

IN THE SUPREME COURT OF OHIO

CITY OF NORWOOD,	:	Case Nos. 05-1210, 05-1211
	:	
Appellee,	:	On Appeal from the Hamilton
	:	County Court of Appeals,
v.	:	First Appellate District
	:	
JOSEPH P. HORNEY, et al.,	:	Court of Appeals Case Nos. C040683,
	:	C040783
and	:	
	:	
CARL E. GAMBLE, et al.,	:	
	:	
Appellants.	:	

**BRIEF OF NON-PARTIES INDIVIDUAL OHIO HOME AND BUSINESS OWNERS
AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS**

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Pursuant to Ohio Supreme Court Rule VI, Section 6, Anthony Ambrozic, Karen Ambrozic, Christa Eckert Blum, John Cresante, Renee Dore, Larry Ellis, Mary Kay Ellis, Lynn Farris, Don Farris, Pat French, Roger Gutschmidt, Bruce Hassel, Susan Horn, Charlotte Krach, Margaret Krivonak, Diane Mester, Dennis Mester, Predrag Milenkovich, Tatjana Milenkovich, Albert Miller, Barbara Miller, Dan Oldham, Dan Regenold, John Ritchey, Loraine Ritchey, James Saleet, JoAnn Saleet, Laurie Smerdel, Clark Unger, Margaret Unger, Maynard Unger, Julia Wiltse, and Harrison Wiltse (collectively, “amici”), hereby submit this brief as *amici curiae* in support of Appellants Carl and Joy Gamble. This brief conforms to the requirements of Ohio Supreme Court Rule VIII, Section 4.

INTEREST OF AMICI CURIAE

Amici are individual home and business owners in the State of Ohio who have experienced first-hand the devastating prospect of losing their property through eminent domain abuse. These individuals have struggled through periods of great uncertainty, anger, and frustration as they watched in disbelief as their local governments have tried to position themselves to take their property and pass it on to other private owners. Local communities throughout Ohio have increasingly resorted to “blighting” perfectly good neighborhoods in order to enhance their ability to extract higher taxes from new property owners. In some instances, the amici home and business owners were able to muster enough political support to reverse dubious blight designations or force local politicians to disavow their intentions of abusing their eminent domain powers. In other instances, amici home and business owners have been less successful and continue to suffer the emotional distress associated with owning property that their local governments may try to confiscate at any moment.

During the five-year period beginning in 1998 and ending in 2002, there were more than 400 instances in which Ohio property owners had their property appropriated or threatened to be

appropriated for the private benefit of another owner.¹ In this brief, more than thirty Ohio citizens join together to present the Court with a brief sampling of their all-too-common stories. The experiences that these property owners have had are similar in many respects to those of the Appellants in this case. The purpose of this amicus brief is to inform the Court that eminent domain abuse is widespread throughout the State of Ohio, and that the injustices that the Appellants have endured at the hands of the City of Norwood are representative of this troubling trend. The individual amici participants submit their views because they understand the outrage, fear, and frustration that the Appellants are experiencing and wish to ensure that the constitutional rights of Ohio home and business owners are enforced to prevent similar government mistreatment. Amici respectfully ask this Court to rein in the City of Norwood's wrongheaded tactics and reverse the court of appeals' decision.

STATEMENT OF FACTS

Amici adopt the statement of facts presented in the brief of Appellants, the Gambles, Joe Horney, and Carol Gooch.

ARGUMENT

Allowing The Condemnation Of Normal Neighborhoods Is Unconstitutional And Threatens The Well-Being Of Ohio Home And Business Owners.

1. Eminent Domain Abuse Is Pervasive In Ohio.

This Court has never endorsed a local government's use of its eminent domain power to take perfectly good property from one private owner and transfer it to another private owner.

And, although the elimination of "slum and other conditions of blight" can provide local gov-

¹ See Jen Melby, *Eminent Domain Abuse in Lakewood*, <http://www.buckeyeinstitute.org/article.php?id=187>, Sept. 30, 2003; Dana Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining the Abuse of Eminent Domain* (2003), available at, http://www.castlecoalition.org/report/pdf/ED_report.pdf (compiling numbers from a collection of news sources).

ernments with the necessary justification to exercise their eminent domain powers against property owners, *see State ex rel. Bruestle v. Rich* (1953), 159 Ohio St. 13, 27-28, 110 N.E.2d 778, 787, this Court has held that neighborhoods can only be “blighted” when such a designation follows from a “sound reasoning process,” *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597, 601. This Court has never permitted the condemnation of properties based on the presence of so-called “deteriorating” conditions.

Despite those apparent legal protections for private property owners, an alarming number of cases have arisen in Ohio in which local governments have improperly exercised their eminent domain powers to transfer property from one private party to another for the latter’s private use. *See, e.g.,* Jenny May and Brian M. Ewig, *Could your home be taken next?*, The News Herald (May 11, 2003), *available at*, http://www.news-herald.com/site/news.cfm?newsid=7976407&BRD=1698&PAG=461&dept_id=21849&rft=8 (noting that “Ohio ranks third in the country for known eminent domain cases for private development”). “Experts say more people will face the same issue in the next several years, as eminent domain cases are on the rise in Ohio.” *Id.* In many of the cases that have arisen in Ohio, local governments have abused their eminent domain authority to condemn or threaten to condemn properties that no one could rationally consider “blighted” or slum-like.

2. Local Governments Have Sought To Transfer Perfectly Good Property To Other Private Owners Through Sham Blight Designations.

The study undertaken in Norwood has been roundly criticized. Among other flaws, the private developers who sought to benefit from the City’s use of its eminent domain power completely *financed* the very study from which they would benefit. The evident conflict of interest in that financing relationship renders the study’s results inherently suspect. Moreover, using the

study, the City Council designated the Gambles, and Mr. Horney and Ms. Gooch's neighborhood to be "deteriorating" based on such frivolous reasons as having "diversity of ownership," the existence of ribbon driveways, and lot sizes that were not large enough. But those characteristics are common at homes throughout the entire City and, in any event, hardly stand as indicia of slum or blight. Indeed, the diversification of older neighborhoods is often a hallmark of urban renewal.

Unfortunately, the obvious pretense with which the City of Norwood set about invoking its eminent domain powers, and the numerous flaws in the City's study, look like government as usual throughout the State. Other local governments in Ohio have, at the behest of private developers, conducted similarly bogus blight studies in their attempts to take property from a private owner and give it to those developers. In Lakewood, Ohio, for example, the city government "blighted" more than 50 homes and 4 apartment buildings in the City's West End. Because the homes in this area did not have structural deficiencies, the blight designations were justified on such dubious grounds as the homes lacking central air conditioning, lacking attached two-car garages, having fewer than two full bathrooms, and having fewer than three bedrooms. *E.g.*, David Sartin, *Lakewood sets vote on West End for Nov. 4*, *The Plain Dealer*, July 16, 2003, at B1; Steve Stephens, *'Blighted' Label Often Hides Ulterior Motive*, *The Columbus Dispatch*, June 2, 2003; *60 Minutes: Eminent Domain: Being Abused?* (CBS television broadcast July 4, 2004), *available at* <http://www.cbsnews.com/stories/2003/09/26/60minutes/main575343.shtml>. The Lakewood blight study also disingenuously sought to portray the West End as crime ridden by misleadingly including in its statistics crimes committed in areas within the same reporting district but outside of the West End. That the "blight-worthy" characteristics identified in Lakewood's blight study were pretextual justifications for reaching a particular desired result was ob-

vious. Indeed, the West End residents determined that these same “deficiencies” would apply to 93% of all single family homes throughout the City, including the homes of the members of the City Council and the Mayor. The Mayor of Lakewood could not even pretend that the West End needed to be condemned because it was slum-like or otherwise undesirable, and acknowledged that the West End was a “cute little neighborhood.” *See id.* Instead, the City just wanted to give one group of citizens’ properties to private developers—one of whom was the same Jeffrey R. Anderson that is set to obtain the Gambles’ property in Norwood—because the private developer “promises to pay more taxes than Lakewood can squeeze from the current owners.” Steve Stephens, *Fourth of July a Fine Holiday To Root For the Underdogs*, *The Columbus Dispatch*, July 7, 2003.

In Evendale, Ohio, a similar story emerged when the local government wanted to take private property and transfer it to private developers. Evendale targeted an area known as the Reading Road corridor and, like Norwood and Lakewood, the Village of Evendale commissioned a bogus blight study to enable it to take the land. The Village “blighted” some 130 properties, including the Formica Corporation’s world headquarters and a multi-million dollar hospital complex. To reach its blight designations, the blight study relied on such pretextual factors as whether the properties were more than forty years old and whether there was “diversity of ownership,” the same factor that Norwood has embraced in its study. *See, e.g.*, <http://www.blightedevendale.com/McBride%20Dale%20Clarion.htm>. When the number of fire code violations proved too few to support a blight finding, that factor was eliminated from the Evendale study altogether. The same was true for building code violations; when no violations were found, that indicator was not included in the study either. In short, the blight study was a

farce that was geared toward reaching a specific conclusion, regardless of whether that conclusion was warranted.

Indeed, the entire Evendale charade reeked of illegitimacy. The local government initially failed to comply with its own well-established notice requirements in an apparent effort to limit the predictable dissatisfaction among the affected property owners. The government manipulated the process by adding language to the blight study to suit its redevelopment agenda, despite the lack of any evidentiary support for the language and its absence from the study's first draft. Furthermore, when village officials held hearings, a half dozen experts expressed their view that the area could not reasonably be given a blight designation, while only one planning expert thought the area was blight-worthy. Nevertheless, because the local government was determined to push ahead with its urban renewal plan, it did not hesitate in blighting the Reading Road corridor to suit its objectives.

This Court can send a strong message to the political subdivisions of Ohio that resorting to illegitimate means in condemning private property will not entitle them to take that property under their eminent domain authority. Rigged blight studies, based on phony or irrelevant criteria, cannot provide a valid basis for government taking property from one private owner and giving it to another, and this Court can and should make that clear.

3. Individual Property Owners Suffer Greatly As A Result Of Eminent Domain Abuse.

Many observers wrongly assume that because property owners are compensated for the loss of their homes or businesses they do not truly suffer harm from eminent domain abuse. Of course, that view fails to account for the value that one's property can have beyond financial terms and the emotional attachment that many property owners have to their homes and businesses. Indeed, "[e]ven when eminent domain law is not invoked by a government entity, the

threat may be potent,” and can leave people “stressed and anxious” as they wait “to hear what will happen to their homes.” Jenny May and Brian M. Ewig, *Could your home be taken next?*, The News Herald (May 11, 2003), *available at*, http://www.news-herald.com/site/news.cfm?newsid=7976407&BRD=1698&PAG=461&dept_id=21849&rfi=8.

In addition to the emotional toll associated with the prospect of losing one’s home, property owners also are less likely to invest in their properties when there is a chance that they will be forced to leave their homes. Many of the individual amici property owners delayed renovation efforts or other improvements to their homes because their future ownership was put in doubt. Moreover, once designated as “blighted,” their properties were less financially valuable because few prospective buyers would be willing to purchase a home or business space that was in jeopardy of being confiscated by the government at any time.

The individual amici home and business owners’ stories highlight the unfairness that private property owners are increasingly experiencing in Ohio:

Lakewood, Ohio: Residents of Lakewood, Ohio have experienced the outrage that the Gambles and others in Norwood are feeling. As explained above, Lakewood conducted a bogus blight study through which the City labeled “blighted” more than 50 individual homes and 4 apartment buildings in a normal middle-class neighborhood. What followed was a lengthy struggle for residents to hold onto the homes and businesses that they rightfully owned.

Jim and JoAnn Saleet have lived in their Gridley Street home in Lakewood’s West End since 1965. From the first time they saw it, they knew it was their dream home, and they decided that they would buy it and never move again. JoAnn Saleet, *There’s nothing blighted about the West End*, The Plain Dealer, May 20, 2003. The Saleets raised four children in that home. Over the years, the Saleets made many improvements to their home, cherished their spectacular view

of the Rocky River and valley, and looked forward to living out their lives there. They had promised their daughter that they would leave the house to her and her family. When the city government threatened to take the home, the Saleets, now retired, risked losing the life that they had always planned for themselves. Jim Saleet would not stand for it: “I thought I bought this place. But I guess I just leased it, until the city wants it. . . . That’s what makes me very angry. This is my dream home. And I’m gonna fight for it.” *60 Minutes: Eminent Domain: Being Abused?*, CBS News, July 4, 2004, *available at* <http://www.cbsnews.com/stories/2003/09/26/60minutes/main575343.shtml>. JoAnn was similarly affected: “Our home is our haven, our peace and the repository of the memories of the best years of our lives. It is irreplaceable. We and the rest of our neighbors should not be forced out of our homes because private developers want our land.” JoAnn Saleet, *There’s nothing blighted about the West End*, *The Plain Dealer*, May 20, 2003.

Julia Wiltse also lives on Gridley Street. Both her home and her husband’s business were threatened to be taken pursuant to the City’s eminent domain powers. Julia responded by getting involved with the Saleets and others in her neighborhood to try to save their homes. But when Julia helped to point out the numerous flaws in the City’s blight designation, the city council and planning commission was not interested. It soon became clear to Julia and her neighbors that the City did not care about the legitimacy of the blight study, so long as it yielded the blight designations necessary to allow the City to transfer West End property to private developers pursuant to the City’s eminent domain powers.

After a long two-year battle, the voters of Lakewood voted to reverse the blight designations. Notwithstanding the West End residents’ ultimate success in stopping their government’s attempts to take their property, residents in Lakewood suffered greatly. Julia Wiltse and her

husband went through a protracted period in which they were extremely distressed. They were shocked when they learned that they could lose their home and business even though they did not want to sell. Hal Wiltse had grown up in Lakewood. He and his wife had spent four years renovating their house. They could not believe that all of their efforts could be wiped out because the government wanted another private party to own their property. When they learned that the blight study had been a sham, their disbelief turned to anger and frustration. And they spent two years of their lives attending countless city council meetings and working to save their home—two years that they could have spent enjoying their home, like most homeowners, instead of being forced to wage an all out defense of it.

Bert Miller, who owned Holmes Printing in the West End, had never felt such emotional strain in his life as he did during the two years of fighting with the city to save his property. Bert, 67, went through stages of sheer anger, worry, and complete frustration with the process. Bert was beside himself that the city council wanted to take his business property, the business that he had worked to build, simply so that it could hand the property over to someone else. Bert understands what eminent domain is supposed to be used for—things like schools and roads and government buildings—but he hopes that no one has to go through the emotional saga that he and his wife were forced to undergo when Lakewood threatened to transfer their property to another private owner.

Christa Eckert Blum immigrated to the United States from Latvia with her family after they were forced to flee the invading Soviet forces during World War II. Her family treasured the opportunity to own their own home in this country. Christa felt betrayed when she learned that the City of Lakewood had plans to take her West End home. As she learned more about the situation and saw the disingenuousness of her elected officials and the bogus blight study that

had been conducted, she became increasingly angry. She knew from personal experience that people were forced out of their homes in war-torn Europe, but she did not expect it to happen in America.

Willowick, Ohio: Dan Oldham, an engineer at the NASA Glenn Research Center, has devoted the last few years of his life to fighting to save his home and neighborhood. Dan bought a beautiful lakefront property in Willowick, Ohio in the mid-1990s, and began investing in improvements for his newly acquired home. Many of Dan's neighbors undertook similar renovation efforts, and their neighborhood on Lake Erie steadily improved, quickly becoming one of Willowick's finest.

Despite Dan's and his neighbors' obvious commitment to their neighborhood, the City of Willowick has other ideas for their homes. In late 2002, the City unveiled a redevelopment project that contemplated wiping out Dan's and his neighbors' homes. Under the City's so-called "Master Plan," Dan's beautiful neighborhood would be condemned so that a private developer could construct a new neighborhood of town-houses and luxury condominiums. As the City Council President candidly remarked, "We are trying to set up a land bank so the city can buy homes and then sell them to the developer." Jenny May and Brian M. Ewig, *Could your home be taken next?*, The News Herald (May 11, 2003), available at, http://www.news-herald.com/site/news.cfm?newsid=7976407&BRD=1698&PAG=461&dept_id=21849&rft=8. Although the City has not yet sought to invoke its eminent domain power to take Dan's house, city officials have made clear that they will do whatever is necessary to see their redevelopment plan through to completion, including using eminent domain. See Maggi Martin, *Willowick homeowners fight plan for \$50 million lakefront renewal*, The Plain Dealer, at B3 (June 23, 2004).

The City's threat to take Dan's home, only to transfer the property for another private party's use, has left Dan extremely unsettled. He has put on hold plans to make alterations to his home that would allow his father to move in. He now spends most nights during the week attending council meetings or meeting with residents who share his concern about losing their homes. Dan has even felt compelled to run for a spot on the city council to try to protect his neighborhood, a campaign that has consumed even more of his time and money. The City's threat to take Dan's home has negatively affected Dan's life. He does not want to move out of the home that he has worked so hard to make his own. As he told *The Plain Dealer* in June 2004, he "just want[s] to live in [his] home in peace," and the threat of the City taking his home "scares [him] to death." Maggi Martin, *Planners view lake as future of Willowick; Housing project would cost \$50 million, take homes*, *The Plain Dealer*, at B1 (June 21, 2004).

One of Dan's neighbors is Laurie Smerdel. Laurie moved to Willowick in 1995 to get a fresh start with her family after going through a divorce. She poured her heart and soul—and thousands of dollars in life savings—into renovating her lakefront property, including building an addition that could accommodate family members. Laurie was proud of the new life she was able to build in her Willowick home. Laurie now frequently has trouble sleeping through the night because she is so distraught over the prospect of losing her home. For three years, she and her neighbors have had a cloud hanging over them. While not yet deciding to take her home, the City has made clear that it may well exercise its eminent domain powers to take Laurie's home if necessary. The uncertainty only worsens her anxiety.

Another Willowick resident, Pat French, is similarly frustrated: "My husband and I have lived here over 20 years, and every morning we wake up and say, 'The city is going to kick us out of our home.' We want our homes; we don't want money. This is the United States. Hope-

fully, we have rights.” Jenny May, *Council looks at change to plan*, The News Herald (Mar. 15, 2004), available at, http://www.news-herald.com/site/news.cfm?newsid=11122585&BRD=1698&PAG=461&dept_id=21849&rfi=8. Pat and her husband, Bud, have gone to great expense in improving their lakefront home, which is in a perfect location for the couple. Their children and grandchildren live only minutes away, which allows Pat to care for her grandchildren while their parents are at work. All of the Frenches’ friends and family are close by. Bud, who is 73, is able to walk to his job at a local pharmacy, and there is a shopping center across the street from the couple’s home. Pat has gone to the same church for more than 60 years, and if she is forced to move out of the area, she may no longer be able to attend.

Concerned that the City of Willowick has put at risk the life the Frenches have built for themselves, Pat joined with others in her neighborhood, including Dan Oldham and Laurie Smerdel, to form a residents’ group that would oppose attempts by the City to use eminent domain to force them from their homes. Pat’s efforts to protect her home have been costly and time-consuming. The possibility that she will lose her home is all-consuming.

Lorain, Ohio: In Lorain, Ohio, the city government wants to replace a number of lakefront properties, including four blocks of historic homes, with something that will allow the City to collect more in taxes. The City is kicking off a number of blight studies and is trying to position itself to take properties that it can then transfer to other private parties for redevelopment. One potential benefactor from the City’s actions is the Eastern Shawnee Indian Tribe, which would like to open a casino along Lorain’s waterfront.

Renee Dore and her husband built a brand new house on Washington Avenue four years ago that is now at risk of being taken. Their home is near the water and is in an area that has a number of historic homes and elderly residents who have lived there for most of their lives.

Mike Sakal, *Blight study to include historic property*, Morning Journal (Oct. 19, 2005), *available at*, http://www.morningjournal.com/site/news.cfm?newsid=15411643&BRD=1699&PAG=461&dept_id=566374&rft=8. Renee grew up in the house next door. Although Renee's home has not yet been blighted, her overwhelming fear is that her home will be the next targeted.

Shawn Foucher, *Resident fears losing home to blight plan*, The Chronicle Telegram (Oct. 12, 2005), *available at*, http://www.chroniclet.com/2005_Archive/10-12-05/Daily%20Pages/Local/Html/local3.html.

Evendale, Ohio: In 2001, the local government in the wealthy community of Evendale, Ohio, embarked on an Urban Development Plan that would have transferred approximately 130 properties in an area of the Village that housed most of the business community. The Village ultimately gave up on the plan, but only after it funded a study that declared those properties “blighted” and subjected the owners to the fear that their property would be taken through eminent domain abuse. As a result of the blight designations, several owners moved out of the area or closed their businesses altogether. Dan Regenold was one business owner who became so frustrated with the government's actions that he opted to relocate to a building in another area outside of the Village's development plan. The move cost Dan hundreds of thousands of dollars in lost time and acquisition costs. None of the Reading Road owners invested in their property or businesses during the time that the eminent domain cloud hung over their heads. Bruce Hassel, for example, deferred expending \$120,000 to improve his printing business and property. Because his property was “blighted” and his future in the location uncertain, it made no sense for him to spend money on the business. Bruce, Dan, and other business owners in the area were able to coalesce their resources to fight the redevelopment plan and ultimately prevent the Village from taking their property. Fortunately for them, they were able to spend the tens of thou-

sands of dollars necessary to mount a successful campaign to overturn their government’s development plan and the bogus blight designations—although Dan had already purchased a new property for his business by the time the blight designation was dropped. Of course, unlike the business owners in Evendale, many other property owners are not in a financial position to overcome a faulty blight designation through political or judicial avenues.

* * * * *

As the foregoing examples demonstrate, the prospect of losing one’s home or business so that the government can give the property to somebody else is devastating. The amici home and business owners have been forced to sacrifice vast amounts of their time and money to fight for their ownership rights. Moreover, the emotional trauma that they have had to endure as a result of their local governments’ unconstitutional actions is more than anyone in Ohio, or elsewhere, should have to experience in order to enjoy the benefits of owning a home or business.

CONCLUSION

The individual amici home and business owners urge this Court to reverse the court of appeals’ decision and put an end to the unfortunate era in which local governments in Ohio can abuse their eminent domain powers with impunity.

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