gap between Black and white households, noting the disparity of net worth as $840,900 and suggesting a race-equity program that would include a statewide initiative to return thousands of plots of land to Black families and adjudicating their claims at no cost).

172. *See id.*

compensation scheme provided in Part III of this Note to compensate descendants for the losses their families suffered.

Addressing blight, increasing compensation, and descendant return are not enough individually. But as a comprehensive, three-pronged approach, these factors would bring Virginia closer to protecting the home from the abuses of eminent domain. The home is different. "A Home is a biological necessity."[173] The home is a culmination of hard work, family, community, and belonging. Eminent domain threatens an American value.[174] If Virginia fails to act, more minority communities will be threatened, and more homes will be lost. Take it from the Johnsons of Shoe Lane. Despite the creation of a task force to investigate the wrongs committed against Shoe Lane, CNU still plans to acquire the last remaining houses in the community by 2030.[175] Recognition of a problem only goes so far—Virginia must act to protect its citizens.

CONCLUSION

Life, liberty, and property are considered pillars of American freedom, yet in Virginia, property is still not properly respected. Property is deeply intertwined with life and liberty, especially among Black Americans whose homes were taken unjustly, whose lives were changed completely, and whose liberty was stripped away by eminent domain abuse. The three-pronged arrangement suggested by this Note would propel Virginia ahead of other states in remedying blight-based takings and particularly the wrongful takings of Black residences under the guise of remedying blight.

Shifting the burden of proof for blight to the government would remove the deference currently enjoyed by the government and protect the homeowner's interest in keeping their home. Increasing just compensation to account for sentimental value respects the home as more than just a plot of land. Descendant return is the ultimate acknowledgment of wrongdoing and rectification. But it is

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173. Mindy Thompson Fullilove, *Eminent Domain & African Americans: What is the Price of the Commons?*, 1 PERSPS. ON EMINENT DOMAIN ABUSE 7 (2007).

174. *See id.* (arguing that eminent domain has become an abusive tool that takes from the poor and stating this abuse is what the founding fathers wanted to prevent).

175. *See* Jaffe, *supra* note 132.

essential that Virginia implement the *entire* approach—the home deserves a comprehensive legal program to adequately protect it as a fundamental right.

Vinegar Hill, Gospel Hill, Lambert's Point, and Shoe Lane were all communities subjected to the abuses of eminent domain. The Johnsons in Shoe Lane have just a scrapbook of the community they once called home. With only five remaining properties, Shoe Lane faces threats of complete erasure with continued expansion into the neighborhood. Virginia must adopt this Note's three-pronged approach to eminent domain so instead of just a collection of memories, the home will be treated as a castle on the highest ground.

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