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HUNGRY IN THE “LAND OF PLEASANT LIVING”: COMBATING THE EFFECTS OF BALTIMORE’S FOOD DESERTS ON CHILDHOOD EDUCATION THROUGH EMINENT DOMAIN

Gabriel H. Rubinstein *

In 1848, American reformer Horace Mann called education the “great equalizer of the conditions of men—the balance wheel of the social machinery.”¹ Education by itself, however, has failed to bring equal socio-economic mobility to certain segments of the American population. A barrier to education emerges in low-income neighborhoods where children may be affected by substandard nutrition. This Comment discusses how the lack of healthy food in low-income areas of Baltimore City (“the City”) is a “social determinant of health”² for black children and suggests that the City government use eminent domain to increase urban farming in low-income areas of the City.

A recent study conducted in Baltimore City, known as the Long Shadow Study, revealed how difficult educational attainment and social mobility are for individuals from low-income backgrounds. The study monitored the progress of approximately 800 Baltimore City children from first grade until their late twenties.³ Among

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¹ David Rhode et al., *The Decline of the ‘Great Equalizer’*, THE ATLANTIC (Dec. 19, 2012), <http://www.theatlantic.com/business/archive/2012/12/the-decline-of-the-great-equalizer/266455/>.

² The World Health Organization defines social determinants of health as “the circumstances in which people are born, grow up, live, work and age, and the systems put in place to deal with illness. These circumstances are in turn shaped by a wider set of forces: economics, social policies, and politics.” *Key Concepts, in Social Determinants of Health Commission’s Final Report*, WORLD HEALTH ORG., http://www.who.int/social_determinants/thecommission/finalreport/key_concepts/en/ (last visited Oct. 26, 2015).

³ KARL ALEXANDER ET AL., *THE LONG SHADOW: FAMILY BACKGROUND, DISADVANTAGED URBAN YOUTH, AND THE TRANSITION TO ADULTHOOD* xv (2014).

children initially classified as “urban disadvantaged,”⁴ only 4 percent went on to complete a bachelor’s degree and just over 10 percent were able to move beyond a low-income socio-economic status by age twenty-eight.⁵

Many in the Long Shadow sample were residents of City areas classified as “food deserts.” Though there is no consensus on the definition of a food desert, this Comment uses the City of Baltimore Department of Planning’s definition, which describes a food desert as “an area where the distance to a supermarket is more than one quarter of a mile; the median household income is at or below 185 percent of the Federal Poverty Level; over 30 percent of households have no vehicle available; and the average Healthy Food Availability Index score for [supermarkets, convenience and corner stores] is low.”⁶ 35 percent of black Baltimoreans live in food deserts, compared to just 8 percent of white Baltimoreans, and 30 percent of Baltimore’s school-aged children live in food deserts.⁷

Individuals living in food deserts face an increased prospect of malnutrition,⁸ which leaves children particularly vulnerable. A

⁴ The Long Shadow study defines urban disadvantaged children as “children whose parents rank low by conventional markers of socioeconomic standing (level of education, occupation, and income).” *Id.* at 1.

⁵ Emily Badger, *What Your 1st-Grade Life Says About the Rest of It*, WASH. POST (Aug. 29, 2014), <http://www.washingtonpost.com/news/wonk/wp/2014/08/29/what-your-1st-grade-life-says-about-the-rest-of-it/>.

⁶ *Food Deserts*, BALT. CITY GOV., <http://archive.baltimorecity.gov/Government/AgenciesDepartments/Planning/BaltimoreFoodPolicyInitiative/FoodDeserts.aspx> (last visited Oct. 27, 2015) [hereinafter Planning Dep’t]. The Healthy Food Availability score is determined using the Nutrition Environment Measurement Survey, a formula developed at the University of Pennsylvania to rate healthiness of food in an area based on type and accessibility. *NEMS*, PERELMAN SCH. OF MED., UNIV. OF PA., <http://www.med.upenn.edu/nems/shtml> (last visited Dec. 27, 2014).

⁷ AMANDA BEHRENS BUCZYNSKI ET AL., *MAPPING BALTIMORE CITY’S FOOD ENVIRONMENT* 23 (2015), <http://mdfoodsystemmap.org/wp-content/uploads/2015/06/Baltimore-Food-Environment-Report-2015-11.pdf> [hereinafter MAPPING BALTIMORE].

⁸ See BALT. STUDENT ATTENDANCE CAMPAIGN & ELEV8 BALTIMORE, *STATE OF CHRONIC ABSENTEEISM AND SCHOOL HEALTH* 10 (2012), <http://www.elev8baltimore.org/site/wp-content/uploads/2012/04/Absenteeism-and-School-Health-Report.pdf> [hereinafter ABSENTEEISM AND SCHOOL HEALTH REPORT] (noting “Food-insecure families often cope by skipping meals or relying too much

deficiency of high quality food contributes to poorer overall health and increased hospitalization,⁹ as well as amplified rates of school absences for children.¹⁰ Furthermore, numerous residents living in food deserts rely on high calorie processed foods that adds to high rates of obesity.¹¹ The financial costs of attempting to address these problems are exorbitant.¹² Difficulties in obtaining healthy food have led the Baltimore City Health Department to develop a program allowing physicians who provide care to low-income patients to write “prescriptions” for patients to obtain fresh fruits and vegetables.¹³

One promising solution to expand access to healthy food in the City is urban farming.¹⁴ Baltimore City has a strong history of urban farming dating back to the 1890s,¹⁵ and the City has seen an increase in urban farming by community groups since the 2000s.¹⁶ Baltimore has plenty of land available on which to urban farm—the City contains thousands of vacant structures that are hazardous to the public, stunt community growth, and are costly for local government to manage.¹⁷

on low-cost unhealthy food, leading to increased risk of poor health, malnutrition, or obesity.”)

⁹ Tess Feldman, *Re-Stocking the Shelves: Policies and Programs Growing in Food Deserts*, 16 PUB. INT. L. REP. 38, 40 (2010).

¹⁰ ABSENTEEISM AND SCHOOL HEALTH REPORT, *supra* note 8, at 11.

¹¹ See Feldman, *supra* note 9 (stating “where food deserts exist, packaged junk food and high calorie processed food are often easily accessible and affordable. The lack of fresh food combined with the presence of snack and fast food contribute to populations with high rates of . . . obesity”).

¹² See JOHN COOK & KAREN JENG, FEEDING AMERICA, CHILD FOOD INSECURITY: THE ECONOMIC IMPACT ON OUR NATION 25 (2009) (discussing the direct and indirect costs of food insecurity).

¹³ Interview with Dr. Susan Hersker Rubinstein, Medical Director, Family Health Centers of Baltimore—Cherry Hill Site, Balt., Md. (July 20, 2014).

¹⁴ See BALT. OFFICE OF SUSTAINABILITY, HOMEGROWN BALTIMORE: GROW LOCAL BALTIMORE CITY’S URBAN AGRICULTURE PLAN 9 (2013), <http://www.baltimoresustainability.org/sites/baltimoresustainability.org/files/HGB%20Grow%20Local%20Urban%20Ag%20Plan%20final.pdf> [hereinafter HOMEGROWN BALT.] (noting that urban agriculture is one of the U.S. Conference of Mayors’ Food Policy Task Force’s “three platform legs” to promote healthy food access).

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 9.

¹⁷ See generally Katherine Wells, *The Hunt for Baltimore’s Slumlords*, THE ATLANTIC (Dec. 19, 2013), <http://www.theatlantic.com/video/index/282483/the-hunt-for-baltimores-slumlords/>; see also Yepoka Yeebo, *Baltimore Decides Some Neighborhoods Just Aren’t Worth Saving*, BUSINESS INSIDER (Feb. 24, 2012),

Consistent with the United States Supreme Court's holding in *Kelo v. City of New London*,¹⁸ the Baltimore City government should use its power of eminent domain to take ownership of unused and hazardous vacant property and transfer the property to urban farming groups to maximize urban farming and strengthen Baltimore's communities.¹⁹ In *Kelo*, the City of New London, Connecticut, used eminent domain, prescribed under the Takings Clause of the Fifth Amendment,²⁰ to transfer land largely owned by private homeowners to private developers who aimed to increase business and wealth in an economically depressed city.²¹ The Court held that the U.S. Constitution does not prohibit state or city governments from considering economic development as a sufficiently public purpose to utilize its power of eminent domain.²²

In summary, this Comment argues that using eminent domain to expand urban farming in the City is a highly efficient way to provide the City's most vulnerable populations with access to healthy food. Part I of this Comment examines the history of the City and how food deserts and vacant structures became widespread in the City.²³ Part II of this Comment explores the deleterious consequences of food deserts on children, which hinder educational success.²⁴ Part III describes current urban farming practices in the City and how the City government can utilize eminent domain to expand access to healthy food through urban farming to reduce malnutrition.²⁵

<http://www.businessinsider.com/baltimore-has-decided-some-neighborhoods-just-arent-worth-saving-2012-2>.

¹⁸ 545 U.S. 469 (2005).

¹⁹ Keith Buzby, *Farming the Slums: Using Eminent Domain and Urban Agriculture to Rebuild Baltimore's Blighted Neighborhoods*, 38 WM. & MARY ENVTL. L. & POL'Y REV. 479, 480 (2014).

²⁰ U.S. CONST. amend. V.

²¹ *Kelo*, 545 U.S. at 472. The purpose of the taking was to create jobs and businesses to improve the New London's economy. *Id.*

²² *Id.* at 484-85.

²³ See *infra* Part I.

²⁴ See *infra* Part II.

²⁵ See *infra* Part III.

I. THE RISE AND FALL OF BALTIMORE CITY

A. *Baltimore's Economic Demise*

Like many other industrial cities, the City's economic vibrancy faded during the latter half of the 20th century.²⁶ The changes in the City's weakening economy left a large number of low-income blacks confined to areas lacking access to healthy food. Though Baltimore led Maryland economically during World War II, business and industrial leaders were aware that elevated levels of industry would be difficult to maintain after the War ended.²⁷ Baltimore bore the brunt of Maryland's industrial decline while burgeoning suburban areas prospered significantly.²⁸ Between 1950 and 1995, Baltimore lost over 100,000 manufacturing jobs, 75 percent of all industrial employment, to suburban areas.²⁹ Today, manufacturing jobs comprise only six percent of Baltimore's total job market.³⁰

White flight from the City contributed significantly to a predominantly black population—entire neighborhoods changed from

²⁶ By 1950, Baltimore had become the sixth-largest city in the United States. ALEXANDER ET AL., *supra* note 3, at 24. Baltimore was the economic center of the mid-Atlantic region. *Id.* at 24–25. Working-class Baltimoreans, including people of color, were able to earn enough to buy homes, save for the future, and give their children access to higher education. Service Employees International Union, *A Brief Economic History of Modern Baltimore*, in PUTTING BALTIMORE'S PEOPLE FIRST: KEYS TO RESPONSIBLE ECONOMIC DEVELOPMENT OF OUR CITY (2004), available at <http://www.nathanielturner.com/robertmooreand1199union3.htm> [hereinafter SEIU]. With the increase in overall wealth and businesses in the City, the food industry also boomed. In 1949, the *Baltimore Sun* depicted a city with “a grocery store on practically every corner.” David Frey, *The Last of the Arabbers*, EATER (Oct. 8, 2014), <http://www.eater.com/2014/10/8/6915565/baltimore-arabbers-fruit-vendors>. The Baltimore “arabbers”, a group of African-American merchants historically active in the City, transported healthy foods, such as fruits, vegetables, and seafood all over the City. *Id.* In addition, “Victory Gardens” were popular in Baltimore. At the height of the War, 60,000 Baltimore families generated food in Victory Gardens. Homegrown Baltimore, *supra* note 14, at 7. By 1943, the City held over fifty community gardens. *Id.*

²⁷ ROBERT J. BRUGGER, MARYLAND, A MIDDLE TEMPERAMENT: 1634–1980, 554 (1988).

²⁸ ANTERO PIETILA, NOT IN MY NEIGHBORHOOD: HOW BIGOTRY SHAPED A GREAT AMERICAN CITY 217 (2010).

²⁹ SEIU, *supra* note 26.

³⁰ *Id.*

predominantly white to predominantly black in ten or fifteen years.³¹ Further, the City's lack of wealth became problematic because the City could no longer generate tax revenue from a large number of middle and upper class individuals and families.³²

B. Governmental Policy and the Ghettoization of Baltimore City

Deindustrialization and suburbanization were not the only factors that left Baltimore City with a high population of low-income blacks. Policies implemented throughout the 20th Century played a significant role in shaping a city where a considerable number of blacks not only lived in poverty, but also in racially segregated neighborhoods.³³

Because the majority of blacks in the City were unable to obtain home financing and were restricted to "overcrowded neighborhoods where housing was in short supply," they were forced to either rent apartments at significantly higher prices than similar dwellings for white people in different neighborhoods or purchase homes on installment plans from speculators.³⁴ These contract sales differed from mortgages because monthly payments were not amortized, so one missed payment, which speculators often expected,

³¹ *The Story of Urban America*, ANTERO PIETILA, <http://www.anteropietila.com/books.html> (last visited Sept. 20, 2015).

³² See Elizabeth M. Nix & Deborah R. Weiner, *Pivot in Perception: The Impact of the 1968 Riots on Three Baltimore Business Districts*, in *BALTIMORE '68: RIOTS AND REBIRTH IN AN AMERICAN CITY* 181 (Jessica I. Elfenbein et al. eds., 2011) (noting that by 1960 "upper-income families had moved off [Baltimore City's] tax rolls").

³³ Historically, the Baltimore City government has been a major player in segregating the City's neighborhoods. See generally PIETILA, *supra* note 28, ch. 2 (discussing the role government played in segregating the City's neighborhoods).

³⁴ Richard Rothstein, *From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation*, ECON. POLICY INST. (Apr. 29, 2015, 2:46 PM), <http://www.epi.org/blog/from-ferguson-to-baltimore-the-fruits-of-government-sponsored-segregation/>. "Between 1930 and 1960, Baltimore's black population grew from 142,000 to 326,000," but the housing market "made no allowance for increasing the number of black housing units." Garrett Power, *Apartheid Baltimore Style: the Residential Segregation Ordinances of 1910-1913*, 42 MD. L. REV. 289, 320 (1983). African American houses were often located in the older sections of the City in "blighted districts." *Id.* The City government "from time to time demolished black slums if they became a nuisance." *Id.*

resulted in eviction.³⁵ Keeping down payments and monthly installments as profit, speculators would quickly rent to other blacks in need of housing.³⁶ Ultimately, these policies contributed considerably to prevalent pockets of low-income blacks living in unhealthy conditions throughout the City. Federal policy essentially barred black families from amassing housing equity during and after the influx of wealth to suburban areas, while white families had the opportunity to move to suburban single-family homes where they accumulated wealth to transfer to subsequent generations.³⁷

Today, on average, the income of black families is approximately sixty percent of the income of white families, but total household wealth for black families is roughly five percent of white household wealth.³⁸ Because black Baltimoreans are far less likely than whites to achieve higher education, black Baltimoreans are largely resigned to jobs in service, cleaning, and security,³⁹ which are often characterized by “low pay, high turnover, and irregular schedules,” and typically do not include benefits, union representation, job security, or any skill building or vocational training opportunities.⁴⁰

C. *The Emergence of Baltimore’s Food Deserts*

As money and industry moved from the City to the suburbs, access to fresh food became more difficult for low-income groups in the City. The focus on bringing healthy food to the City shifted to supplying suburban families with produce at new supermarkets,

³⁵ Rothstein, *supra* note 34.

³⁶ Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>. Richard Rothstein argues that contract buying and predatory lending that targeted African Americans was a direct consequence of the federal government’s policy of denying mortgages to African Americans. Rothstein, *supra* note 34.

³⁷ Rothstein, *supra* note 34.

³⁸ *Id.*

³⁹ ALEXANDER ET AL., *supra* note 3, at 25–26.

⁴⁰ SEIU, *supra* note 26. Today, the City’s economy is shaped like an “hour-glass”; lucrative jobs requiring higher education, often in the technology, finance, insurance, and real estate industries, are at the top, low-wage jobs with little potential for advancement are at the bottom, and very few opportunities in the middle. ALEXANDER ET AL., *supra* note 3, at 26.

leading to the departure of the City's grocery stores and closing of many of its markets.⁴¹ In 1961, the Baltimore Health and Welfare Council identified poor nutritional and health standards as concerns for inner-city neighborhoods.⁴² "Supermarket flight from the inner city [area] left the typical low-income neighborhood with thirty percent fewer supermarkets than higher-income areas."⁴³ Today, Baltimore City ranks second among similarly sized cities for the number of low-income people living in food insecure areas.⁴⁴

II. FOOD INSECURITY IMPEDES EDUCATION AND ECONOMIC OPPORTUNITY IN THE CITY

A. *Baltimore's Food Deserts*

In the City, thirty-five percent of all black citizens live in food deserts, the highest percentage of any race.⁴⁵ Baltimore City has 45 supermarkets compared to 450 corner stores and 625 carry out locations,⁴⁶ but these stores are not equally distributed across all neighborhoods. Within predominantly white neighborhoods, forty-two percent of all food stores are corner stores, thirty-seven percent are convenience stores, thirteen percent are supermarkets, five percent are farmers markets, two percent are covered markets, and one percent

⁴¹ PIETILA, *supra* note 28, at 221. By 1976, Baltimore had closed three of its major markets, including the vital Inner Harbor market, in favor of the Greater Baltimore Consolidated Wholesale Food Market Authority's modern distribution center in Jessup, Maryland, seventeen miles away. Frey, *supra* note 26. Eight years later the seafood market on the Inner Harbor closed and joined the produce center. *Id.* Estimates state that at certain points in the mid-20th century, hundreds of arabbers were active in the City. *Id.* As of 2014, approximately nine arabbers remain active in the City, largely through the support of the Arabber Preservation Society.

⁴² Elizabeth M. Nix & Deborah R. Weiner, *supra* note 32, at 181.

⁴³ Shiriki Kumanyika & Sonya Grier, *Targeting Interventions for Ethnic Minority and Low-Income Populations*, 16 THE FUTURE OF CHILDREN. 187, 193 (2006), http://www.princeton.edu/futureofchildren/publications/docs/16_01_09.pdf.

⁴⁴ Holly Freishtat, Director, Baltimore City Food Policy, Maryland's Food Desert Initiatives: Innovative Financing and Partnerships at the 4th Annual Fighting Hunger in Maryland Conference (Sept. 29, 2014), http://mdhungersolutions.org/projects/mfann_conference_presentations_2014.shtm.

⁴⁵ MAPPING BALTIMORE, *supra* note 7, at 23. Fifteen percent of Hispanic and Latinos and eleven percent of Asians live in food deserts in the City. *Id.* at 24.

⁴⁶ Freishtat, *supra* note 44.

are “behind-glass” stores.⁴⁷ When looking at predominantly black neighborhoods in the City, however, the percentages shift dramatically towards food vendors that do not provide healthy options. Black neighborhoods are comprised of fifty-four percent corner stores, seventeen percent convenience stores, eight percent supermarkets, one percent farmers markets, one percent covered markets, and nineteen percent behind-glass stores.⁴⁸ Further, the discrepancy in the quality of food sold in Baltimore supermarkets is particularly striking. A study of two Baltimore City supermarkets, one located in a predominantly white, high-income neighborhood and the other in a predominantly black, low-income neighborhood, revealed that healthy food was considerably less available in the supermarket serving the black, low-income neighborhood.⁴⁹

Poor access to supermarkets poses a major problem for those living in food deserts. The neighborhood of Cherry Hill demonstrates just how problematic shopping at supermarkets can be for low-income people. The Cherry Hill neighborhood was a racially segregated, planned suburb built in the 1940s and 1950s for blacks.⁵⁰ The neighborhood included numerous green spaces, with curving streets and parkland⁵¹ and orchards and fruit trees.⁵² The first residents of

⁴⁷ AMANDA BEHRENS ET. AL, THE BALTIMORE CITY FOOD ENVIRONMENT 7 (Stephen A. Haering et al. eds., 2010), http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/_pdf/research/clf_reports/BaltimoreCityFoodEnvironment.pdf. Behind-glass stores are “characterized by having barriers of Plexiglas walls separating the consumer on one side from the retail items and owner/workers on the other side.” *Id.* at 4.

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* at 8. The researchers looked at eight food groups: milk, fruits, vegetables, meat, frozen foods, low sodium foods, bread, and breakfast cereals to determine the availability of healthy food. *Id.* at 7. In addition, the study revealed an “organizational barrier discrepancy—the supermarket in the African-American, low-income neighborhood was open twelve hours a day, while the supermarket in the white, high-income neighborhood was open twenty-four hours a day.” *Id.* at 8.

⁵⁰ John R. Breihan, *Why Was There No Rioting In Cherry Hill?*, in BALTIMORE ’68: RIOTS AND REBIRTH IN AN AMERICAN CITY 39 (Jessica I. Elfenbein et al. eds., 2011). Cherry Hill was developed to mitigate overcrowding in black neighborhoods in the City. *Id.* at 40. Promoting the continued wartime production in Baltimore City, the federal government promised \$8 million to the City government on the “condition that it be spent on new permanent housing for African Americans beyond the boundaries of existing ghettos.” *Id.*

⁵¹ *Id.* at 41.

Cherry Hill described the neighborhood as idyllic and plentiful.⁵³ Today, Cherry Hill is one of the poorest neighborhoods in Baltimore.⁵⁴

To travel to the closest supermarket by automobile, the average Cherry Hill resident must drive about 7 minutes, compared to about 3.7 minutes for the average Baltimore City resident.⁵⁵ Impoverished residents are less likely to own or even have occasional access to an automobile.⁵⁶ Residents without access to automobiles often rely on public transportation or walking to get places, but walking to a grocery store and transporting purchases home may be difficult for individuals with health problems.⁵⁷ Travel by bus to the nearest supermarket takes the average Cherry Hill resident 32 minutes one way, versus 12 minutes for the average Baltimore City resident.⁵⁸ Because

⁵² Rebecca L. Croog, *Baltimore and the Cherry Hill Urban Garden: Tearing Down and Building Up the Physical and Imaginative Spaces of Post-Industrial Urban Food Systems*, THE CUPOLA: SCHOLARSHIP AT GETTYSBURG COLLEGE 1, 22 (2014), http://cupola.gettysburg.edu/student_scholarship/249/.

⁵³ One resident, in describing the neighborhood, explained that “some of [her] cousins would come from the City of Baltimore into Cherry Hill. They were surprised and amazed at the green grass. . . . [T]here would be cherry trees, and we would pick blackberries, and they would make blackberry pie.” See Breihan, *supra* note 50, at 42.

⁵⁴ See *id.* at 44–45 (explaining that in the 1970’s, 1980’s, and 1990’s the perception of Cherry Hill changed from a bucolic suburb to a gang and drug ridden zone). The median household income for Cherry Hill residents is \$19,183, compared to the median city income of \$37,395. ALISA AMES ET AL., CHERRY HILL, BALT. CITY HEALTH DEP’T 4 (2011), <http://health.baltimorecity.gov/sites/default/files/7%20Cherry%20Hill.pdf>. Cherry Hill is 95.7 percent African American and the majority of the neighborhood is designated as a food desert. *Id.* at 3. The Long Shadow study describes Cherry Hill as “an isolated black enclave . . . circumscribed by major roads, highways, and railroad tracks, with few roads into or out of the community.” ALEXANDER, ET. AL., *supra* note 3, at 42.

⁵⁵ ALISA AMES ET AL., *supra* note 54, at 9.

⁵⁶ See MARK WINNE, CLOSING THE FOOD GAP: RESETTING THE TABLE IN THE LAND OF PLENTY 112 (2008) (explaining that it is difficult for low-income individuals to reach quality supermarkets because they do not own a car or other means of transportation).

⁵⁷ See *e.g.*, *id.* at 107 (explaining that a study by the City of Hartford Advisory Commission on Food Policy found that 32 percent of bus riders used them for all of their food shopping and of that 32 percent, 60 percent had difficulty doing so, and 57 percent used more expensive neighborhood stores to fill in the gaps).

⁵⁸ ALISA AMES ET AL., *supra* note 54, at 9. Walking to the nearest supermarket for the average Cherry Hill resident takes 43 minutes, compared to 16.6 minutes for the average Baltimorean. *Id.*

supermarkets are often out of reach, many Baltimoreans purchase food from nearby corner stores, behind-glass stores, and fast food stores where food is less expensive and nutritious but higher in calories.⁵⁹

B. Food Insecurity Decreases the Likelihood of Quality Education

Educational attainment in the United States is one indicator for future success. The median annual income for those who do not graduate high school is substantially lower compared to that of college graduates.⁶⁰ In Baltimore City Public Schools, black students are least likely to graduate, immediately placing them at a much higher risk for a lifetime of poverty.⁶¹

Thirty percent of school-aged children in Baltimore under age eighteen live in food deserts, the majority of whom are black.⁶² In

⁵⁹ See Behrens et. al., *supra* note 47, at 16 (explaining that corner stores lack nutritious food because it is easier to stock soda and chips); see also John T. Cook & Deborah Frank, *Food Security, Poverty, and Human Development in the United States*, 1136 ANNALS N.Y. ACAD. SCI. 193, 196–97 (2008) (noting “[o]verall, less expensive filling foods are more energy dense and nutrient sparse, whereas nutrient-dense, energy-sparse foods are more expensive.”).

⁶⁰ See Cook & Jeng, *supra* note 12, at 23 (noting that in 2006, the median annual income for an individual without a high school degree was \$27,567 less than a college graduate). Not only are uneducated individuals more likely to earn less, but low-income positions are less likely to provide benefits, leaving such individuals with meager safety networks. *Id.*

⁶¹ *Baltimore City Graduation*, MD. STATE DEP’T OF EDU., <http://www.mdreportcard.org/Graduation.aspx?K=30AAAA> (last updated Nov. 12, 2014). In Sandtown-Winchester, a neighborhood of West Baltimore that is almost entirely African-American, approximately 61 percent of residents above age twenty-five do not have a high school diploma. JUSTICE POLICY INITIATIVE & PRISON POLICY INITIATIVE, SANDTOWN-WINCHESTER/HARLEM PARK (2015), <http://static.prisonpolicy.org/origin/md/Sandtown.pdf>. The median household income is approximately \$22,000 per year. ALISA AMES ET AL., BALT. CITY HEALTH DEP’T, 2011 NEIGHBORHOOD HEALTH PROFILE: SANDTOWN-WINCHESTER/HARLEM PARK 4 (2011), <http://health.baltimorecity.gov/sites/default/files/47%20Sandtown.pdf>. This median income is significantly less compared to \$72,483 for Maryland and \$52,250 for the United States. AMANDA NOSS, HOUSEHOLD INCOME: 2013, UNITED STATES CENSUS BUREAU 3 tbl. 1 (2014), <https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-02.pdf>.

⁶² MAPPING BALTIMORE, *supra* note 7, at 1.

these areas, foods that are high in calories but low in nutrients are widespread, while energy-dense foods with vital nutrients are generally unavailable or too expensive.⁶³ Children in these areas may have sufficient or excessive caloric intake, but still suffer from poor nutrition.⁶⁴ Childhood nutrition is linked to cognitive development, behavior, school attendance, the ability for the body to prevent lead poisoning, and obesity.⁶⁵ The following sections discuss these effects of food insecurity.

1. Inadequate Nutrition and Cognitive Development

Inadequate nutrition early in life can negatively affect the cognitive development of children.⁶⁶ Numerous studies show that children who do not receive proper nutrition perform worse in school than children from food secure families.⁶⁷ Even children who are only marginally food secure, meaning that they generally have enough food but their families struggle to meet their needs, trailed their more food secure peers in educational success.⁶⁸ Fast food is cheap and filling, allowing parents to maximize their dollar, but research demonstrates that fast food consumption is positively associated with worsened academic performance among children.⁶⁹

⁶³ Cook & Frank, *supra* note 59, at 196–97.

⁶⁴ *Id.* at 197.

⁶⁵ *See Infra Part II.B.1.*

⁶⁶ Cook & Jeng, *supra* note 12, at 2.

⁶⁷ *See* Cook & Frank, *supra* note 59, at 201 (discussing the findings of studies that “examined associations between food sufficiency and children’s health, school performance and psychological functioning”). One study conducted by the Children’s Sentinel Nutrition Assessment Program (C-SNAP) focused on children from low-income populations in inner city environments and determined that school children between the ages of six and eleven from food insecure families performed substantially worse on math tests than children from food secure families. *Id.* The same study also found that low-income and food insecure children had an increased probability of repeating a grade. *Id.*

⁶⁸ Cook & Jeng, *supra* note 12, at 22.

⁶⁹ Roberto A. Ferdman, *Fast Food Consumption is Out of Control—And It Could Be Blunting Children’s Brains*, WASH. POST (Dec. 23, 2014),

<http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/23/fast-food-consumption-is-out-of-control-and-it-could-be-blunting-childrens-brains/>.

Researchers at Ohio State University assessed the connection between fast food and class performance in children. *Id.* Children who were “habitual” fast food eaters scored on average twenty percent lower in reading, math, and science than those who

2. Inadequate Nutrition and Lead Poisoning

Inadequate nutrition during childhood puts children at further risk for lead poisoning,⁷⁰ the effects of which include learning disabilities, severe brain damage, memory loss, stunted growth, hyperactivity, and even death.⁷¹ Lead poisoning remains a serious hazard for young children living throughout the City,⁷² and is particularly injurious to children under the age of six.⁷³ Children who consume healthy food decrease the likelihood of their bodies absorbing lead following lead exposure.⁷⁴ Furthermore, medical experts advise that children at risk for lead exposure avoid foods containing butter, oil, lard, or snack foods like potato chips, corn chips, french fries, and all fried foods—because these foods facilitate lead absorption into the body.⁷⁵ These foods, however, are some of

ate no fast food. *Id.* Even minute increases in the frequency of fast food consumption were associated with poorer test results. *Id.*

⁷⁰ *Nutrition and Lead Poisoning Prevention*, NEB. DEP'T OF HEALTH & HUMAN SERVICES (Jun. 11, 2013), <http://dhhs.ne.gov/publichealth/Pages/LeadNutrition.aspx>.

⁷¹ *Lead Poisoning*, BALT. CITY HEALTH DEP'T, <http://health.baltimorecity.gov/lead/lead-poisoning> (last visited Dec. 27, 2014).

⁷² MARISELA B. GOMEZ, RACE, CLASS, POWER, AND ORGANIZING IN EAST BALTIMORE: REBUILDING ABANDONED COMMUNITIES IN AMERICA 225 (2013). Though Maryland landlords must comply with lead risk reduction standards in rental apartments to escape liability, landlords do not always adhere to lead-based paint removal requirements. *See id.* In conjunction with the fact that lead levels in housing have not always been systematically monitored, many low-income black families inadvertently expose their newborn and young children to lead. *Id.* Many Baltimore citizens who were poisoned as children are now adults living with the physical effects of lead poisoning. *See generally* Terrence McCoy, *How Companies Make Millions off Lead-Poisoned, Poor Blacks*, WASH. POST (Aug. 25, 2015), http://www.washingtonpost.com/local/social-issues/how-companies-make-millions-off-lead-poisoned-poor-blacks/2015/08/25/7460c1de-0d8c-11e5-9726-49d6fa26a8c6_story.html.

⁷³ *Lead Poisoning*, *supra* note 71. In 2012, 2,700 Maryland children had harmful levels of lead in their blood, and the majority of these cases were in Baltimore City. Tim Wheeler, *Grant Targets Continuing Lead Poisoning Threats in Baltimore*, BALT. SUN (Oct. 25, 2013), <http://www.baltimoresun.com/features/green/blog/bal-bmg-grant-targets-continuing-lead-poisoning-threats-in-baltimore--20131025-story.html>.

⁷⁴ *Nutrition and Lead Poisoning Prevention*, NEB. DEP'T OF HEALTH & HUMAN SERVICES (Jun. 11, 2013), <http://dhhs.ne.gov/publichealth/Pages/LeadNutrition.aspx>.

⁷⁵ *Lead Poisoning Prevention: What Every Parent Should Know!*, MD DEP'T OF THE ENV'T., (last visited Dec. 27, 2014),

the most accessible and affordable in areas without access to supermarkets.

3. Behavioral Issues and School Tardiness and Absences

Food insecurity is correlated with developmental conditions resulting in poor classroom behavior and inhibited success in school.⁷⁶ By the time a food insecure child becomes a teenager, he or she is “twice as likely to have been suspended from school, and twice as likely as his or her peers to see a psychologist.”⁷⁷ Black children are more likely to be suspended or expelled during their school careers than children of other races.⁷⁸

Behavioral problems in children stemming from food insecurity increase the likelihood of eventual involvement in the criminal justice system;⁷⁹ this in turn decreases opportunity for higher education and eventual employment. Blacks, particularly young men, are incarcerated and involved in the criminal justice system more than any other demographic.⁸⁰ Young people who spend time in prison are twenty-five to thirty percent less likely to find employment in the decade following incarceration.⁸¹

Food insecure children are more likely to miss school due to health problems and are hospitalized for illness more frequently.⁸² A

http://www.mde.state.md.us/programs/Land/LeadPoisoningPrevention/Parents/Pages/Programs/LandPrograms/LeadCoordination/parents/parents_know.aspx.

⁷⁶ Cook & Jeng, *supra* note 12, at 22–23.

⁷⁷ *Id.* at 23.

⁷⁸ See *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited Jan. 1, 2015) (noting “thirty-five percent of black children [between] grades seven and twelve have been suspended or expelled at some point during their school careers compared to twenty percent of Hispanic [students] and fifteen percent of white [students].”).

⁷⁹ Cook & Jeng, *supra* note 12, at 23.

⁸⁰ *Criminal Justice Fact Sheet*, *supra* note 78. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012) (describing the United States government’s disproportionate and mass incarceration of African-American men that functions as a system of racial control, relegating African Americans, particularly men, to permanent second-class status).

⁸¹ *Criminal Justice Fact Sheet*, *supra* note 78.

⁸² See Cook & Jeng, *supra* note 12, at 19. A study conducted by the Community Childhood Hunger Identification Project found that children younger than twelve

high probability for sickness resulting from poor nutrition can have far-reaching ramifications for families' economic security. When children have to miss school, their parents are more likely to miss work to take care of them, increasing productivity loss for employers and income loss for parents.⁸³ Chronic illness may cause a caregiver to lose his or her job if the position offers few or no sick days.⁸⁴ Frequent illness is also costly for employers, as frequent employee absences are associated with productivity and revenue loss for businesses.⁸⁵

4. Special Education Services

Children from food-insecure families are more likely to require special education services at school, and "hungry children are twice as likely to be placed in special education than those who are not hungry."⁸⁶ Special education services cost an additional \$6,000 per year, per student in public schools, a figure nearly doubling the expenditure on non-special education students.⁸⁷ Once children enter a special needs program at school, they typically remain in the special needs system for the rest of their school careers.⁸⁸ By the time special-needs kindergarteners' progress to eighth grade, for example, a school district typically has spent an additional \$54,000 on each student.⁸⁹ In areas like Baltimore City, where public schools often lack vital resources, this money could be used in a variety of more effective ways, such as higher salaries to attract high-quality teachers or improved school facilities.

years old designated as food insecure or at risk of food insecurity were more likely to be absent or tardy from school. *Id.* at 20. A study of chronically absent Baltimore pre-kindergarten and kindergarteners showed increased chronic absences in the future, as well as lower overall school achievement. ROBERT BALFANZ & VAUGHN BYRNES, *THE IMPORTANCE OF BEING IN SCHOOL: A REPORT ON ABSENTEEISM IN THE NATION'S PUBLIC SCHOOLS* 23 (2012), http://www.sia-us.com/uploads/FINALChronicAbsenteeismReport_May16_executivesummary_wit_hcover_20_1_.pdf.

⁸³ Cook & Jeng, *supra* note 12, at 19.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 22.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

5. Poverty and Obesity

Children can be concurrently obese and malnourished. Such children face challenges associated with malnutrition, but also conditions associated with obesity like type-2 diabetes and cardiovascular disease, which significantly hinder future economic opportunity.⁹⁰ In Baltimore City, 25.7 percent of school-aged children are obese, a much higher percentage compared to 12 percent for school-aged children in Maryland and 13 percent for the United States.⁹¹ Obesity is especially prevalent among Baltimore's black population.⁹² Within the City, blacks are twice as likely to die from type-2 diabetes as whites.⁹³ Similarly, blacks can have the highest rate of death from cardiovascular disease.⁹⁴

Obesity also negatively affects the emotional and cognitive wellbeing of young children.⁹⁵ Obese children are frequently stigmatized by their peers, which often influence their psychological and social development, as well as their self-esteem.⁹⁶ Obesity is also correlated with a lower future earning capacity.⁹⁷ A primary reason

⁹⁰ Sharon Begley, *As America's Waistline Expands, Costs Soar*, REUTERS (Apr. 30, 2012), <http://www.reuters.com/article/2012/04/30/us-obesity-idUSBRE83T0C820120430>. Obesity is extremely costly—the nationwide health care costs of obesity-related illness are \$190.2 billion per year, or nearly 21 percent of annual medical spending. *The Economic Costs of Obesity*, NAT'L. LEAGUE OF CITIES, <http://www.healthycommunitieshealthyfuture.org/learn-the-facts/economic-costs-of-obesity/>.

⁹¹ *Health Disparities in Baltimore City: Is Geography Destiny?*, JOHNS HOPKINS UNIV. URBAN HEALTH INST. 2 http://urbanhealth.jhu.edu/media/reports/healthdis_baltimore.pdf.

⁹² *Id.* at 4.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Cook & Jeng, *supra* note 12, at 17.

⁹⁶ *Id.* One study of children age twelve to fourteen years old found that overweight and obese children were more likely to be “depressed, report low self-confidence, and have poor school and social functioning compared to normal weight children.” *Id.* Likewise, “obese adolescents were more likely to perceive themselves as below average students,” and obese males were twice as likely to drop out of school as non-obese males. *Id.*

⁹⁷ A study conducted among adults found a one-point increase in Body Mass Index (BMI) was associated with approximately \$1,000 decrease in net worth. *Id.* at 18.

for this correlation stems from the fact that overweight and obese adults tend to leave school earlier than their peers of healthy weight.⁹⁸

Furthermore, childhood obesity is particularly problematic because it “tracks into adulthood.”⁹⁹ Obesity has a deleterious effect on productivity and economic output.¹⁰⁰ Obese individuals are absent from work more than people of healthy weight, increasing the likelihood of lower work productivity, and in turn a higher chance of reduced wages or termination.¹⁰¹ Likewise, obese people are less likely to be hired and promoted than their “fit” co-workers.¹⁰²

When children have access to high-quality food during their formative years, they are less likely to face serious cognitive and behavioral problems and health issues that impede future economic prosperity. Additionally, because the available evidence suggests that there may be significant financial savings for taxpayers and employers, the City government has a compelling incentive to guarantee the availability of healthy food for low-income residents.

III. USING EMINENT DOMAIN TO EXPAND ACCESS TO HEALTHY FOOD

The Baltimore City government can bring food security to many of its citizens by converting vacant structures into urban farms to produce healthy and affordable food in communities. To maximize the amount of healthy food and ensure that produce is available in all communities, the City government should use eminent domain to take control of vacant structures that pose a threat to the wellbeing of communities, and transfer the land to urban farming groups as permitted by *Kelo v. City of New London*.¹⁰³

⁹⁸ *Id.*

⁹⁹ Megan L. Jehn et al., *Prevalence of Overweight Among Baltimore City Schoolchildren and its Associations with Nutrition and Physical Activity*, 14 OBESITY 989, 989 (2006).

¹⁰⁰ Begley, *supra* note 90.

¹⁰¹ *Id.*

¹⁰² *Id.* at 104–05.

¹⁰³ 545 U.S. 469 (2005). Maryland and Baltimore City has a strong history and precedent for using its power of eminent domain, which is not limited significantly by state or city laws. See Buzby, *supra* note 19, at 494 (noting “Maryland has a history of allowing broad state powers in the context of eminent domain.”).

A. *Efficient Use of Available Land in Baltimore City*

Baltimore's economic decline has resulted in a high number of vacant structures located throughout the City. The City's population has decreased by a third since 1950, and because of a wave of subprime mortgage lending in the 1990s and 2000s many low-income Baltimore residents lost their homes.¹⁰⁴ The City government estimates that there are currently 16,000 vacant structures, and the City government owns 25 percent of these properties.¹⁰⁵ The actual number of vacant structures, however, could be much higher,¹⁰⁶ and in some sections of the City, entire neighborhoods or blocks are completely vacant.¹⁰⁷ The Baltimore City Building Code defines a vacant structure as an unoccupied structure that is (1) unsafe or unfit for human habitation or other authorized use, or (2) a nuisance property.¹⁰⁸ Notably, the definition of structure includes the premises and land.¹⁰⁹

Aside from the demoralizing psychological impact that mass vacancy has on communities,¹¹⁰ vacant structures also present serious

¹⁰⁴ See generally PIETILA, *supra* note 28, at 256–58. By 2005, hundreds of Baltimoreans had lost their homes and thousands were on the verge of foreclosure. *Id.* at 258. Between 2000 and 2008, more than 33,000 homes foreclosed in the City. *Id.* A suit brought against Wells Fargo by Baltimore City alleged that two-thirds of Wells Fargo's foreclosures in Baltimore were in areas that were over 60 percent African-American, while only 15.6 percent of foreclosures took place in areas that were less than 20 percent African-American. *Id.*

¹⁰⁵ Stephanie Rawlings-Blake, Mayor, Balt. City, Mayor Announces “Vacant to Value” Plan to Reduce Blight (Nov. 3, 2010), http://archive.baltimorecity.gov/OfficeoftheMayor/NewsMedia/tabid/66/ID/691/Mayor_Announces_Vacants_to_Value_Plan_to_Reduce_Blight.aspx.

¹⁰⁶ See The Stream Team, *Baltimore Slumlord Watch Blogger Hit with Vandalism Lawsuits*, AL JAZEERA AMERICA (Dec. 31, 2013, 5:07 PM), <http://america.aljazeera.com/watch/shows/the-stream/the-stream-officialblog/2013/12/31/baltimore-bloggeraccusedofenablingvandalism.html> [hereinafter Stream Team] (noting “[t]he official count of abandoned properties in Baltimore is 16,000, but many say that the actual number could be more than two times higher”).

¹⁰⁷ Wells, *supra* note 17.

¹⁰⁸ BALT. CITY BUILDING CODE, PART II, 116.4.1.2(1)–(2).

¹⁰⁹ BALT. CITY BUILDING CODE, PART II, 202.2.52.

¹¹⁰ NAT'L VACANT PROPERTIES CAMPAIGN, VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES 11 (2005), <http://www.smartgrowthamerica.org/documents/true-costs.pdf>.

public safety concerns. In the U.S. each year, approximately 12,000 fires originate in vacant structures, resulting in \$73 million in property damages annually.¹¹¹ Illegal “scrappers,” who enter vacant structures to strip homes of any metal or other valuable material increase the chance of fire, as these individuals often remove electrical wiring.¹¹² Because vacant buildings are neglected and typically exposed to the elements, they are prone to caving in and often become sites for illegal dumping, trash buildup, and sources of rodent infestation.¹¹³ In addition, vacant structures are “crime magnets.”¹¹⁴ Securing vacant structures is a cost-effective crime control tactic for distressed communities.¹¹⁵ Moreover, research has shown that transforming vacant structures into green spaces is particularly effective in addressing crime in urban communities with high rates of vacancies.¹¹⁶

The City government has acknowledged Baltimore’s vacancy issue by developing the “Vacants to Value” program.¹¹⁷ The City government owns approximately 25 percent of the reported 16,000 vacancies in Baltimore and hopes to rebuild these properties and attract homeowners to build vigorous neighborhoods throughout the City.¹¹⁸ However, with 75 percent of vacant structures in the City privately owned, the City’s redevelopment efforts are limited. By utilizing its power of eminent domain to acquire a large number of

¹¹¹ *Id.* at 1. A 2011 study showed that a 10 percent increase in the proportion of vacancies in a neighborhood was associated with a 9.9 percent increase in fire. Stephen E. Schachterle et. al, *Abstract, Proximity to Vacant Buildings is Associated With Increased Fire Risk in Baltimore, Maryland, Homes*, 18 INJ. PREV. 98, 98 (2012).

¹¹² Wells, *supra* note 17.

¹¹³ Stream Team, *supra* note 106; NAT’L VACANT PROPERTIES CAMPAIGN, *supra* note 110, at 5.

¹¹⁴ See NAT’L VACANT PROPERTIES CAMPAIGN, *supra* note 110, at 3 (noting that unoccupied structures often attract and are used by individuals engaging in illicit activity, such as prostitution and drug dealing).

¹¹⁵ *Id.* at 4.

¹¹⁶ See Charles C. Branas et. al, *A Difference-in-Differences Analysis of Health, Safety, and Greening Vacant Urban Space*, AM. J. OF EPIDEMIOLOGY 9 (2011).

¹¹⁷ *About Vacants to Value*, VACANTS TO VALUE, <http://www.vacantstovalue.org/About.aspx> (last visited Nov. 17, 2014). Aside from Vacants to Value, the City of Baltimore’s Side Yard Program encourages the efficient usage of properties. This program allows an existing property owner to purchase a vacant lot adjacent to his or her property. *Legal Tools for Urban Agriculture in Baltimore City*, CMTY. L CTR., INC. 14 (2015).

¹¹⁸ Stephanie Rawlings Blake, *supra* note 105.

vacant structures and transferring this property to groups engaged in urban farming,¹¹⁹ the City government would address a major food justice issue while stabilizing communities dominated by rotting buildings.

B. Urban Agriculture is Promising in Baltimore City

Groups dedicated to generating fresh produce in the City have shown the effectiveness of urban farming and the potential that widespread urban farming could have in the City.¹²⁰ The Farm Alliance of Baltimore City is a non-profit entity that is made up of eleven farms located throughout the Baltimore City area.¹²¹ The Farm Alliance is “a network of producers working to increase the viability of urban farming and improve access to urban grown foods.”¹²²

Civic Works’ Real Food Farm (“Real Food”) is one organization in the Farm Alliance.¹²³ Real Food specializes in urban farming, community education in how to grow healthy food, and bringing healthy food to low-income areas of Baltimore.¹²⁴ Real Food has a six-acre farm in Clifton Park in northeast Baltimore, which is surrounded by approximately 35,000 Baltimoreans, many of whom live in designated food deserts.¹²⁵ Real Food utilizes high tunnel “hoop houses,”¹²⁶ as well as agricultural fields to produce healthy

¹¹⁹ Buzby, *supra* note 19, at 496.

¹²⁰ See MELISSA N. POULSEN ET AL., JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, INTEGRATING URBAN FARMS INTO THE SOCIAL LANDSCAPE OF CITIES 10 (2014), <http://ucanr.edu/blogs/UrbanAg/blogfiles/25902.pdf>.

¹²¹ *About Us*, FARM ALLIANCE BALT., <http://www.farmalliancebaltimore.org/the-alliance/about/> (last visited Nov. 17, 2014).

¹²² *Id.*

¹²³ *The Farms*, FARM ALLIANCE BALT., <http://www.farmalliancebaltimore.org/the-farms/> (last visited Sept. 30, 2015).

¹²⁴ *Real Food Farm*, FARM ALLIANCE BALT., <http://www.farmalliancebaltimore.org/the-farms/real-food-farm/> (last visited Sept. 25, 2015).

¹²⁵ MICA Social Design, *Sappi Ideas that Matter Winner: Real Food Farm CDP*, VIMEO.COM (Aug. 29, 2013), <https://vimeo.com/73419754>.

¹²⁶ Hoop houses are “a series of large hoops or bows—made of metal, plastic pipe or wood—covered with a layer of heavy greenhouse plastic. Hoop houses are heated by the sun and cooled by the wind.” Kaye Spector, *Grow Food All Winter With a Hoop House*, ECOWATCH (Oct. 14, 2013), <http://ecowatch.com/2013/10/14/grow-food-all-winter-with-hoop-house/>.

food.¹²⁷ Real Food also employs a mobile market to deliver healthy food to the low-income communities surrounding Clifton Park.¹²⁸

The Cherry Hill Urban Garden (“the Garden”), which is also part of the Farm Alliance, produces healthy food that is convenient for low-income residents of Cherry Hill to obtain. The Garden, which was founded by Juanita Ewell, an African American woman who lived in Cherry Hill since the 1940s, has expanded to include a market stand, handicapped-accessible gardening area, and a garden open to the community.¹²⁹ Though Ms. Ewell passed away in early 2015,¹³⁰ she was optimistic about urban farming’s potential to bring healthy food to residents.¹³¹

Urban farming enterprises like Real Food and the Garden demonstrate that urban farming is a viable approach to generating food in the City. If conducted on a larger scale throughout more communities, urban farming could provide a consistent supply of healthy food for those living in food deserts. One of the major barriers to implementing such a plan is providing land to groups engaging in urban farming.

C. *Eminent Domain*

1. *Kelo v. City of New London*

Eminent domain is the governmental power, exercised under the Takings Clause of the Fifth Amendment, in which the government can take private property for the public interest as long as the property owner is justly compensated.¹³² In 2005, the United States Supreme Court further elaborated on eminent domain in *Kelo v. City of New*

¹²⁷ *Real Food*, *supra* note 124.

¹²⁸ *Our Story*, CIVIC WORKS: REAL FOOD FARM, <http://realfoodfarm.civicworks.com/about-us/our-story/> (last visited Sept. 30, 2015).

¹²⁹ Croog, *supra* note 52, at 20–23.

¹³⁰ *Cherry Hill Urban Garden*, FARM ALLIANCE BALT., <http://www.farmalliancebaltimore.org/the-farms/cherry-hill/> (last visited Sept. 30th, 2015).

¹³¹ See Croog, *supra* note 52, at 23 (noting that Ms. Ewell is proud of the garden’s accomplishments).

¹³² U.S. CONST., amend. V.

London,¹³³ holding that local governments can take and transfer private property to private owners as long as planned development qualifies as a public purpose under the Takings Clause of the Fifth Amendment.¹³⁴

The City of New London, Connecticut, had faced “decades of economic decline,” leading a state agency to designate it as a “distressed municipality.”¹³⁵ New London’s economic woes were amplified when the federal government closed a major naval center in New London, which provided 1,500 jobs.¹³⁶ By 1998, New London’s unemployment rate was nearly double that of Connecticut’s, and its population had reached its lowest point since 1920.¹³⁷

To alleviate New London’s financial trouble, the New London Development Corporation (NLDC), a private nonprofit entity, worked with the city government to develop a plan focusing on ninety acres of the Fort Turnbull area of New London, which the state approved.¹³⁸ Pfizer, Inc. planned to build a \$300 million research facility on a site next to Fort Trumbull, giving local developers optimism that new businesses would be drawn to the area, facilitating New London’s revitalization.¹³⁹ The NLDC also aimed to make New London more “attractive” and to “create leisure and recreational opportunities on the waterfront and in the park.”¹⁴⁰ To obtain land to develop, the city bought property from willing sellers; if owners were unwilling to sell, the city planned to utilize eminent domain to transfer the land to developers.¹⁴¹

Though the City government had determined that New London had areas that were “blighted,”¹⁴² some residents initiated a lawsuit,

¹³³ 545 U.S. 469 (2005).

¹³⁴ *Id.*

¹³⁵ *Id.* at 473.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Kelo v. City of New London*, 545 U.S. 469, 473 (2005).

¹⁴⁰ *Id.* at 474–75.

¹⁴¹ *Id.* at 475.

¹⁴² *See generally id.* at 483 (taking judicial notice of the City’s “determination that the area was sufficiently distressed to justify a program of economic rejuvenation”). The concept of blight, while on the periphery of the *Kelo* majority’s discussion here,

arguing that the taking of their property violated the Fifth Amendment's "public use" restriction¹⁴³ under *Berman v. Parker*,¹⁴⁴ where the Court "upheld a redevelopment plan targeting a blighted area of Washington, D.C., in which most of the housing for the area's 5,000 inhabitants was beyond repair."¹⁴⁵ In *Berman*, the plan sought to use part of the condemned area for the "construction of streets, schools, and other public facilities," with the remainder of the land to be leased or sold to private parties for redevelopment, including the construction of low-cost housing.¹⁴⁶

2. *Kelo* and Takings to Expand Urban Farming

Under the Supreme Court's decision in *Kelo*, the Baltimore City government has the power to use eminent domain to take vacant structures throughout the City and transfer title of that property to entities specializing in urban farming to bring nutritious food to food deserts.

In *Kelo*, some of the homes in question were not considered blighted, or even in poor condition, but were "condemned only because they happened to be located in the development area."¹⁴⁷ Nevertheless, the Court found the record below to be sufficient on the point whether the city had established a public purpose.¹⁴⁸ Thus, the

historically expanded state police powers by allowing state and city governments to seize existing communities' lands without prior consultation. Amy Laura Cahn, *On Retiring Blight as Policy and Making Eastwick Whole*, 49 HARV. C. R. C. L. L. REV. 449, 456 (2014). As blight is a subjective concept inherently susceptible to varying judgments of an existing community's value, the concept, in practice, "pulls power away from [the] community . . ." and into the hands of government officials. *Id.* at 450. Residents of so-called "blighted" communities desire to solve the community issues associated with disinvestment and dilapidated housing but often those desires are not heard and "top-down neighborhood development can perpetuate health disparities and other inequities." *Id.* As such, this paper only refers to blight when a court of law has used that terminology.

¹⁴³ *Kelo*, 545 U.S. at 475.

¹⁴⁴ 348 U.S. 26 (1954).

¹⁴⁵ *Kelo*, 545 U.S. at 480.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 475.

¹⁴⁸ *Id.* at 481.

Court will favorably view plans that spur job creation and economic development.¹⁴⁹

By transferring vacant structures from absentee property owners who show no interest in working towards building stronger communities in the City, to groups that will generate healthy food for low-income residents in need, the City government would bring “appreciable benefits to the community;”¹⁵⁰ the result would be a major step in improving the overall health of and bringing economic opportunities to disadvantaged communities.¹⁵¹

Similarly, more farming locations will introduce employment opportunities. Organizations like Real Food Farm and the Cherry Hill Urban Garden provide employment opportunities for people living in those communities.¹⁵² One urban farming group estimates that urban farming businesses generate approximately six jobs per acre.¹⁵³ These jobs would provide individuals who are commonly shut out from job

¹⁴⁹ *Id.* at 483–84.

¹⁵⁰ *Id.* at 483.

¹⁵¹ This is not to suggest that simply razing vacant structures will rid a community of all crimes and other issues. For a discussion on comprehensive community reform see MARCUS POLLOCK & ED RUTKOWSKI, *THE URBAN TRANSITION ZONE: A PLACE WORTH A FIGHT* 37–50 (1998) (describing the “very long” list of “things that must be done . . . [for] transitional neighborhoods to succeed”).

¹⁵² *Youth Jobs*, REAL FOOD FARM, <http://www.realfoodfarm.org/get-involved/youth-jobs/> (last visited May 14, 2015); see also Cherry Hill Urban Garden, *supra* note 133. Another potential model would be to develop worker-owned urban farming cooperatives in the City, which would extend community members the ability to own their own businesses tailored to the groups’ goals and retain capital in their communities. Though Maryland has no cooperative statute, groups wishing to form businesses with cooperative structures can form as an LLC or a corporation. *Basics of Forming and Maintaining Cooperatives in Maryland*, THE PEOPLE’S LAW LIBRARY OF MD., <http://www.peoples-law.org/basics-forming-and-maintaining-cooperatives-maryland> (last updated Jan. 20, 2015). Recently, law, business, and social work students at the University of Maryland, Baltimore worked on developing an urban farm cooperative in West Baltimore, owned by West Baltimore community members, though the project is in its very early stages. Carrie Handwerker, *Smith Students Offer Solutions in West Baltimore*, UNIV. OF MD. ROBERT H. SMITH SCH. OF BUS. (May 19, 2015), <http://www.rhsmith.umd.edu/news/smith-students-offer-solutions-west-baltimore>.

¹⁵³ Missy Smith, *Baltimore-based Urban Farming Co. with Goal of 1000 Acres Under Hoop Houses Hopes to Create 600 Jobs*, SEEDSTOCK (Dec. 18, 2012), <http://seedstock.com/2012/12/18/baltimore-based-urban-farming-co-with-goal-of-100-acres-under-hoop-houses-hopes-to-create-600-jobs/>.

training and experience the chance to cultivate such skills. In addition, allowing people the opportunity to work within their communities and provide community members with a much-needed service would strengthen community bonds.

Cases that involve the government taking large swathes of land on which some of the owners do efficiently use their properties run the risk of significant resistance. Transaction costs increase, as these individuals often feel that no compensation is enough to make them give up their property.¹⁵⁴ In *Berman*, for example, the owner of a department store located in the condemned area challenged the government on the grounds that his store was not “blighted” and a more balanced and attractive community was not a valid public use.¹⁵⁵ Likewise, in *Kelo*, the plaintiff challenged the city’s plan because her home was not blighted.¹⁵⁶

Fortunately, the City government does not need to take large areas of land containing efficiently used properties in order to sufficiently implement urban farming on a wide scale in Baltimore. One reason Baltimore is ideal for using urban farming to dismantle pervasive food deserts is because of the intermingled nature of vacant structures, which are located throughout all of the City.¹⁵⁷ This allows the development of several smaller urban farms to break up food deserts.¹⁵⁸ Because the City government does not need to take large pieces of real estate, it can focus on taking those properties belonging to property owners who willingly accept just compensation, keeping transaction costs low, as well as inefficiently used vacant structures.

Transferring private property to urban farming groups is also permissible under Justice Sandra Day O’Connor’s dissent in *Kelo*. Specifically, Justice O’Connor states that the government can take private property for private use when the source of the evil is the way in which the private property is being used.¹⁵⁹ Here, a transfer of

¹⁵⁴ James J. Kelly, Jr., “We Shall Not Be Moved”: *Urban Communities, Eminent Domain and the Socioeconomics of Just Compensation*, 80 ST. JOHN’S L. REV. 923, 928 (2006).

¹⁵⁵ *Kelo*, 545 U.S. at 481.

¹⁵⁶ *Id.* at 475.

¹⁵⁷ Buzby, *supra* note 19, at 497–98.

¹⁵⁸ *Id.*

¹⁵⁹ *Kelo*, 545 U.S. at 500 (O’Connor, J., dissenting).

private property to urban farming groups would qualify due to the evils that blight creates within communities, as the development of the farms would involve tearing down vacant structures and ridding the community of the evils associated with dilapidation, creating jobs, and providing the community with essential food to ameliorate the effects of poor nutrition on children.

Likewise, a private transfer to a private party would hold up under Justice Clarence Thomas's dissent. Justice Thomas states that that private property can be taken by the government and transferred to a private party if that property remains open to the public.¹⁶⁰ As long as urban farming was implemented in a manner in which the community can go to the farm to see the farm and learn about farming, as it is at Real Food Farm and the Garden, the property would be considered open to the public. Furthermore, in his dissent, Justice Thomas warned about the harm that eminent domain can cause for groups with little political power. Because the City government can focus on taking properties that are already vacant and are perceived to be nuisances by community associations,¹⁶¹ it can ensure that losses of property do not fall "disproportionately on poor communities."¹⁶² The City government could also provide incentives to urban farming operations to incorporate and employ the surrounding communities as much as possible, aside from providing the community with healthy food.

Critics of *Kelo* may argue that expanding the government's power to take private property and transfer it to private entities constitutes an infringement on private property rights.¹⁶³ Nevertheless, given the largely inefficient use of the vacant structures to be targeted for urban farming, these critics need not fear any such

¹⁶⁰ *Id.* at 508 (Thomas, J., dissenting).

¹⁶¹ Complaint and Demand for Jury Trial at 4, Coldstream-Homestead-Montebello Cmty Corp. v. Wizig, No. 24-C-13-002570 (Md.Cir.Ct. May 1, 2013), 2013 WL 1826480.

¹⁶² *Kelo*, 545 U.S. at 521 (Thomas, J., dissenting).

¹⁶³ Buzby, *supra* note 19, at 493; *see generally* JAMES W. ELY, JR., *THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS* 43 (1998) (stating "the doctrine that property ownership was essential for the enjoyment of liberty had long been a fundamental tenet of Anglo-American constitutional thought").

infringement.¹⁶⁴ In fact, aside from the costs associated with vacant buildings, vacant buildings often provide negative value to the City resulting from unpaid tax liens.

A primary cost of implementing eminent domain will be the City of Baltimore justly compensating all property owners that lose their land. Here, the impacts of unhealthy foods on low-income populations are catastrophic, and the numerous future economic benefits and savings should spur the City government to pay these costs to increase urban farming, especially if the City can be systematic in acquiring properties requiring the lowest costs.

Ensuring low-income children have access to healthy food will benefit Baltimore's economy in the long-term. If children that are statistically more likely to develop health conditions, due to inadequate nutrition, gain access to healthy food, they become more likely to do well in school and enter higher socio-economic tiers. As adults, such children are more likely to become productive members of their communities and independent of governmental programs needed to support those in poverty.

CONCLUSION

In 2011, Arne Duncan, United States Secretary of Education, echoed Horace Mann's 1848 statement by stating that "education is still the great equalizer in America."¹⁶⁵ However, food deserts remain one serious obstacle in ensuring that low-income children make the most of their education. In Baltimore City, the need to bring healthy food to low-income children in food deserts is critical to break the cycle of poverty. The City of Baltimore government should waste no time in bringing healthy food to its most vulnerable citizens. The City Government should assert its power of eminent domain to rid Baltimore neighborhoods of costly vacancies and lay the foundation for productive community spaces that generate healthy food. In doing so, the City government would express its hope and optimism for Baltimore's future.

¹⁶⁴ Buzby, *supra* note 19, at 497.

¹⁶⁵ Cameron Brenchley, *In America, Education is Still The Great Equalizer*, HOMEROOM (Dec. 12, 2011, 4:07 PM), <http://www.ed.gov/blog/2011/12/in-america-education-is-still-the-great-equalizer/> (last visited Jan. 3, 2015).