

Rural Blight

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Vacant, abandoned, and dilapidated buildings plague rural communities, yet little legal scholarship examines the law and policy questions surrounding blighted properties in non-urban environments. This Article proposes a definition and solutions for rural blight that take rural communities' common characteristics into account, with the aim of either strengthening rural local governments to better handle the weighty task of blight remediation, or relieving them of the task by shifting some of the burden toward the state and regional level. Rural America, often portrayed as "forgotten" or "dying," has an uncertain road before it. The question of how society as a whole approaches the decaying rural built environment—which will in turn affect rural safety, health, economics, aesthetics, and overall quality of life—will play an important role in shaping that fate.

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INTRODUCTION

The skeletal remains of America's dying small towns scatter the countryside in the form of empty, crumbling buildings, sapped of the life once

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supported when rural populations matched their built infrastructure.¹ Today, these infrastructural bones weigh on the shrunken populations who still seek to survive in struggling rural enclaves.² This Article refers to this problem as “rural blight,” or the issue of vacant, abandoned, and dilapidated buildings burdening rural communities.³ Blighted rural properties become stuck in a downward spiral: as a small town or rural county loses population, more buildings become superfluous, and those buildings become all the harder for the ever-shrinking population to address.⁴ This is the case, for example, in Cairo, Illinois, whose population dropped from 15,000 at its zenith as a hub of river commerce, to about 2300 today, with empty mansions and businesses now lining its streets.⁵

Rural blight occupies a paradoxical space in the American imagination. On the one hand, rural blight is all around. One sees it readily while driving through the countryside; popular media such as *Gone Girl*, *Ozark*, and *Justified* have scenes set in abandoned rural malls, sheds, and mines;⁶ and news stories on rural challenges, such as population loss, often feature a dilapidated building as the headline image.⁷ Rural America’s crumbling structures

¹ See Steven Conn, *Is Rural America The New Inner City?*, HUFFINGTON POST (Apr. 18, 2017, 2:43 PM), https://www.huffingtonpost.com/entry/rural-american-the-new-inner-city_us_58c5961ce4b0a797c1d39e24 [<https://perma.cc/H3HD-7AM9>].

² See John Cromartie, *Rural Areas Show Overall Population Decline and Shifting Regional Patterns of Population Change*, USDA ECON. RES. SERV. (Sept. 5, 2017), <https://www.ers.usda.gov/amber-waves/2017/september/rural-areas-show-overall-population-decline-and-shifting-regional-patterns-of-population-change/> [<https://perma.cc/4F7B-AQYL>]; see also, e.g., Steve Matzker, *Residents mobilize to help Cairo*, S. ILLINOISAN (June 15, 2014), http://thesouthern.com/news/local/residents-mobilize-to-help-cairo/article_4dd63244-1539-53ab-80f1-3391022deb19.html [<https://perma.cc/CK9E-2Q8K>].

³ See also Ann M. Eisenberg, *Addressing Rural Blight: Lessons from West Virginia and WV LEAP*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 513, 513–14 (2016) [hereinafter *Addressing Rural Blight*].

⁴ *Id.* at 534 (“Tax delinquency was perceived as fueling a vicious cycle: neglected properties had delinquent taxes and lowered neighboring property values, and the impacts on local government budgets made local governments less able to address the properties.”); Harry M. Hipler, *Economic Redevelopment of Small-city Downtowns: Options and Considerations for the Practitioner*, 81 FLA. B. J. 39, 39 (2007) (describing a vicious cycle of declining small-town downtowns where downtowns became less central to town life, and then “businesses were forced to close or relocate elsewhere as the number of downtown visitors declined”); Douglas J. Whaley, *Mortgage Foreclosures, Promissory Notes, and the Uniform Commercial Code*, 39 W. ST. U. L. REV. 313, 332 n.52 (2012) (“Urban blight is already a major problem in many communities, even upscale ones, as house after house sits abandoned, leading to dropping real estate value of others, and a vicious cycle of neighborly collapse.”).

⁵ See Matzker, *supra* note 2; James Wilkinson, *The town that time forgot: Incredible photos show how nature is reclaiming the eerie, near-abandoned city of Cairo, Illinois*, DAILY MAIL (Aug. 25, 2016, 20:22 EDT), <http://www.dailymail.co.uk/news/article-3759263/Eerie-photos-Cairo-Illinois-abandoned-city-Mississippi-Ohio-rivers.html> [<http://perma.cc/P7N6-T9YD>]; Shamdai Sukhan, *At the crossroads of race in America, the death of a black soldier ignited—and helped end—this town*, TIMELINE (July 12, 2017), <https://timeline.com/cairo-illinois-race-riot-d79bf5f9d8e3> [<https://perma.cc/YJ7D-TKXS>].

⁶ GONE GIRL (Fox 2014); see generally *Ozark* (Netflix television series July 21, 2017); see generally, *Justified* (FX television broadcast Mar. 16, 2010–Apr. 14, 2015).

⁷ See, e.g., Alana Semuels, *The Graying of Rural America*, ATLANTIC (June 2, 2016), <https://www.theatlantic.com/business/archive/2016/06/the-graying-of-rural-america/485159/> [<https://perma.cc/4T3F-GY28>].

seem to serve as a symbol for overall rural decline.⁸ Yet, rural blight is also invisible. Despite their increasing prevalence over the past several decades, vacant, abandoned, or dilapidated rural buildings have received little explicit attention in legal scholarship or the public discourse, other than attracting the occasional photographer snapshotting the buildings as ghostly images of a past way of life.⁹

A common refrain of rural law and policy scholarship is that rural circumstances tend to be ignored, or when acknowledged, poorly understood.¹⁰ The legal discourse on rural blight is no exception.¹¹ Little research establishes the prevalence of vacant, abandoned, and dilapidated properties in rural areas. Existing data—including a one-third rate of residential building vacancy in some rural counties, or up to a one hundred percent vacancy rate in some places if fully abandoned “ghost towns” are counted—indicate that blight is just as much a problem in rural communities as it is in urban ones.¹² Yet, a search of popular research databases suggests that rural blight is addressed in only a small fraction of articles discussing blight.¹³ This seems

⁸ See, e.g., Doug Bierend, *The Decline of Rural America, Captured in Replicas of Decaying Home*, WIRED (Mar. 6, 2014, 6:30 AM), <https://www.wired.com/2014/03/dilapidated-houses/> [<https://perma.cc/H2UN-DFHZ>].

⁹ See, e.g., Ron Johnson, *Putting the Heart Back in the Heartland: Regional Land Bank Initiatives for Sustainable Rural Economies*, 69 ARK. L. REV. 1055, 1057 (2017) (arguing that rural blight receives little attention) [hereinafter *Regional Land Bank Initiatives*]; see generally Dawn Jourdan et al., *Meeting Their Fair Share: A Proposal for the Creation of Regional Land Banks to Meet the Affordable Housing Needs in the Rural Areas of Texas*, 19 J. AFFORDABLE HOUSING & CMTY. DEV. L. 147 (2010) [hereinafter *Meeting Their Fair Share*]; see *Addressing Rural Blight*, *supra* note 3.

¹⁰ See, e.g., Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 483 (2014); Lisa R. Pruitt, *Spatial Inequality As Constitutional Infirmary: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1 (2010).

¹¹ See *Addressing Rural Blight*, *supra* note 3, at 529.

¹² See *Meeting Their Fair Share*, *supra* note 9, at 155 (discussing rural counties in Texas with twenty-eight percent vacancy); Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1364 (2012) (describing ghost town phenomenon) [hereinafter *Dissolving Cities*]; Bill Estep, *Historic coal towns are fighting to survive. Could three of them merge into one?*, LEXINGTON HERALD LEADER (Oct. 26, 2017, 1:09 PM), <http://www.kentucky.com/news/state/article181032761.html> [<https://perma.cc/H4GK-P5C7>] (discussing one-third vacancy rate in Lynch, Kentucky); but see Kate Abbey-Lambertz, *These Are The American Cities With The Most Abandoned Houses*, HUFFINGTON POST (Feb. 13, 2016, 9:30 AM), https://www.huffingtonpost.com/entry/cities-with-most-abandoned-houses-flint_us_56be4e9ae4b0c3c5505171e7 [<https://perma.cc/ZB8R-FPB8>] (discussing one-sixth vacancy rate in Flint, Michigan, and one-fifth rate in Detroit).

¹³ A brief, non-scientific perusal of online resources illuminates the attention rural blight receives in the overall discourse on blight. As of this writing, a search for “urban blight” yields 1330 results on Westlaw and 288,000 results on Google. Meanwhile, a search for “rural blight” yields ten Westlaw results and 2330 Google results, respectively—roughly suggesting that rural blight is addressed in less than one percent of discussions of blight (0.6% on Westlaw and 0.8% on Google). A search for “blight” in the same paragraph as “rural,” with “rural” mentioned at least twice—accounting for the fact that “rural blight” is not necessarily a commonly used term, but blight may be discussed in a rural context—expands the Westlaw results to sixty-two articles, or four percent of articles addressing blight. As sixteen percent of Americans reside in rural areas, one might expect a proportionate balance to yield a sixteen percent rate of discussion of rural blight—which would result in 254 results for rural blight on Westlaw (rather than fewer than one hundred) and 56,000 on Google (rather than 2260).

disproportionately low, given that just under one-fifth of Americans reside in rural areas and seventy-two percent of the country's land is rural.¹⁴

Based on the unique circumstances that shape rural blight—including population scarcity, limited physical and economic access to resources, and limited legal frameworks, in addition to differing rural cultural norms—I argued in a previous article, *Addressing Rural Blight: Lessons from West Virginia and WV LEAP*, that rural blight warrants consideration as its own phenomenon.¹⁵ *Addressing Rural Blight* drew on interviews with stakeholders in West Virginia to propose a roadmap for successful rural blight remediation at the local level.¹⁶ The roadmap proposed a focus on preventative and remedial measures that are more modest and incremental than the solutions that tend to receive attention for urban contexts, and which are potentially more attainable for rural local governments.¹⁷ For example, empowering code enforcement officials to issue “on-the-spot” citations for structural defects, rather than communicating with landowners only through the mail, was a low-cost measure that saw dramatic increases in landowner compliance in some places in West Virginia.¹⁸ It may make more sense in a discourse on rural blight to focus on measures like this before discussing aggressive, large-scale blight remediation approaches more common in cities, such as land banks and other public or quasi-public entities that use substantial resources to acquire properties for remediation. *Addressing Rural Blight* also argued that non-legal tools, such as negotiations with landowners and partnerships with non-profit organizations, may be just as important as legal tools in rural communities because non-legal tools may involve fewer resources in time, money, people, and energy.¹⁹

Expanding beyond *Addressing Rural Blight's* focus on local measures, this Article is the first to articulate a definition for rural blight and is one of few to consider law and policy solutions to rural blight at the state and regional level.²⁰ The definition places rural blight in the context of population scarcity, limited access to resources, and limited legal frameworks in rural places, conditions which are often underestimated in their importance to rural law and policy.²¹ The overarching theme of this Article's law and policy

¹⁴ See Cromartie, *supra* note 2; Justin Fox, *Rural America is Aging and Shrinking*, BLOOMBERG (June 20, 2017, 2:54 PM), <https://www.bloomberg.com/view/articles/2017-06-20/rural-america-is-aging-and-shrinking> [<https://perma.cc/76HY-ZEU4>].

¹⁵ *Addressing Rural Blight*, *supra* note 3, at 515.

¹⁶ *Id.* at 537.

¹⁷ *Id.* at 538.

¹⁸ *Fix It or Ticket: The Power of On-Site Citations Shows Real Results for Home Rule Cities*, WV HUB (Mar. 8, 2017), <http://wvhub.org/fix-it-or-ticket-the-power-of-on-site-citations-shows-real-results-for-home-rule-cities/> [<https://perma.cc/YDW8-LSZ8>].

¹⁹ *Addressing Rural Blight*, *supra* note 3, at 540.

²⁰ See *Meeting Their Fair Share*, *supra* note 9; *Regional Land Bank Initiatives*, *supra* note 9.

²¹ See *Addressing Rural Blight*, *supra* note 3, at 517; see generally Carpenter et al., *Blight Remediation in the Southeast: Local Approaches to Design and Implementation*, CMTY. & ECON. DEV. DEP'T, FED. RESERVE BANK OF ATLANTA (Feb. 22, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2774636 [<https://perma.cc/K852-L4SK>]. This inquiry is informed by a critical legal geography methodology, which involves “exploring the ways in which geographic assumptions and unequal spatialization of power constitute and are constituted by

proposals is a call to strengthen rural local governments where possible through legal measures, or otherwise relieve them of their daunting burdens by shifting some of the rural blight problem to the state and regional level. While urban and rural blight share many themes, perhaps the most salient difference between the two is what “limited local government capacity” means. The large cities often discussed in urban blight literature face substantial challenges in addressing their high rates of vacant and dilapidated structures.²² However, those cities have *something* to work with in addressing their blight—building codes,²³ zoning ordinances,²⁴ active community organizations,²⁵ housing counselors and assistance,²⁶ the prospect of private investment,²⁷ the capacity to pursue eminent domain,²⁸ land banks,²⁹ and media attention,³⁰ for example. Rural communities, however, may not have access to any of these resources.³¹ Thus, a blighted property that would pose difficult questions of time, funding, and strategy in a larger city may simply be an insurmountable problem in a rural locality.³² Rural communities need

law.” Hari M. Osofsky, *The Geography of “Moo Ha Ha”: A Tribute to Keith Aoki’s Role in Developing Critical Legal Geography*, 90 OR. L. REV. 1233, 1239 (2012).

²² Yxta Maya Murray, *Detroit Looks toward a Massive, Unconstitutional Blight Condemnation: The Optics of Eminent Domain in Motor City*, 23 GEO. J. POVERTY L. & POL’Y 395, 397 (2016) (describing Detroit as the most dilapidated city in the country); Terrence McCoy, *Baltimore has more than 16,000 vacant houses. Why can’t the homeless move in?*, WASH. POST (May 12, 2015), https://www.washingtonpost.com/local/baltimore-has-more-than-16000-vacant-houses-why-cant-the-homeless-move-in/2015/05/12/3fd6b068-f7ed-11e4-9030-b4732caefe81_story.html?utm_term=.2c6808975046 [<https://perma.cc/NTC4-XNYE>].

²³ See, e.g., Press Release, City of St. Louis, City of St. Louis Selected to Leadership Institute’s Best Practices on Tackling Vacant and Problem Properties (Mar. 16, 2015), <https://www.stlouis-mo.gov/government/departments/mayor/news/tackling-vacant-and-problem-properties.cfm> [<https://perma.cc/8GNF-FWDW>].

²⁴ See, e.g., ST. LOUIS, MO., CODE OF ORDINANCE tit. 26 (2017), https://library.municode.com/mo/st._louis/codes/code_of_ordinances?nodeId=TIT26ZO [<https://perma.cc/8QC3-XS59>].

²⁵ See, e.g., *Fighting Blight in the Gateway City*, SLATE PLACEMAKERS (Oct. 31, 2016, 4:01 AM), http://www.slate.com/podcasts/placemakers/fighting_blight_in_st_louis_one_mlk_jr_drive_at_a_time.html [<https://perma.cc/P4LD-LQMR>].

²⁶ See, e.g., METRO. ST. LOUIS EQUAL HOUS. AND OPPORTUNITY COUNCIL, <http://ehocstl.org/> [<https://perma.cc/A8TE-8PG9>].

²⁷ See Maria Altman, *St. Louis takes new look at old problem: What to do with vacant land and abandoned buildings*, ST. LOUIS PUB. RADIO (June 15, 2016) [hereinafter *St. Louis takes new look*], <http://news.stpublicradio.org/post/st-louis-takes-new-look-old-problem-what-do-vacant-land-and-abandoned-buildings#stream/0> [<https://perma.cc/3HWB-X5L7>] (discussing Fresh Coast Capital, a company redeveloping vacant and blighted land in midwestern cities).

²⁸ See Maria Altman, *City’s eminent domain suit for NGA land expanded*, ST. LOUIS PUB. RADIO (Mar. 18, 2016), <http://news.stpublicradio.org/post/city-s-eminant-domain-suit-nga-land-expanded#stream/0> [<https://perma.cc/SE6Y-8T6Z>].

²⁹ See, e.g., *St. Louis takes new look*, *supra* note 27 (St. Louis has oldest land bank in the country); Erick Trickey, *Detroit’s DIY Cure for Urban Blight*, POLITICO (May 18, 2017), <https://www.politico.com/magazine/story/2017/05/18/how-detroit-is-beating-its-blight-215160> [<https://perma.cc/5TZE-EBZP>] (noting that Detroit has country’s largest land bank).

³⁰ See generally Trickey, *supra* note 29.

³¹ See, e.g., *Addressing Rural Blight*, *supra* note 3; Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1218 (2014) [hereinafter *Minimal Cities*].

³² See, e.g., *Code Enforcement Recommendations for Small Towns*, RURAL PLAN. GROUP (Feb. 2016), http://www.ruralplanning.org/assets/code_enforcement-web.pdf [<https://>]

tailored attention in law and policy if they are going to be able to tackle their blight effectively.³³

The stakes of addressing rural blight extend beyond a few problem properties, both in terms of scale and in terms of what blight's widespread presence signifies. Rural blight is an apt symbol for overall rural decline, as it symptomatizes a variety of legal, social, and economic systems that are not functioning well.³⁴ Since the 2016 presidential election, more commentary has recognized that rural America's fate is in question, although non-white rural residents continue to receive little attention.³⁵ Decisions as to whether and how to approach rural blight—which will in turn affect rural health, safety, aesthetics, economics, and overall quality of life—will play a role in determining that fate. Whatever the optimal roadmap for rural America may be, this discussion assumes that society should not leave rural communities defenseless against “the slow ravages of abandonment and disintegration.”³⁶

Part I of this Article proposes a definition for rural blight. Part II discusses a non-exhaustive list of several main contributors to rural blight. Drawing on rural legal scholarship, Part II.A theorizes that courts' and legislatures' historically disproportionate solicitude of certain rural private property rights may play a role in rural blight. Part II.B discusses macro-level causes of rural blight, including the restructuring of the rural economy over the past half-century and the related rural local government fiscal crisis. Part II.C discusses more proximate contributors to rural blight, such as the difficulty for rural local governments of finding absentee landowners and holding them accountable. Part III turns to rural blight remediation. Part III.A discusses effective approaches rural local governments have taken despite the lack of support for their efforts in law, policy, and funding. Part III.B discusses a variety of options as to how law and policy could better support those and other efforts under three main umbrellas: (1) reconfiguring, supporting, or enabling rural local governments; (2) regionalist approaches; and (3) targeted law and policy reform, with a focus on streamlining tax foreclosure processes, better addressing heirs' property complications, and enhancing accountability for absentee and out-of-state landowners. Part III.C discusses important considerations of equity.

perma.cc/G7DB-77MS] (“The difficulties of code enforcement can seem insurmountable, leading [small towns] to not enforce.”).

³³ See Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 975 (2005) (arguing that the impact of financial downturns on rural areas illustrates the need for specialized rural policy in America).

³⁴ See Joe Schilling et al., *Charting the Multiple Meanings of Blight*, KEEP AM. BEAUTIFUL (May 20, 2015), https://www.kab.org/sites/default/files/Charting_the_Multiple_Meanings_of_Blight_Executive_Summary_FINAL.pdf [<https://perma.cc/Q8ZK-4CB4>].

³⁵ See, e.g., Peter Hessler, *How Trump is Transforming Rural America*, NEW YORKER (July 24, 2017), <https://www.newyorker.com/magazine/2017/07/24/how-trump-is-transforming-rural-america> [<https://perma.cc/WQ7Q-JEBP>]; Alec MacGillis & ProPublica, *The Original Underclass*, ATLANTIC (Sept. 2016), <https://www.theatlantic.com/magazine/archive/2016/09/the-original-underclass/492731/> [<https://perma.cc/JFG9-QVF4>].

³⁶ Michelle W. Anderson, *The Western, Rural Rustbelt: Learning from Local Fiscal Crisis in Oregon*, 50 WILLAMETTE L. REV. 465, 500 (2014) [hereinafter *The Western, Rural Rustbelt*].

Two definitional points inform this discussion. First, “blight” is a problematic term.³⁷ Its vagueness has allowed bad-faith actors to designate poor and minority communities as “blighted” on improper or discriminatory bases, allowing local governments and developers to justify the pretextual use of eminent domain to transfer vulnerable populations’ property away.³⁸ This Article discusses blight as a policy concern that needs to be understood and approached ethically and holistically. Condemnation, especially for cash-strapped rural local governments, is not likely the best option for each vacant, abandoned, or dilapidated building that may be considered part of “blight,” and would ideally be an extremely rare occurrence for inhabited properties. In other words, this discussion does not contemplate as ethically viable an approach reliant on evicting poor or minority communities from their homes or businesses.³⁹

Second, some may read “urban” to be synonymous with “black” and “rural” to be synonymous with “white.”⁴⁰ Although the research for this project began in mostly-white (but not all-white)⁴¹ West Virginia, evidence suggests that vacancy, abandonment, and dilapidation are problems of national scale.⁴² The four main populations and regions affected by extreme rural poverty—including whites in Appalachia, Native Americans in the West and elsewhere, African Americans in the Southeast, and Hispanics in the Southwest and elsewhere—all face problems of substandard or overcrowded housing, abandoned buildings, brownfields, and dilapidation in some form or another.⁴³ However, like in many large cities today, local government fis-

³⁷ See Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 *FORDHAM URB. L.J.* 305 (2004).

³⁸ See Murray, *supra* note 22; see also Steven J. Eagle, *Does Blight Really Justify Condemnation?*, 39 *URB. L.* 833 (2007) (noting use of blight to label “diffused or conjectural threat[s] to well-being”); Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 *YALE L. & POL’Y REV.* 1, 3, 6 (2003) (describing blight as “[a] vague, amorphous term . . . a rhetorical device that enabled renewal advocates to reorganize property ownership by declaring certain real estate dangerous to the future of the city. . . . [It is] a facially neutral term infused with racial and ethnic prejudice.”).

³⁹ See Eagle, *supra* note 38, at 833 (describing blight’s potential as “a scary pretext for the acquisition of land that is desired by others”); *Kelo v. City of New London*, 545 U.S. 469, 522 (Thomas, J., dissenting) (noting that “[u]rban renewal projects have long been associated with the displacement of blacks”).

⁴⁰ Cf. George Lefcoe, *Redevelopment Takings After Kelo: What’s Blight Got to Do with It?*, 17 *S. CAL. REV. L. & SOC. JUST.* 803, 829 (2008) (discussing Justice Thomas’ opinion in *Kelo* “pointedly link[ing] racism and the blight norm in urban redevelopment”).

⁴¹ See Kathryn Trauth Taylor, *Naming Affrilachia: Toward Rhetorical Ecologies of Identity Performance in Appalachia*, *ENCULTURATION* (June 21, 2011), <http://enculturation.net/naming-affrilachia> [<https://perma.cc/4CQU-DLUV>].

⁴² See, e.g., Sarah Schindler, *The Future of Abandoned Big Box Stores: Legal Solutions to the Legacies of Poor Planning Decisions*, 83 *U. COLO. L. REV.* 471, 473–75 (2012).

⁴³ See generally Cynthia Duncan, *WORLDS APART: WHY POVERTY PERSISTS IN RURAL AMERICA* (2000) (discussing why poverty continues via case studies of three rural areas across America); see also Ezra Rosser, *Rural Housing and Code Enforcement: Navigating Between Values and Housing Types*, 13 *GEO. J. POVERTY L. & POL’Y* 33 (2006) (discussing rural case studies, including in Navajo Nation and small Colorado subdivision); Emily Ramshaw, *Improvement Comes Up Short in South Texas Community*, *N.Y. TIMES* (July 7, 2011), <http://www.nytimes.com/2011/07/08/us/08ttconditions.html> [<https://perma.cc/CX22-3TUP>];

cal crisis affects rural communities nationwide.⁴⁴ Rural communities also generally face higher rates of poverty.⁴⁵ This discussion proceeds at a level of abstraction that will unfortunately gloss over particular regions and socioeconomic circumstances, including blight policy's highly racialized past. To both points, Part III attempts to account for certain risks of abuse in rural blight remediation, including subordination and discrimination.

I. DEFINING RURAL BLIGHT

A more nuanced understanding of rural blight should inform the crafting of better solutions for it. In brief, I propose to define rural blight as (1) one or more defective properties; (2) posing a measurable threat to a community; (3) located in a place with sparser population (under 20,000 or so) at a distance from a population center (at least thirty-five miles from a community of 20,000 or more people). These three factors can help further identify and address this phenomenon. Yet, understanding these factors requires context.

The small town of Cairo, Illinois illustrates how rural blight arises and perpetuates a vicious downward cycle for a rural community.⁴⁶ Cairo thrived into the early twentieth century with a population of around 15,000 because of its commerce-friendly location at the intersection of the Ohio and Mississippi Rivers.⁴⁷ Its population gradually decreased to under 3000 as of 2014, in part because of competition from railway and interstate traffic, and because of the closure of Cairo's largest employer, the Burkart Foam Com-

Stewart Wooten, *Abandoned building becomes busy community center*, TUSCALOOSA NEWS (Feb. 28, 2006), <http://www.tuscaloosaneews.com/news/20060228/abandoned-building-becomes-busy-community-center> [<http://perma.cc/QXL9-GPMA>] (discussing effort in majority-black, rural, unincorporated community in Alabama to repurpose abandoned school building); Scott Rodd, *From an abandoned house to a structure that unfolds into a community theater*, RENEWAL PROJECT (July 27, 2016), <http://www.therenewalproject.com/from-an-abandoned-house-to-a-structure-that-unfolds-into-a-community-theater/> [<https://perma.cc/UV9U-ZDQ5>] (discussing abandoned buildings in majority-black, rural town in Alabama); A.G. Sulzberger, *Hispanics Reviving Faded Towns on the Plains*, N.Y. TIMES (Nov. 13, 2011), <https://www.nytimes.com/2011/11/14/us/as-small-towns-wither-on-plains-hispanics-come-to-the-rescue.html> [<https://perma.cc/8BCX-TPL8>] (discussing transition of rural Kansas town with vacancy and abandonment problem from majority-white to majority-Hispanic); Sarah Dewees & Benjamin Marks, *Twice Invisible: Understanding Rural Native America*, FIRST NATIONS DEV. INST. 1 (Apr. 2017), <https://www.usetinc.org/wp-content/uploads/bvenuti/WWS/2017/May%202017/May%208/Twice%20Invisible%20-%20Research%20Note.pdf> [<https://perma.cc/U8PL-LPTR>] (noting that majority of American Indian and Alaskan Native people live in rural or small-town areas, many of which are not on reservations).

⁴⁴ See, e.g., *The Western, Rural Rustbelt*, *supra* note 36, at 470.

⁴⁵ See *Poverty in Rural America*, HOUS. ASSISTANCE COUNCIL (Sept. 2011), http://www.ruralhome.org/storage/documents/info_sheets/povertyamerica.pdf [<https://perma.cc/K9N2-C3FC>].

⁴⁶ For another case study, see Michelle Wilde Anderson, *Who Needs Local Government Anyway? Dissolution in Pennsylvania's Distressed Cities*, 24 WIDENER L.J. 149, 151 (2015) [hereinafter *Who Needs Local Government?*] (discussing decline of Rust Belt town of Braddock, Pennsylvania, with a twenty-four percent vacancy rate).

⁴⁷ See Wilkinson, *supra* note 5.

pany.⁴⁸ During that time, the town also transitioned from majority-white to majority-black, although it remains mixed.⁴⁹ Today, Alexander County, where Cairo is located, is one of the poorest and most quickly depopulating counties in the country.⁵⁰

Cairo's properties have followed in step with its economic and population decline. Entire blocks have been condemned, and "partly burned mansions with roofs caving in" characterize the landscape.⁵¹ The town's only grocery store and gas station closed in 2015, in addition to the bowling alley, a furniture store, and other private businesses.⁵² While there have been efforts to demolish some properties and otherwise revitalize Cairo, state grant funding "dried up long ago" and the county housing authority is bankrupt.⁵³

In 2014, a small group of residents began documenting the problem properties, and community members also began the process of creating a comprehensive plan.⁵⁴ Comprehensive plans are typically non-binding land use and development visions for communities.⁵⁵ They lay a foundation for more powerful local land use governance, including zoning ordinances, and are required to receive grant support from the U.S. Department of Housing and Urban Development (HUD) and other funders.⁵⁶ Cairo's earlier comprehensive plan developed in 1973 had never been implemented.⁵⁷

The comprehensive plan effort came to fruition in November 2014, with the document specifically identifying blight and the city's 26-percent vacancy rate as needs to be addressed.⁵⁸ However, a discouraging sign as to Cairo's progress occurred in 2017, when HUD authorities deemed two of the town's public housing complexes uninhabitable and beyond repair.⁵⁹ The condemnation of the buildings—plagued with water damage, mold, roaches,

⁴⁸ See *id.*; see also Kirk Siegler, *Tired of Promises, A Struggling Small Town Wants Problems Solved*, NPR (Mar. 28, 2017, 5:01 AM), <https://www.npr.org/2017/03/28/521118179/tired-of-promises-a-struggling-small-town-wants-problems-solved> [<https://perma.cc/F6QW-H7RB>]; *Burkart Foam plant to close*, SE. MISSOURIAN (Sept. 15, 2001) [hereinafter *Burkart Foam plant*], <http://www.semissourian.com/story/42693.html> [<https://perma.cc/7MGQ-SVCW>].

⁴⁹ See Monica Davey, *Their Public Housing at the End of Its Life, Residents Ask: What Now?*, N.Y. TIMES (May 17, 2017), <https://www.nytimes.com/2017/05/17/us/cairo-public-housing-hud-poverty.html> [<https://perma.cc/L6SU-QH76>].

⁵⁰ See Siegler, *supra* note 48.

⁵¹ *Id.*

⁵² *Id.*; Wilkinson, *supra* note 5.

⁵³ See Siegler, *supra* note 48; *Burkart Foam plant*, *supra* note 48.

⁵⁴ See Matzker, *supra* note 2; *Burkart Foam plant*, *supra* note 48.

⁵⁵ See *Forestview Homeowners Ass'n v. Cook*, 309 N.E.2d 763, 771 (Ill. App. Ct. 1974) (explaining that "[a] comprehensive zoning plan is a scheme or formula of zoning that reasonably relates the regulation and restriction of land uses, including establishment of districts therefor, to the health, safety and welfare of the public, and thus to the police power" and helps to guide zoning decisions).

⁵⁶ See Matzker, *supra* note 2; *Burkart Foam plant*, *supra* note 48; see also *1350 Lake Shore Ass'ns v. Casalino*, 816 N.E.2d 675, 685 (Ill. App. Ct. 2004) (noting that absence of comprehensive plan weakens presumption of valid zoning ordinance).

⁵⁷ *Burkart Foam plant*, *supra* note 48.

⁵⁸ CITY OF CAIRO, COMPREHENSIVE PLAN (2014).

⁵⁹ Davey, *supra* note 49.

bed bugs, insufficient insulation, and poor plumbing, heating, and electrical systems—at first seemed like vindication for the many residents who had complained.⁶⁰ But when approximately 400 residents were told to vacate their homes in April 2017, many would have to leave Cairo altogether to find adequate housing because “places like Cairo have no excess supply of safe, available low-income housing” and, as one resident articulated, “[w]e all know there’s nowhere to use a [public housing] voucher in Cairo.”⁶¹ According to HUD, rebuilding was not an option because of the lack of a willing private partner.⁶²

An understanding of how blight remediation should normally work can help illuminate Cairo’s struggle and the features of rural blight. Typically, a municipality would address a problem property in the following manner. The municipality should already have laid a foundation for addressing problem properties in law and policy.⁶³ It has ideally adopted a comprehensive plan, a zoning ordinance, and a building code, complying as needed with provisions of state law.⁶⁴ When a property violates one of the latter two legally binding sets of standards, a local government actor, such as a code enforcement officer, issues a citation.⁶⁵ For example, if the property owner allows trash and vermin to collect on the front lawn, the code enforcement officer would direct the owner to correct the violations or face fines and eventually, proceedings in court.⁶⁶ Ideally, property owners respond to such citations with corrective action, and the cycle either ceases or begins again.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See, e.g., W. VA. UNIV. COL. OF L., LAND USE & SUSTAINABLE DEV. L. CLINIC, FROM LIABILITY TO VIABILITY: A LEGAL TOOLKIT TO ADDRESS NEGLECTED PROPERTIES IN WEST VIRGINIA 4 (2015) [hereinafter LIABILITY TO VIABILITY], <https://wvleap.wvu.edu/files/d/cf7aade6-10ca-4df7-b154-6956dbad3b85/from-liability-to-viability.pdf> [<https://perma.cc/22DA-44DL>] (“Addressing dilapidated properties is a long-term project that requires capitalizing on community partnerships and community planning . . . [M]aintaining properties typically requires the use of an effective code enforcement program and a registration system to keep track of vacant and uninhabitable properties.”); see also *id.* at 7 (“[C]omprehensive plans are an essential tool for guiding a community’s goals and resources, particularly for dilapidated properties.”).

⁶⁴ See PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 6:6 (5th ed. 2017); EUGENE MCQUILLIN, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 24:505 (3d ed. 1913).

⁶⁵ See Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 STAN. L. REV. 1, 4 (2004); see, e.g., *Code Enforcement*, CITY OF VA. BEACH, <https://www.vbgov.com/government/departments/housing-neighborhood-preservation/code-enforcement/Pages/default.aspx> [<https://perma.cc/G43C-AH8U>].

⁶⁶ See, e.g., *Code Enforcement*, BURLINGTON N.C., <http://www.ci.burlington.nc.us/1542/Code-Enforcement> [<https://perma.cc/97FU-4T9U>]; *Code Enforcement*, FERNDALE, <https://www.ferndalemi.gov/services/code-enforcement> [<https://perma.cc/9HJB-YM4E>]. These processes vary by state, locality, and strategy, however. For instance, a municipality may also opt to sue to have a property declared a nuisance. See Steven E. Barlow, Daniel M. Schaffzin, Brittany J. Williams, *Ten Years of Fighting Blighted Property in Memphis: How Innovative Litigation Inspired Systems Change and A Local Culture of Collaboration to Resolve Vacant and Abandoned Properties*, J. AFFORDABLE HOUSING & COMMUNITY DEV. L., 347, 356 (2017); Creola

The cases in which landowners never correct deficiencies are the ones that contribute to blight. Some properties fall into disrepair because of landowners who simply refuse to maintain them.⁶⁷ These scenarios seem relatively rare, however. Much of the property neglect in rural areas comes from cases of vacant properties with absentee owners or ownership that is unclear.⁶⁸ These may include speculators who purchased a property at a tax sale without intending to use it, heirs who live out of state or are unaware they inherited a property, neglectful landlords, foreign or out-of-state investors, people who died or moved to retirement facilities without making plans for the property, or mortgage lenders who did not foreclose on abandoned homes during the housing and foreclosure crisis.⁶⁹ Owners of abandoned malls, former industrial sites, and other defunct businesses may be corporations that no longer exist or maintain local contacts, and owners of abandoned schools may be the cash-strapped local governments themselves.⁷⁰

Properties such as these decay rather rapidly, as no one is tending to them and the owners are difficult to hold accountable. In turn, empty, dilapidated structures attract vermin and crime, create fire and structural hazards, reduce neighboring properties' values, and hurt local government tax revenues and overall community economic health.⁷¹

Even when a high volume of these properties crops up, a local government would ideally take action in response. Condemnation and eminent domain are perhaps the most common legal tools local governments can use for properties that reach such a dramatic state of disrepair and danger.⁷² A well-functioning local government acting in good faith would first look to its blight ordinance or another statute.⁷³ The statute would define blighted properties as having one or a set of the problems discussed here, including hazardous physical defects and the absence of a property owner willing to

Johnson, *Fight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties*, 2008 UTAH L. REV. 1169, 1190 (2008).

⁶⁷ See, e.g., *On-site Citations*, WV LEAP, <https://wvleap.wvu.edu/fundamental-tools/on-site-citations> [<https://perma.cc/XWW7-2675>] (discussing non-compliance and responses in the city of Charleston).

⁶⁸ See *Addressing Rural Blight*, *supra* note 3, at 533.

⁶⁹ See *id.* at 546 n.152; Allen Best, *Unfinished zombie housing developments haunt the rural West*, HIGH COUNTRY NEWS (Mar. 12, 2012), <http://www.hcn.org/issues/44.4/unfinished-zombie-housing-developments-haunt-the-rural-west> [<https://perma.cc/7R6Y-6T5A>].

⁷⁰ See, e.g., Betsy H. Sochar, *Shining the Light on Greyfields: A Wal-Mart Case Study on Preventing Abandonment of BigBox Stores through Land Use Regulations*, 71 ALB. L. REV. 697, 703 (2008) ("Currently, thousands of abandoned big box[] [stores] litter municipalities across the United States."); CITY OF CAIRO COMPREHENSIVE PLAN, *supra* note 58 (listing publicly-owned abandoned buildings).

⁷¹ See *Addressing Rural Blight*, *supra* note 3 at 518, 546 n.3.

⁷² See generally 2004 Update: *Eminent Domain's Role In Redevelopment*, SK002 ALI-ABA 185, 188.

⁷³ See, e.g., *City of Shelton v. Fuge*, No. CV010074857S, 2002 WL 1009845, at *1 (Conn. Super. Ct. Apr. 23, 2002) (analyzing City of Shelton's Anti Blight Ordinance enacted pursuant to Connecticut Code § 7-148 "to ensure that proper procedures exist for the rehabilitation, reconstruction, or reuse of vacant and blighted buildings in order to protect the health and safety of the people").

make repairs.⁷⁴ The local government would then officially designate a property as “blighted.”⁷⁵ The landowner would be entitled to due process protections, requiring the local government to provide notice of the designation to the extent possible.⁷⁶

Eventually, absent action from the landowner, the local government or related entity would take over ownership of the property.⁷⁷ The local government would then raze or rehabilitate the building and sell it to a new owner who would put it to productive use. If a community had a large number of problem properties, the local government could use one of several common large-scale approaches, including creating a land bank or designating some form of community development zone.⁷⁸ Local governments may also use nuisance abatement lawsuits to pursue the same ends.⁷⁹

In the rural context, Cairo illustrates several problems with these processes as the standard for blight remediation. First, many rural local governments lack the capacity to take on ownership and repairs of a problem property.⁸⁰ To do so requires substantial resources and may expose the local government to liability associated with property hazards.⁸¹ For instance, it seems unlikely that Cairo could acquire or remediate its public housing complexes given its current inability to address smaller properties.

Meanwhile, a large-scale initiative would seem difficult for Cairo without external support. Land banks, redevelopment authorities, and receivership are among the popular tools used in urban blight remediation, but these approaches usually involve a local government creating a public or quasi-public entity that operates as a sort of real estate business. Land banks, for example, “are typically sophisticated entities that are independent of local governments with their own budgets and staff.”⁸² Yet, all of these initiatives “require resources and coordination that may be beyond many rural communities . . . [which] may not have the human or fiscal resources necessary to

⁷⁴ See, e.g., PA. STAT. ANN. tit. 35, § 1712.1 (West 2002) (defining, among other options, blighted property to include premises which are nuisances because of physical conditions, properties that are “dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality,” and properties that have been declared abandoned by the owner).

⁷⁵ See, e.g., *Redevelopment Auth. of City of York v. Bratic*, 45 A.3d 1168, 1170 (Pa. Commw. Ct. 2012) (City Planning Commission certified property as blighted under state statute).

⁷⁶ See *id.* (discussing series of letters sent to landowner, opportunities for appeal, and opportunities to correct deficiencies).

⁷⁷ See *id.*; *Charleston Urban Renewal Auth. v. Courtland Co.*, 203 W. Va. 528, 530 (1998) (property was subject to acquisition by eminent domain).

⁷⁸ See Anne E. Kline, *A Case for Connecticut Land Banks*, 88 CONN. B.J. 210, 214 (2015).

⁷⁹ S. Adeline McKinney, *The North Carolina Banking Institute Symposium on the Foreclosure Crisis: Municipalities Fight Effects of Foreclosure with Litigation and Neighborhood Stabilization Program Grants*, 14 N.C. BANKING INST. 257, 259 (2010).

⁸⁰ See *Meeting Their Fair Share*, *supra* note 9.

⁸¹ See *Addressing Rural Blight*, *supra* note 3, at 513, 530.

⁸² *Meeting Their Fair Share*, *supra* note 9, at 149.

accomplish the relatively sophisticated land acquisition and distribution activities involved in land banking” and similar approaches.⁸³

As rural local governments have a more limited capacity overall, a lower volume of vacant properties, and a smaller market for redeemed properties, land banks and similar large-scale approaches might not be realistic blight remediation mechanisms for them to implement.⁸⁴ Although Cairo’s comprehensive plan calls for a land bank to address a portion of its downtown,⁸⁵ the city does not seem to have created a land bank in the four years since the plan’s drafting. Even at the level of the individual parcel, if a local government could reach the step of redeveloping the property, the parcel will likely have a relatively low economic value, and the rural area would likely lack interested buyers.⁸⁶ HUD’s statement about the lack of a willing partner to redevelop Cairo’s public housing similarly illustrates this issue.

Cairo’s struggle to survive involves a full spectrum of problem properties. Its blight ranges from crumbling, vacant mansions to uninhabitable, yet occupied, housing. These conditions resemble blight-related problems that arise in cities. Yet, Cairo exhibits many of the traits of rurality that shape rural blight and impede its remediation: few people were available to be galvanized to document properties; because of a lack of a comprehensive plan until 2014, Cairo has had more limited land use guidance to direct remediation and development, and has had to start its land use policy from scratch; no private developers were willing to work on the public housing problems, according to HUD; and limited housing options were driving people out of town. The most concerning communities burdened by rural blight, and hampered by their rurality, are small towns like Cairo and communities governed at the county level, who face similar obstacles.⁸⁷

Using Cairo as a reference point, rural blight can be understood to have three categorical features that illustrate how rurality affects blighted properties and how blighted properties may have different relationships with rural environs. The first feature is location in a rural place. Like blight, rurality does not have a standard definition; it can be defined by non-urbanity, population volume, population density, distance from an urban center, or other measures.⁸⁸ Population scarcity, large stretches of geographical space,

⁸³ *Id.* at 157.

⁸⁴ See *Addressing Rural Blight*, *supra* note 3, at 530.

⁸⁵ CITY OF CAIRO COMPREHENSIVE PLAN, *supra* note 58.

⁸⁶ *Id.* (citing *Meeting Their Fair Share*, *supra* note 9, at 157).

⁸⁷ Although rural places are highly variable, Cairo’s story likely illustrates issues that arise across other regions and demographics, given its mixed racial population and location at the meeting place of the South and the Midwest. Cf. Guadalupe T. Luna, *Agriculture, Rural Workers and Free Trade*, 14 N. ILL. U. L. REV. 789, 796 (1994) (noting absence of urban infrastructure and presence of rural slums in unincorporated areas along U.S.-Mexico border); Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1115 (2008) (discussing “colonias”—rural, primarily Latino subdivisions that lack collective infrastructure and are plagued with health problems).

⁸⁸ See *The federal definition of ‘rural’ – times 15*, WASH. POST (June 8, 2013), <https://www.washingtonpost.com/politics/the-federal-definition-of-rural—times-15/2013/06/08/a39>

limited economies, limited legal frameworks, and differing cultural norms characterize rural life and in turn shape rural blight and its remediation.⁸⁹ Many recognize rurality to exist on a spectrum, though: the farther one travels from an urban center and the sparser the population becomes, the less urban the location is.⁹⁰ Michelle Wilde Anderson has proposed a population prong—including as rural communities with fewer than 15,000 people⁹¹—and Debra Lyn Bassett has proposed a spatial prong—including as rural communities that are “located at least fifty miles from a community of 20,000 or more people.”⁹² Expanding these parameters somewhat to account for rurality’s spectrum-like nature, the first feature of rural blight could be defined as location in a place with sparser population (a helpful cutoff being a population of under 20,000) at a distance from a population center (at least thirty-five miles from a community of 20,000 or more people).⁹³ This definition places Cairo into its purview, with its current population of about 2300

e46a8-cd4a-11e2-ac03-178510c9cc0a_story.html?utm_term=.2a626b21f1ee [https://perma.cc/B4JV-9REY]; see also Lisa Pruitt, *Gender, Geography, and Rural Justice*, 23 BERKELEY J. OF GENDER L. & JUST. 338, 344–48 (2008) [hereinafter *Gender, Geography*]; Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273, 285–90 (2003) [hereinafter *Ruralism*]; Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 177–84 (2006) [hereinafter *Rural Rhetoric*] (providing varied definitions of rural).

⁸⁹ See Daniel Lichter & Kenneth Johnson, *The Changing Spatial Concentration of America’s Rural Poor Population*, 72 RURAL SOC. 331, 333 (2007); Michele Statz & Lisa Pruitt, *To Recognize the Tyranny of Distance: A Spatial Reading of Whole Woman’s Health v. Hellerstedt*, ENVTL. & PLAN. A: ECON. AND SPACE 1 (forthcoming 2018) (on file with the Harvard Law School Library); *Addressing Rural Blight*, *supra* note 3.

⁹⁰ See *Gender, Geography*, *supra* note 88, at 346.

⁹¹ See *Minimal Cities*, *supra* note 31, at 1131. Anderson suggests that a cutoff of populations below 15,000 may “differentiat[e] high-poverty rural towns from urban cities and suburbs, which are more likely to host governments that provide (or at least, provided) a more heterogeneous and diverse array of services and assets.” *Id.* at 1131 n.24.

⁹² See *Ruralism*, *supra* note 88, at 290.

⁹³ There are historical reasons why “blight” tends to be associated with urbanness. The movement to label and address blight stemmed from the evolution of the industrialized American city. Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 712 (1993); see also Rosser, *supra* note 43, at 35 (“[T]he building code’s historical development was often keyed particularly to urban health and safety concerns.”). In the early nineteenth century, poor planning combined with an influx of urban residents contributed to the emergence of squalid slums, which were “filthy, unlighted, overcrowded, and dank.” Aoki, *supra*, at 712. State and local legislation to enable housing codes, large-scale planning, and eminent domain came in response in the following decades. *Id.*; Patricia J. Askew, *Take It or Leave It: Eminent Domain for Economic Development—Statutes, Ordinances, & Politics, Oh My!*, 12 TEX. WESLEYAN L. REV. 523, 531 (2006). It thus might seem as if there is a tension between “rural” and “blight,” as rural areas have sparser populations, larger stretches of space, and a more limited history of land use planning. Aoki, *supra*, at 712; see generally Rural zoning § 9:48, 1 Am. Law. Zoning § 9:48 (5th ed.) (for much of the twentieth century, “rural zoning was still considered a novel and possibly problematic device”); Michelle Wilde Anderson, *Sprawl’s Shepherd: The Rural County*, 100 CAL. L. REV. 365, 369 (2012) (as of 1930, “land use controls were predominantly employed only in urban areas, by municipal governments, and at the local (not metropolitan) scale. In rural areas under the unincorporated jurisdiction of county governments, such regulations remained rare and novel.”). An understanding of rural blight therefore first requires an understanding that rural America faces many of the same conditions as urban America, including poverty, pollution, crime, a shortage of affordable housing, and inadequate housing conditions. See *Minimal Cities*, *supra* note 31, at 1218 (“In rural areas today we thus face the same

at a 40-mile distance from the mid-sized city of Cape Girardeau, population 39,000.⁹⁴

The second and third categorical features of rural blight are more aligned with urban blight definitions but should be understood in the rural context. The second feature is some form of problematic property. But critically, rural blight could comprise only one property. An abandoned movie theater or mall would cause concern in an urban downtown, but in a rural community, such a building may become the community's defining feature.⁹⁵ Rural blight should therefore not necessarily be conceptualized through the lens of redevelopment "areas," for instance.⁹⁶ The second feature of rural blight can thus be defined as one or more problematic properties. While rural communities may have many such properties, it seems logical to start with the first step of contemplating how a fiscally strained local government could address even one of them first—which may involve building a local law and policy framework from scratch.

Finally, the third feature is the hazardous effects of the problem properties. The potential for misuse is a concern in both urban and rural blight designations.⁹⁷ While this definition is not proposed as a legal one, standards using objective criteria related primarily to health, safety, and measurable harms can help prevent excessive discretion resulting in discriminatory enforcement.⁹⁸ Thus, the third feature of rural blight entails the negative effects of a property, including public health and fire hazards, crime, vermin, substantially reduced neighboring property values, and other assessable dangers to surrounding people, property, and the community.⁹⁹ It should be noted,

challenges posed in our new minimal cities and in the industrial urban tenements of the turn of the twentieth century: Will we commit to substantive legal standards for habitability?");

Rural America at A Glance, US DEPT OF AGRIC. (2017), <https://www.ers.usda.gov/webdocs/publications/85740/eib-182.pdf?v=43054> [<https://perma.cc/5LXD-EX85>]; Gillian B. White, *Rural America's Silent Housing Crisis*, THE ATLANTIC (Jan. 28, 2015), <https://www.theatlantic.com/business/archive/2015/01/rural-americas-silent-housing-crisis/384885/> [<https://perma.cc/GF6J-WZRD>]; Sage R. Myers et al, *Safety in Numbers: Are Major Cities the Safest Places in the United States?*, 62 ANNALS OF EMERGENCY MED. (2013); Sarah M. Ramirez & Don Villarejo, *Poverty, Housing, and the Rural Slum: Policies and Production of Inequities, Past, and Present*, 102(9) AM. J. PUB. HEALTH (Sept. 2012) (comparing 1950s agricultural shantytowns in California to New York tenements).

⁹⁴ *Cape Girardeau, Missouri*, CITY-DATA.COM (2014), <http://www.city-data.com/city/Cape-Girardeau-Missouri.html> [<https://perma.cc/XRH4-PJBA>].

⁹⁵ See, e.g., Kirsten Hower, *Behind the Walls: The Uncertain Future of Crownsville State Hospital*, NAT'L TRUST FOR HISTORIC PRES. (Mar. 28, 2016), <https://savingplaces.org/stories/uncertain-future-crownsville-state-hospital#.WvzQy4gvxPY> (discussing abandoned campus of former mental hospital in small town of Crownsville, Maryland).

⁹⁶ Cf. N.Y. GEN. MUN. LAW § 970-c (West 2014) (defining "blighted area").

⁹⁷ Cf. Christopher S. Brown, *Blinded by the Blight: A Search for A Workable Definition of "Blight" in Ohio*, 73 U. CIN. L. REV. 207, 208 (2004).

⁹⁸ Cf. *id.* at 224–25.

⁹⁹ Cf. PA. STAT. ANN. tit. 35, § 1712.1 (West 2002) (defining "blighted property" to include premises declared a public nuisance, posing an attractive nuisance to children, any dwelling which is "dilapidated, unsanitary, unsafe, vermin-infested" or lacking facilities required by housing code, properties which pose fire hazards or other dangers, properties with accumulations of trash and debris or "haven[s] for rodents or other vermin," properties which

though, that effects may differ and be more difficult to measure in a rural community. For example, it would not necessarily be easy to determine how much an isolated, half-burnt barn structure at a highway off-ramp might deter potential visitors from visiting a community, thereby depriving the community of tourism revenue and the opportunity to become known as a place worth visiting or investing in.

Ultimately, disentangling rural blight from blight's association with eminent domain should inform the definition and solutions for this problem. Eminent domain is a hammer; while it is a simple solution in one sense, it is fraught in many respects.¹⁰⁰ The tension at the root of rural blight is that blight is a standard target for local government action, but many rural local governments are not equipped to act in standard ways. While the locally-oriented roadmap in *Addressing Rural Blight* is a helpful starting point, legal scholars, practitioners, and policymakers must also approach this problem with more creativity. The system in Cairo is not working, and the people and local government of Cairo and similar communities need other options and support.

In sum, rural blight can be defined as: (1) one or more defective properties; (2) posing a measurable threat to the community; (3) located in a place with sparser population (under 20,000 or so) at a distance from a population center (at least thirty-five miles from a community of 20,000 or more people). This definition encapsulates the rural communities that tend to be overlooked and who stand to benefit from increased attention, as well as the problem properties that most hamper those communities.¹⁰¹ After the following section discusses the causes of rural blight, Part III, *infra*, aims to further the conversation on creative solutions. This more nuanced picture of rural blight informs these solutions and, it is hoped, can inform others as well.

II. THE CAUSES OF RURAL BLIGHT

A. *The Omission and Differential Treatment of Rural Property*

Rural legal scholarship tends to focus on two main issues in the law's relationship with the rural: (1) the omission concern¹⁰² and (2) the stereotype

were delinquent on taxes for two years or more, and properties considered vacant or abandoned).

¹⁰⁰ Cf. Brown, *supra* note 97, at 208–15.

¹⁰¹ See *Ruralism*, *supra* note 88, at 290 (noting “peculiar difficulties encountered by those who reside in especially small, isolated, rural communities”).

¹⁰² See, e.g., Porter, *supra* note 33, at 970 (“When scholars collect empirical data, they frequently fail to sample rural residents. When reform proposals for legislation are debated, the impact of such laws on rural residents is often ignored. . . . [R]ural Americans are ghosts in the legal system.”); Debra Lyn Bassett, *Distancing Rural Poverty*, 13 GEO. J. ON POVERTY L. & POL’Y 3, 4 (2006) (criticizing inattention to rural struggles after Hurricane Katrina).

or misinformation concern.¹⁰³ Specifically, rural needs tend to be forgotten by legal decision-makers, who advance mostly urban perspectives. Yet, even when decision-makers address rural issues, their misinformed sense of rural life may cause them to do so poorly.¹⁰⁴ These disconnects, scholars have argued, result in “urbanormative” law, or law that fails to appropriately contemplate the needs of populations not living in urban centers.¹⁰⁵ This tension tempers even the present discussion, which is premised on mostly anecdotal or qualitative analysis. Rural areas likely need to be treated differently. However, *how* they should be treated differently is often imperfectly understood, given the lack of study and knowledge about rural life.

Both the omission concern and the stereotype/misinformation concern play a role in rural blight prevention and remediation. *Addressing Rural Blight* proposed that blight literature exhibits an “urbanormative” bias in its disregard for rural circumstances. For its analysis, the article drew upon the West Virginia Legal Education to Address Abandoned and Neglected Properties (WV LEAP) program, a yearlong research and development initiative that aimed “to address the dearth of legal resources and guidance for municipal and county governments in West Virginia for dealing with abandoned, dilapidated, and unsafe buildings.”¹⁰⁶ The program was run by professors, staff attorneys, and land use planners working with law students in the West Virginia University College of Law Land Use and Sustainable Development Law Clinic. Through WV LEAP, the clinic conducted statewide interviews with stakeholders in order to create a local government “toolkit” offering guidance to address problem properties.¹⁰⁷ The WV LEAP listening sessions in the mostly rural state “offer[ed] a rare instance of systematic study of rural blight by attorneys and planners.”¹⁰⁸

The interviews and research conducted through WV LEAP revealed the types of obstacles that impede local blight remediation efforts in West Virginia, as well as an urban-centric tendency in information available on how to approach blight. Most of the scholarly and advocacy literature on blight remediation focuses on urban issues, an example of the omission concern.¹⁰⁹ The literature sometimes mentions rural blight as a side note—but often premised on the idea that an urban tool can be adjusted for a rural

¹⁰³ See, e.g., *Ruralism*, *supra* note 88, at 279 (“[R]uralism entails the projection of stereotyped attributes by a more powerful majority group onto a less powerful minority group.”); Bud W. Jerke, *Queer Ruralism*, 34 HARV. J.L. & GENDER 259, 260 (2010); Debra Lyn Bassett, *The Rural Venue*, 57 ALA. L. REV. 941, 941 (2006).

¹⁰⁴ See STUDIES IN URBANORMATIVITY: RURAL COMMUNITY IN URBAN SOCIETY 3 (Gregory M. Fulkerson & Alexander R. Thomas eds., 2014).

¹⁰⁵ See Lisa R. Pruitt & Marta R. Vanegas, *Urbanormativity, Spatial Privilege, and Judicial Blind Spots in Abortion Law*, 30 BERKELEY J. GENDER L. & JUST. 76, 77 (2015).

¹⁰⁶ *Addressing Rural Blight*, *supra* note 3, at 532 (“In 2014, through a grant from the Benedictum Foundation, the WVU Land Use Clinic partnered with the West Virginia Northern Brownfields Assistance Center (NBAC) to establish the [WV LEAP program].”).

¹⁰⁷ See *id.*

¹⁰⁸ *Id.* at 532.

¹⁰⁹ See *id.* at 514–15.

setting.¹¹⁰ However, the limited existing literature on rural blight suggests that this assumption exemplifies the misinformation concern: like with land banks, which are often not realistically available to rural communities, the legal tools designed to counter blight in an urban setting may be less effective in rural areas due to differing circumstances.¹¹¹

Legal decisionmakers' stereotype-driven treatment of some rural property may also play a role in rural blight. Rural legal scholars Lisa Pruitt and Alan Romero have each argued that the law may be more protective of rural private property ownership than urban property because of stereotypes associated with rural life.¹¹² In *Rural Rhetoric*, Pruitt observes that courts treat the laws of nuisance, ownership, and easements differently in a rural versus an urban context.¹¹³ "In many instances," she argues, "the law respects the private property rights of rural landowners more than those of urban ones, based on assumptions about how the lives of their respective inhabitants differ."¹¹⁴ In *Rural Property Law*, Romero argues that courts apply property law differently in urban and rural areas, especially in nuisance, adverse possession, landlord-tenant, prescriptive easement, and surface water cases.¹¹⁵ He also suggests that this divergent treatment may stem from misguided beliefs about the nature of rural life, positing that judges may believe that "rural tenants need less assurance of habitability or less protection from landlords" and "rural development isn't as important as urban development."¹¹⁶ The underlying stereotype seems premised on the image of a self-sufficient individual or family with a strong reliance on land-based activity and an ability to self-regulate. This image may be the reality for some rural property owners

¹¹⁰ See *id.* at 515.

¹¹¹ See *id.* at 529–31.

¹¹² Alan Romero, *Rural Property Law*, 112 W. VA. L. REV. 765, 765–66 (2010); *Rural Rhetoric*, *supra* note 88, at 177–84. While neither Pruitt nor Romero mentions race in these pieces, the rural property protectionism they discuss seems aligned with stereotypes associated with white rural residents. For black rural Americans, legal decision-making has trended in the opposite direction: discriminatory practices have rendered black-owned rural property highly vulnerable. See Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 559 (2005) ("[F]ew legal academics have considered the history and experiences of black rural property owners to be an important topic in its own right, in spite of the fact that the law has played a powerful role in shaping the destiny of many black landowners. Although the record is uneven, the law has shaped property ownership in a way that has often injured the black landowner."); Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505 (2001). Similarly, in the context of pipelines, so-called public rights often seem to trump Native American ownership interests. See German Lopez, *The big, nearly 200-year-old legal issue at the heart of the Dakota Access pipeline fight*, VOX (Mar. 13, 2017), <https://www.vox.com/identities/2017/3/13/14854096/dakota-access-pipeline-tribal-sovereignty> [<https://perma.cc/KWP2-MCUM>] (discussing history of federal disrespect for tribal sovereignty). See also Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1160 n.87 (2008) (noting "legal uncertainty associated with financing and titling mechanisms commonly used in the colonias market").

¹¹³ *Rural Rhetoric*, *supra* note 88.

¹¹⁴ *Id.* at 191.

¹¹⁵ Romero, *supra* note 112, at 765–66.

¹¹⁶ *Id.* at 797.

and may in fact reveal the courts' reflection of rural political priorities. However, presuming this existence as the default may also neglect other concerns, such as safety and infrastructure development.

Overall, Pruitt and Romero highlight in their respective reviews of court decisions: (1) a higher tolerance for rural nuisances on private property, including nuisances related to poor property maintenance; (2) a lower tolerance for public intrusion onto rural land, such as for infrastructure development, including higher compensation for such intrusions; (3) stronger protections for rural landlords and weaker ones for rural tenants; (4) liberal rural homestead protections; and (5) a higher burden for establishing adverse possession claims on rural private property. Taken altogether, these protections may serve to keep property in the hands of negligent or absentee property owners, protect hazardous conduct, and limit the potential for transfers of interests into more productive private or public stewards. Put another way, countering rural blight is generally a public task, but courts may have tipped the legal scale toward the private to the detriment of the public's ability to act to redeem problem properties. For example, an abandoned property may still enjoy some of the protections afforded to the envisioned owner, even if the owner is long gone.

Again, it can be difficult to differentiate among what an appropriate intuition is about urban-rural differences, what conclusions logically stem from anecdotal evidence, and what constitutes a stereotype. For instance, it may seem natural that rural areas would have a higher tolerance for certain nuisances, such as agricultural activity. Clearly, though, meaningful study and understanding are preferable to common-sense intuitions about "what rural places are like."¹¹⁷ Pruitt's and Romero's discussions of nuisance suggest that courts have exhibited a strong willingness to protect rural property owner conduct that does not necessarily seem like a natural incident of rural life. Rural property owners may have lower liability standards for certain hazards, such as agricultural activities, which is perhaps to be expected.¹¹⁸ However, they also may have reduced liability for high-volume, polluting truck traffic, because such conduct is normal in a "rural farming community";¹¹⁹ for poorly maintained properties or faulty scaffolding because they are "better able to protect themselves"¹²⁰ and because it may be "unduly burdensome to obligate the [rural] owner to inspect and maintain distant hold-

¹¹⁷ *But see Rural Rhetoric, supra* 88, at 160 ("The assumptions judges make about rural places and people are often incapable of being empirically proven.").

¹¹⁸ *See Romero, supra* note 112, at 773-74.

¹¹⁹ *Neyland v. Schneider*, 615 S.W.2d 285, 287 (Tex. App. 1981) (allowing fifteen daily round trips by trucks visiting defendant's property and stirring up dust as reasonable use because it was "rural farming community").

¹²⁰ *Rural Rhetoric, supra* note 88, at 207 (citing *O'Cain v. Harvey Freeman & Sons, Inc.*, 603 So. 2d 824, 830-31 (Miss. Ct. App. 1991) and *Jones v. Russell*, 6 S.W.2d 460, 461, 463 (Ky. Ct. App. 1928)).

ings” for trespassers;¹²¹ and for exposing others to dog bites “because keeping domestic animals is seen as a ‘normal incident of rural life.’”¹²²

Limitations on public intrusions onto rural land appear to stem in part from the belief that infrastructure development is less needed in rural areas, and in part from the belief that rural owners are more attached to their property.¹²³ Courts have held that public improvements on rural land, such as oil and gas mainlines under a highway, constitute additional servitudes requiring compensation, even though they would be considered implicit rights on urban property.¹²⁴ Courts have given rural property owners additional compensation for takings based on sewer improvements or noise intrusions.¹²⁵ A Virginia court in 1996 held that a doctrine to dedicate roads to public use only applied to urban areas, and required more formal proof of intent to dedicate roads from rural residents, who were perceived as less inclined to allow public access across their land.¹²⁶

Landlord-tenant laws as applied to rural areas seem dismissive of tenants’ needs and protective of landlords’ interests. This differential treatment may be due to an outdated belief that rural structures are simple and rural tenants are adequately equipped to make needed repairs, or due to a belief that overcrowding is less of a problem in rural areas.¹²⁷ Warranties of habitability have been applied more weakly to rural rental properties; Tennessee’s habitability statute explicitly excludes counties with fewer than 68,000 peo-

¹²¹ Poulin v. Colby Coll., 402 A.2d 846, 850 (Me. 1979) (quoting Mounsey v. Ellard, 297 N.E.2d 43, 51 (Mass. 1973)).

¹²² *Rural Rhetoric*, *supra* note 88, at 181 (citing FOWLER V. HARPER ET AL., THE LAW OF TORTS § 14.11 (2d ed. 1986)). *See also* King v. Arlington County, 81 S.E.2d 587, 590 (Va. 1954) (dog kennel “may be entirely reasonable in a rural area and yet might constitute a nuisance in a city or urban community”).

¹²³ *Rural Rhetoric*, *supra* note 88, at 189–90 (“The rationale articulated in some cases has been that services such as sewer and lighting were a public necessity in cities, but not in the country.”).

¹²⁴ *See, e.g.*, Paine’s Guardian v. Calor Oil & Gas Co., 103 S.W. 309, 311 (Ky. Ct. App. 1907); Ward v. Triple State Natural Gas & Oil Co., 74 S.W. 709, 710 (Ky. Ct. App. 1903); Potomac Edison Co. v. Routzahn, 65 A.2d 580, 584–86 (Md. Ct. App. 1949); Loeber v. Butte Gen. Elect. Co., 39 P. 912, 913 (Mont. 1895).

¹²⁵ *See, e.g.*, Harlan v. Town of Bel Air, 13 A.2d 370, 373 (Md. Ct. App. 1940); Sechler v. Commonwealth, 11 Pa. D. & C.3d 510, 517–18 (Pa. Ct. Com. Pl. 1979) (discussing use and enjoyment of rural property affected by environmental noise, which “fractures rural quietness and privacy,” making scarce “the aesthetic virtues of the more quiet rural life” and “property which can offer a way of life relatively unmolested by such intrusions”).

¹²⁶ *See* McNew v. McCoy, 467 S.E.2d 477, 479 (Va. 1996); *see also* Commonwealth v. Kelly, 49 Va. 632, 635 (Va. 1851) (noting that landowners in rural areas frequently allowed roads to be opened through their property without intending a dedication to the public); Dunn v. County of Santa Cruz, 154 P.2d 440, 441–42 (Cal. Dist. Ct. App. 1944) (concluding that more evidence was required to show public dedication of country road).

¹²⁷ *See Rural Rhetoric*, *supra* note 88, at 205 (noting judge’s opinion that whereas structures on property had previously been relatively simple in design such that “the agrarian leaseholder had the expertise to discover and repair any defects on the property,” urban leaseholders lacked both expertise and funds “to repair the increasingly complex structures they occupied”).

ple.¹²⁸ The absence of building or housing codes in rural areas, or the presence of more lax codes than in urban areas, also disfavor tenants.¹²⁹

Finally, liberal rural homestead protections and a higher burden for establishing adverse possession may offer inordinate protections for under-utilized or neglected rural properties. Two Texas cases provide examples of the first issue. A state court in 1987 treated a property as a Texas family's "homestead" warranting protection from a creditor even though the owner had never resided on it, but used it only to raise cattle.¹³⁰ In a 2001 federal case, the court found that an agricultural homestead exemption in bankruptcy applied to two tracts even though the debtors had waived their homestead rights in a premarital agreement, resided on another tract, and used the two tracts primarily for outdoor recreation and to lease to other users.¹³¹ As to adverse possession, in some jurisdictions, because monitoring rural land is believed to be more difficult for owners, would-be claimants must meet a higher burden of dominion and control in order to establish adverse possession of rural property.¹³² While protections such as these may be justified, they may also incentivize and protect the under-utilization of rural land to the detriment of the surrounding community.

Overall, courts' inordinate protection of rural property has the potential to contribute to rural blight and to make its remediation all the harder. The law's treatment of rural property may impede efficient transfer of title, prevent accountability for poor property stewardship, and hinder the balance of public-private rights that are needed for revitalization. A property protected as a rural homestead may contribute to blight-like conditions if it is, in reality, under-used and unmonitored. Outdated legal assumptions that rural residents are better able to protect themselves from poorly maintained or poorly monitored properties reduce landowner accountability for properties in disrepair. The higher burden of establishing adverse possession claims may keep abandoned properties from being put to better uses.¹³³ The higher burdens for public easements for infrastructure development may deter the creation of amenities that help counteract the structural and economic decay associated with blight. Finally, the reduced expectation of habitability limits

¹²⁸ See Romero, *supra* note 112, at 779–80; see also Rosser, *supra* note 43, at 38–40 (discussing ongoing debate on merits of warranties of habitability for low-income populations).

¹²⁹ See Romero, *supra* note 112, at 780; Rosser, *supra* note 43, at 34; but see *id.* at 38–39 (criticizing housing codes as applied to the construction of owner-occupied rural property as paternalistic and urbanormative).

¹³⁰ Fajkus v. First Nat'l Bank, 735 S.W.2d 882, 884 (Tex. Ct. App. 1987).

¹³¹ Painewebber, Inc. v. Murray, 260 B.R. 815, 831 (E.D. Tex. 2001).

¹³² See *Rural Rhetoric*, *supra* note 88, at 189; see also Romero, *supra* note 112, at 784. Courts may also give greater respect to rural property owners' expectations of privacy. "[C]ourts have implied that because rural residents already enjoy an expectation of privacy based upon remoteness and sparse population, they need not construct fences or take other steps to ensure their privacy." *Rural Rhetoric*, *supra* note 88, at 195 (citing U.S. v. Jenkins, 124 F.3d 768, 773 (6th Cir. 1997)).

¹³³ Cf. Heather K. Way, *Informal Ownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 116, 158 (2010) (noting adverse possession's role in promoting a property's highest and best use).

the accountability of irresponsible landlords contributing to slum-like conditions. More research is needed to determine what role legal standards such as these may play in exacerbating blight or hindering its remediation.

B. Macro-Level Causes and the Local Government Fiscal Crisis

The overall restructuring of rural society over the past half-century has played a more demonstrable role in creating rural blight. As of the 1950s, agriculture, extractive industries, and manufacturing were the main sources of rural economic activity.¹³⁴ According to agricultural economist Thomas Johnson, “[e]conomic development strategies for rural areas, while often of limited success, were simple—support agriculture, forestry, and mining and attract manufacturing.”¹³⁵ Local government, too, “was relatively simple,” and tended to involve collecting taxes, providing basic services, and trying to draw more industrial development to the community.¹³⁶

The 1980s saw a dramatic downturn for rural localities.¹³⁷ Deregulation of the transportation industry allowed providers to stop servicing small towns, cementing and exacerbating rural residents’ isolation.¹³⁸ Industrialized, consolidated agriculture and the 1980s “farm crisis” undercut family farms, causing the number of farms in the United States to drop sixty percent from 1950 to the late 1990s.¹³⁹ Free trade agreements and globalization caused critical employers to relocate to other countries.¹⁴⁰ As natural resource supplies were exhausted or uses were restricted, more traditional livelihoods were lost.¹⁴¹ Johnson states, “[s]o many fundamental forces affecting rural

¹³⁴ David Satterthwaite et al., *Urbanization and its implications for food and farming*, PHIL. TRANSACTIONS OF THE ROYAL SOC. B 2809 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2935117/> [<https://perma.cc/33LZ-AMB8>].

¹³⁵ Thomas G. Johnson, *The Rural Economy in a New Century, Beyond Agriculture: New Policies for Rural America*, 7 (Oct. 2000), <https://files.eric.ed.gov/fulltext/ED455981.pdf> [<https://perma.cc/S9KN-ZVDG>].

¹³⁶ *Id.* at 8.

¹³⁷ See generally Douglas E. Bowers et al., *Rural America in Transition*, <http://ecedweb.unomaha.edu/ve/LIBRARY/RAIT.PDF> [<https://perma.cc/8FAA-2FR7>].

¹³⁸ Paul Stephen Dempsey, *The Dark Side of Deregulation: Its Impact on Small Communities*, 39 ADMIN. L. REV. 445, 464 (1987) (“The combination of deregulation and the farm crisis . . . will mutually ensure the degeneration of many small towns into ‘rural ghettos.’”); Strat Douthat, *Small Towns Dying as Railroads, Airports, Buses Leave Them Behind*, L.A. TIMES (Aug. 20, 1989), http://articles.latimes.com/1989-08-20/news/mn-1163_1_small-towns [<https://perma.cc/5N7E-CSR8>].

¹³⁹ See Mary Jane Angelo et al., *Small, Slow, and Local: Essays on Building A More Sustainable and Local Food System*, 12 VT. J. ENVTL. L. 353, 356 (2011); see also Guadalupe T. Luna, “Agricultural Underdogs” and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. REV. 9, 56 (1996) (arguing that international agreements and agricultural consolidation contributed to rise of long-neglected rural slums); Porter, *supra* note 33, at 977–78.

¹⁴⁰ See Peter Cole, *A Tale of Two Towns: Globalization and Rural Deindustrialization in the U.S.*, 12 WORKINGUSA J. OF LAB. & SOC’Y 539 (Dec. 2009), <http://onlinelibrary.wiley.com/doi/10.1111/j.1743-4580.2009.00259.x/pdf> [<https://perma.cc/TG4V-Q9B8>].

¹⁴¹ See James L. Huffman, *Managing the Northern Forests: Lessons from the West*, 19 VT. L. REV. 477, 479 (1995) (“[I]n the face of drastic reductions in public land timber harvesting . . . many [local communities in the west] have been reduced to ghost towns.”).

areas . . . changed such that the economies of rural areas were altered forever.”¹⁴²

The housing and financial crises of 2008 then created the perfect storm. Rural localities continued to experience some limited, cyclical growth after the 1980s, with regular outflows of population offset by natural population increases.¹⁴³ However, the past several years have seen another turning point. In 2010, rural America fell below zero growth for the first time, losing population numbers that have not been replenished.¹⁴⁴ Rural communities thus continue to experience an ever-worsening decline in their economic activity, an increasingly older population, and related problems with quality of life.¹⁴⁵

Today’s rural America is characterized by minimally functioning rural local governments, in large part due to the trends described above.¹⁴⁶ Especially since the economic recession, and with increasing shifts away from traditional industries that helped fill tax coffers, many rural local governments are no longer able to provide basic services.¹⁴⁷ Code enforcement, tax foreclosure, nuisance suits, and eminent domain are among those now-missing services.¹⁴⁸ In *The Western, Rural Rustbelt: Learning from Local Fiscal Crisis in Oregon*, Michelle Wilde Anderson observes that in certain rural localities, “[s]ervices unrelated to public safety and taxes—such as regular park maintenance, summer youth programs, child welfare services, facilities to house the indigent elderly, land-use planning, and proactive code enforcement—seem like a luxury of the past.”¹⁴⁹

Indeed, rural local governments may also not be able to provide services related to safety and taxes. For instance, Anderson describes the story of a victim of domestic violence whom no one came to help:

[A] terrified woman in Josephine County called 911 to report a violent ex-boyfriend in the process of breaking into her home. Budget cuts meant that the local sheriff’s department did not have anyone on duty on weekends . . . The powerless 911 operators stayed on the phone . . . until the assailant finally broke into [the woman’s] home where he raped and choked her. The county sheriff issued an official press release warning victims of domestic violence to ‘consider relocating to an area with adequate law

¹⁴² Johnson, *supra* note 135, at 7.

¹⁴³ See *Rural America at A Glance*, *supra* note 93; see also Fox, *supra* note 14.

¹⁴⁴ See Cromartie, *supra* note 2.

¹⁴⁵ See Semuels, *supra* note 7.

¹⁴⁶ See Lisa Pruitt, *Small-town “justice” run amok?*, U.C. DAVIS SCH. L.: FACULTY BLOG (Feb. 14, 2010, 6:22 AM), <https://facultyblog.law.ucdavis.edu/post/small-town-justice-run-amok.aspx> [<https://perma.cc/2SH8-GU3A>]; *Ruralism*, *supra* note 88, at 341.

¹⁴⁷ See *The Western, Rural Rustbelt*, *supra* note 36, at 485.

¹⁴⁸ *Id.* at 483.

¹⁴⁹ *Id.* at 485–86; see also William Yardley, *Timber (and its Revenues) Decline and Libraries Suffer*, N.Y. TIMES (May 5, 2007), <https://www.nytimes.com/2007/05/05/us/05timber.html?pagewanted> [<https://perma.cc/7Q62-RL5P>].

enforcement services’—an option that . . . is both unavailable and dangerous for many victims.¹⁵⁰

As this anecdote shows, rural local governments may fail to meet their constituents’ most basic needs, having scaled back on services ranging from police, to schools, to libraries, because of widespread fiscal crises.

Rural blight stems directly from the restructuring (or collapse) of the rural economy over the past several decades.¹⁵¹ The decline of traditional industries has contributed to mass migration to more livable locales.¹⁵² This loss of population has drained rural buildings of the stewards who once maintained them. Similarly, population loss has further drained the local governments of the taxpayers who once supported them.¹⁵³ Local governments are simply unable to keep up with addressing the increasingly barren built infrastructure.¹⁵⁴

Yet, rural blight is also a cause of the broader societal problems plaguing rural areas. Its ripple effects on property values and tax revenues may necessitate cutbacks in the very services that could counter it.¹⁵⁵ Further, the appearance of undesirability it gives to a community wards off those who might seek to relocate to the community, invest there, and revitalize it. The blight thus exacerbates itself, plunging rural communities down the path of a vicious cycle.

C. Proximate Contributors and the Local Government Fiscal Crisis

Less far-reaching forces determined closer to the state and local level also play a role in rural blight. These more immediate obstacles stem from inattention to rural needs and the poor fit between the law and the rural, as well as the rural local government fiscal crisis. Some of these causes may be more intractable than others. Yet, overall, legislation that would enable rural localities to deal with this problem is scarce. Rather, legislation may be silent, act as an obstacle, or fail to empower local governments.

While there are many proximate contributors to rural blight—i.e., factors determined at the state and local level, rather than at the level of large-scale societal change—this discussion addresses several that appear to be central, interrelated themes, including: (1) local governments’ lack of resources or enabling authority to act; complex time and resource-consuming

¹⁵⁰ See *The Western, Rural Rustbelt*, *supra* note 36, at 485.

¹⁵¹ See Semuels, *supra* note 7 (discussing loss of rural jobs, outmigration, and unused buildings); White, *supra* note 93 (discussing associations between limited economic opportunities and struggling industries in rural areas with shortage of adequate housing).

¹⁵² See *id.*

¹⁵³ See Tim Henderson, *States Try to Counter Rural Flight*, STATELINE (Aug. 20, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/08/20/states-try-to-counter-rural-flight> [<https://perma.cc/5AG3-P82H>] (noting that loss of taxpayers requires local governments to cut back services).

¹⁵⁴ See *The Western, Rural Rustbelt*, *supra* note 36, at 486.

¹⁵⁵ Cf. *id.*

legal issues, such as (2) tax foreclosure proceedings and (3) cloudy heirs' property titles; and (4) difficulties locating absentee or out-of-state landowners or holding them accountable.

1. *Limited local capacity and empowerment*

Local government capacity could be considered both a large-scale, longer-term contributor to rural blight, and a contributor determined by more day-to-day local operations. Rural tax coffers are unlikely to be filled again with coal, timber, or manufacturing revenues.¹⁵⁶ However, local governments' resources are also determined by local initiatives that may offer more attainable solutions than large-scale rural revitalization. Many local governments either cut off services or turn to short-term, debt-based solutions to service provision,¹⁵⁷ but other options may be available.

Yet, even in a locality with adequate resources, rural local governments are not always empowered to act. For example, municipalities may not be authorized through state law to pass ordinances to monitor or impose fines for vacant and abandoned properties.¹⁵⁸ Even if they are, counties, rather than municipalities, may be rural residents' main governmental affiliation, but municipal powers are often not available to counties.¹⁵⁹ Some rural places have less meaningful governance capabilities because they are not part of a municipality or a county.¹⁶⁰

Two scholarly works that comment specifically on rural blight remediation decry the absence of state enabling legislation allowing rural localities to

¹⁵⁶ See, e.g., Michael E. Webber, *The Coal Industry Isn't Coming Back*, N.Y. TIMES: OPINION (Nov. 15, 2016), <https://www.nytimes.com/2016/11/16/opinion/the-coal-industry-isnt-coming-back.html> [<https://perma.cc/QLS8-4DMZ>].

¹⁵⁷ See generally STEVEN MAGUIRE, CONG. RESEARCH SERV., STATE AND LOCAL GOVERNMENT DEBT: AN ANALYSIS (2011), [https://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/4886e49351a9f3648825786b00707a3a/\\$FILE/Congressional%20Research%20Service%20Report%20on%20State%20and%20Local%20Debt.pdf](https://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/4886e49351a9f3648825786b00707a3a/$FILE/Congressional%20Research%20Service%20Report%20on%20State%20and%20Local%20Debt.pdf) [<https://perma.cc/8KG8-5AMN>].

¹⁵⁸ For example, municipalities in West Virginia did not have the authority to create vacant property registries prior to successful experimentation through West Virginia Home Rule Program. See WV LEAP, *Ordinances to Regulate Unsafe Properties*, W. VA. U. C. OF L. (2018), <https://wvleap.wvu.edu/additional-tools/ordinances-to-regulate-unsafe-properties>, [<https://perma.cc/S9MS-NRGN>] (discussing West Virginia Code section 8-12-16(c)).

¹⁵⁹ See generally Michelle Wilde Anderson, *Sprawl's Shepherd: The Rural County*, 100 CAL. L. REV. 365 (2012) (arguing that county governments' limited authority and passivity in land use planning have catalyzed harmful suburban sprawl); Jeff LeJava, *The Role of County Government in the New York State Land Use System*, 18 PACE L. REV. 311, 315 (1998) (arguing to expand county government powers to account for land use matters outside municipalities); John P. Deller, *County Powers in Assisted Housing Programs: The Constitutional Limits in New York*, 20 FORDHAM URB. L.J. 109, 110 (1993). In addition, for example, West Virginia does not allow county-level vacant or uninhabitable property registration systems. See W. VA. CODE ANN § 8-12-16c(a)-(b)(2) (2012). Michigan counties cannot adopt ordinances at all. See Kurt Schindler, *County Government Powers Are Very Limited*, MSU EXTENSION (May 30, 2013), http://msue.anr.msu.edu/news/county_government_powers_are_very_limited [<https://perma.cc/4RT3-SZQC>]. See also Judith Welch Wegner, *North Carolina's Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 178 (2012).

¹⁶⁰ *Who Needs Local Government*, *supra* note 46, at 172.

join forces and create regional land banks, in light of their more limited ability to create municipal land banks. In *Meeting Their Fair Share: A Proposal for the Creation of Regional Land Banks to Meet the Affordable Housing Needs in the Rural Areas of Texas*, Dawn Jourdan and co-authors note that “[w]ith rare exception, a unit of local government must be given authority to engage in land banking activities pursuant to state enabling legislation.”¹⁶¹ Yet, few of the land bank laws of the past several decades have sought to address problems associated with vacant properties in rural areas.¹⁶² Rather, “urban housing policies typically neglect smaller cities through underfunding and inappropriate regulatory frameworks.”¹⁶³ In *Putting the Heart Back in the Heartland: Regional Land Bank Initiatives for Sustainable Rural Economies*, Ron Johnson similarly argues that “[w]hile land banks have rapidly gained popularity and usage in large cities throughout the country, this positive redevelopment model has not been made available or reconstructed for the benefit of America’s vast rural population.”¹⁶⁴ Both commentators note the absence of rural concerns in policy- and advocacy-related conversations on the topics of blight and housing.¹⁶⁵

Regional land banks make more sense than local ones for rural communities for several reasons. First, because of local governments’ more limited capacity, it would help to pool resources at the regional level. Second, because of rural communities’ smaller populations and lower quantity of problem properties, regional initiatives might be more efficient. Third, a land bank operating at the regional level may be able to create more of a market for redeemed properties. Yet, regional land banks are also a relatively clear example where rural needs have been overlooked. As discussed in section IV, *infra*, mechanisms to eliminate other legal barriers or create additional legal avenues may also help empower rural localities.

2. *The complexity of tax foreclosure*

Studies have repeatedly shown a strong correlation between tax delinquency and vacancy, abandonment, and dilapidation.¹⁶⁶ The tax foreclosure process should then be one tool local governments use to counteract blight. While local governments might still struggle to address dilapidation and va-

¹⁶¹ *Meeting Their Fair Share*, *supra* note 9, at 150.

¹⁶² *See id.* at 151.

¹⁶³ *Id.* at 150.

¹⁶⁴ *Regional Land Bank Initiatives*, *supra* note 9, at 1100.

¹⁶⁵ *See Meeting Their Fair Share*, *supra* note 9, at 150 (“Since the 1980s, Rural America has been a victim of capital mobility and depletion. While this occurrence has had devastating consequences on the community, economy, and present population, the debilitating conditions have been ‘swept under the mat’ in most legal, political, and economic conversations, whether that be because these problems are unknown, overlooked, or just simply ignored.”); *id.* at 152 (“Until recently, the idea of extending the use of land banking to nonurban areas received little consideration.”).

¹⁶⁶ *See* SARA TOERING & MATT KREIS, CTR. FOR CMTY. PROGRESS, WHAT DOES THE SALE OF PROPERTY TAX DEBT MEAN FOR WEST VIRGINIA COMMUNITIES? 9 (2017).

cancy outright, foreclosure on tax-delinquent properties would still be a point of intervention for many problem properties.

Texas and West Virginia provide examples of states where tax foreclosure legislation impedes rural blight remediation. The process in both states involves the passage of multiple years between delinquency and sale, during which time confusion arises as to who is responsible for property maintenance, and properties fall into disrepair.¹⁶⁷ Both states provide a right of redemption to the owner even after the property is sold.¹⁶⁸ If and when properties are eventually sold, local governments have expended substantial time and resources on the property, and often recoup only a fraction of their expenses.¹⁶⁹

Commentators have recognized that cumbersome tax foreclosure processes are an impediment to urban blight remediation.¹⁷⁰ However, the tax foreclosure process's effects may be all the more burdensome in rural communities.¹⁷¹ First, some cities use land banks as a means to acquire tax-delinquent properties through a streamlined process rather than pursuing tax foreclosure.¹⁷² Some land banks acquire all properties not sold at tax auctions.¹⁷³ Yet, as discussed above, land banks are often legally or practically unavailable to rural communities.

Second, rural land tends to have lower values, meaning that speculators are drawn to auctions while good-faith buyers are rare.¹⁷⁴ Much of the potential revenue generated by delinquency-related fees ends up flowing not to rural local governments, but to investors located elsewhere.¹⁷⁵ These inves-

¹⁶⁷ See *Meeting Their Fair Share*, *supra* note 9, at 156 (discussing Texas); *Addressing Rural Blight*, *supra* note 3, at 529 (discussing West Virginia); see also CTR. FOR CMTY. PROGRESS, WHAT DOES THE SALE OF PROPERTY TAX DEBT MEAN FOR WEST VIRGINIA COMMUNITIES? (Nov. 2017), http://www.communityprogress.net/filebin/TASP_Huntington_Final_Report.pdf [<https://perma.cc/P447-HT2K>].

¹⁶⁸ See *Meeting Their Fair Share*, *supra* note 9, at 156 (discussing Texas); *Addressing Rural Blight*, *supra* note 3, at 529 (discussing West Virginia).

¹⁶⁹ See *Meeting Their Fair Share*, *supra* note 9, at 156 (discussing Texas); *Addressing Rural Blight*, *supra* note 3, at 529 (discussing West Virginia).

¹⁷⁰ See Frank Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 140, 140 (2005); James J. Kelly, Jr., *Freeing the City to Compete*, 92 CHI. KENT L. REV. 569, 588 (2017).

¹⁷¹ See Ellen Kirtner, *Interrupting the Blight Cycle*, 66 CASE W. RES. L. REV. 1083, 1086 (2016) (noting that “purchasers may obtain properties with negative intentions (e.g., plans to milk property value by renting out the property without making repairs or paying taxes)”).

¹⁷² See *Meeting Their Fair Share*, *supra* note 9, at 151.

¹⁷³ See Ngai Pindell, *Finding A Right to the City: Exploring Property and Community in Brazil and in the United States*, 39 VAND. J. TRANSNAT'L L. 435, 474 (2006).

¹⁷⁴ See *Addressing Rural Blight*, *supra* note 3, at 534; David A. Andelman, *Estate Taxes Drive Farmers Off Land*, N.Y. TIMES (May 14, 1972), <https://www.nytimes.com/1972/05/14/archives/estate-taxes-drive-farmers-off-land-high-estate-taxes-are-driving.html> [<https://perma.cc/3J5S-M2H7>]; ALAN MALLACH, JENNIFER S. VEY, & BROOKINGS-ROCKEFELLER PROJECT ON ST. AND METRO. INNOVATION, RECAPTURING LAND FOR ECONOMIC AND FISCAL GROWTH 3 (May 2011), https://www.brookings.edu/wp-content/uploads/2016/06/0503_land_value_mallach_vey.pdf [<https://perma.cc/P3NF-7AMX>].

¹⁷⁵ See William Flood, *Everything You Need to Know About Tax Lien and Tax Deed Investing*, FITSMALLBUSINESS (Nov. 7, 2017), <https://fitsmallbusiness.com/tax-lien-and-tax-deed-investing/> [<https://perma.cc/9423-8S5A>] (“Owners may have as few as 3 months or as long as

tors may have no intention of conscientious property stewardship, but are in essence investing in the delinquency process itself.¹⁷⁶

Third, any process that involves legal complexity and expertise is simply going to be more daunting for rural communities in light of their limited resources and lack of access to attorneys.¹⁷⁷ While some cities have the capacity to opt to keep tax foreclosure processes “in-house” in order to maintain control, rural localities may be more tempted to turn to private corporations for tax-delinquency enforcement.¹⁷⁸ Private enforcers then also funnel foreclosure-related revenues out of the community.¹⁷⁹

3. *The complexity of heirs' property*

Heirs property poses different legal complications than tax-delinquent properties, but it is also a contributor to cloudy titles, unclear accountability, and abandonment or dilapidation.¹⁸⁰ “The terms ‘heirs property,’ ‘heirs’ property,’ and ‘land in heirs’ all describe a form of ownership where at least some of the owners have acquired the property through inheritance.”¹⁸¹ Often, numerous family members may hold the property as tenants in common.¹⁸² The inheritance can be especially difficult in the common scenario where the heirs do not have formal title to the property acquired through the probate process, and where the property has been passed down through several gen-

2 years to resolve the debt (depending on the state), during which time interest and penalties accrue to the investor holding the tax lien certificate.”)

¹⁷⁶ See *id.* (“Investors profit from tax liens by earning interest and sometimes penalties.”); CTR. FOR CMTY. PROGRESS, JUDICIAL IN REM CODE ENFORCEMENT AND JUDICIAL IN REM TAX SALES: OPTIMUM TOOLS TO COMBAT VACANCY AND ABANDONMENT IN ATLANTA 25 n.24 (2014), <https://static.spokanecity.org/documents/projects/mayors-housing-quality-task-force/additional-materials/alanta-fix-it-up-or-pay-it-up-report.pdf> [https://perma.cc/L8M8-EZ2V] (discussing “difficulties of achieving neighborhood stabilization where tax liens associated with vacant and abandoned properties are sold to third parties”).

¹⁷⁷ See generally Pruitt & Showman, *Law Stretched Thin*, *supra* note 10 (discussing access to justice issues in rural areas).

¹⁷⁸ Jennifer B. McKim & Andrea D'Eramo, *Cash-strapped Mass. towns selling tax liens to for-profits*, BOS. GLOBE (Nov. 28, 2014), <https://www.bostonglobe.com/business/2014/11/28/towns-turning-for-profits-pursue-delinquent-taxes/FWMAq8dxT83FnCbR7GSUK/story.html> [https://perma.cc/54F6-6R3A] (explaining that city of Boston “keeps tax liens in-house” in order to retain control over properties, while smaller Massachusetts municipalities “have unloaded hundreds of delinquent debts to private investors since 2008 in an effort to raise funds quickly for depleted city coffers”).

¹⁷⁹ See *id.*

¹⁸⁰ See Thomas W. Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, 40 ST. & LOCAL L. NEWS 6 (2016); Steven E. Barlow, Daniel M. Schaffzin & Brittany J. Williams, *Ten Years of Fighting Blighted Property in Memphis: How Innovative Litigation Inspired Systems Change and A Local Culture of Collaboration to Resolve Vacant and Abandoned Properties*, J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 347, 368 (2017).

¹⁸¹ Jesse J. Richardson, Jr., *Land Tenure and Sustainable Agriculture*, 3 TEX. A&M L. REV. 799, 808 (2016).

¹⁸² *Id.*

erations.¹⁸³ Heirs' property "proves particularly prevalent in poor African American and Native American communities, as well as low-income areas of Appalachia,"¹⁸⁴ where there are also fewer resources to address it.

Heirs' property is a particularly sensitive issue. Some heirs' property owners are deeply attached to the property, considering it akin to ancestral land.¹⁸⁵ The land may be among the most important assets a family has. It may, in fact, represent a special case of a disenfranchised group that survived attempts by others to take their land away.¹⁸⁶ The land could, alternatively, be abandoned, or a burden that no one in the family wants.¹⁸⁷

In any case, heirs-related complications can contribute to blight in several ways. Overall, "[b]y failing to address issues of clouded title, the law creates a paralysis in the market that, absent further government involvement to clear the title, eventually leads to an array of larger problems, including property disinvestment, abandonment, and blight."¹⁸⁸ Without a clear title, heirs cannot obtain grants or loans to make urgently needed repairs, obtain homeowners' insurance, or transfer the title.¹⁸⁹ Heirs may be forced to leave a property because it falls into disrepair, but then their absence causes the property to be further neglected.¹⁹⁰ There also may be a lack of clarity as to who is responsible for maintaining a property, especially when most or all heirs do not live near the property. The owners may end up in the difficult situation where the property cannot be sold, improved, or inhabited.¹⁹¹ The stakes may be unclear for a particular property, which may be a precious asset to a family, an unknown asset to a family, an asset to one or a few family members and not to others, or a burden that no one wants.¹⁹² These stakes in

¹⁸³ Luke Telander, *Heirs' Property, Part I: Preventing 'tangled titles' and subsequent blight in Philadelphia*, CTR. FOR COMMUNITY PROGRESS BLOG (June 28, 2016), <http://www.communityprogress.net/blog/heirs-property-part> [<https://perma.cc/7TLG-5W3Y>].

¹⁸⁴ Richardson, Jr., *supra* note 181.

¹⁸⁵ See Way, *supra* note 133, at 155 (noting courts' failure to account for heirs' strong personal ties or other non-economic interests in heirs' property).

¹⁸⁶ See *id.* at 152–53, 155 ("More than one-quarter of black-owned land in the southeastern United States is owned through tenancy-in-common ownership, with an average of eight co-owners per property. On Indian reservations, fractionated ownership of land is even more pervasive. . . . The most frequently reported instances of partition actions involve land in the southeastern United States, where outside investors have been able to acquire prime real estate through partition actions, divesting long-time rural African-American landholders of property that has been in their families for generations.").

¹⁸⁷ See *id.* at 157, 161 (noting that heirs owners face difficulties in trying to sell their home because of unclear titles, and when costs become too high, owners may be compelled to abandon the property).

¹⁸⁸ *Id.* at 160.

¹⁸⁹ See Telander, *supra* note 183; see also Janice F. Dyer & Conner Bailey, *A Place to Call Home: Cultural Understandings of Heir Property Among Rural African Americans*, 73.3 RURAL SOC. 317, 318 (2008); Way, *supra* note 133, at 122.

¹⁹⁰ See Way, *supra* note 133, at 156, 161 (heir's property can become "dead capital," prevented from being improved or developed and unable to be used in any productive way, giving rise to abandonment).

¹⁹¹ See *id.* at 160.

¹⁹² See *id.* at 157 (describing scenario of 80-year-old woman who lived in house still titled in her parents' names, and with a dozen non-resident relatives sharing title to the home,

turn make the question of approaching the property risky, complicated, and potentially ethically fraught for a locality.

Heirs property issues arise in urban and rural areas. However, they are more prevalent in the rural south, Appalachia, and Native American communities, which tend to be rural. These issues also relate to rurality in their innate connection to limited access to justice in rural areas.¹⁹³ While there is little consensus as to a legislative solution to heirs property, many recognize that the lack of access to attorneys and estate planning services is a central component of heirs complications.¹⁹⁴

4. *Difficulties locating absentee or out-of-state landowners or otherwise holding them accountable*

Ownership in rural land is highly concentrated in out-of-state or absentee owners.¹⁹⁵ For example, a subsidiary of the Mormon church headquartered in Salt Lake City owns nearly 670,000 acres in Florida, and is now the largest private landowner in the state.¹⁹⁶ In some counties in West Virginia, the top ten landowners, all of whom are companies headquartered outside West Virginia, own at least fifty percent of private land.¹⁹⁷ In South Carolina, from 2013 to 2017, out-of-state agribusinesses purchased nearly ten thousand acres in one river basin.¹⁹⁸ Foreign investment in U.S. agricultural land has seen a dramatic rise in the past several years.¹⁹⁹ Landlords, interest-

preventing the woman from obtaining government assistance to make repairs after Hurricane Katrina).

¹⁹³ See Porter, *supra* note 33, at 1023.

¹⁹⁴ See, e.g., Way, *supra* note 133, at 116.

¹⁹⁵ See Marley Beem, *Absentee Rural Land Ownership*, OKLA. COOPERATIVE EXTENSION SERV., <http://pods.dasnr.okstate.edu/docushare/dsweb/Get/Document-2520/AGEC-966web.pdf> [<https://perma.cc/2W6R-7QBL>] (“Many people own rural land far from where they live[,] making it difficult to monitor.”); Peggy Petrzelka, *Absentee Landlords and Agriculture*, in *ENCYCLOPEDIA OF FOOD AND AGRIC. ETHICS 1* (Paul B. Thompson & David M. Kaplan eds., 2014) http://www.redgtd.org/CENTRODOC/BD_ARCHIVOS/Thompson&Kaplan_Encyclopedia_Food&Agricultural_Ethics_2014.pdf [<https://perma.cc/346L-Z4C5>] (describing an “unprecedented level of absentee ownership of rangelands” in the U.S. West); Peggy Petrzelka et al., *Engaging absentee landowners in conservation practice decisions: A descriptive study of an understudied group*, 64 *J. OF SOIL & WATER CONSERVATION* 94A-96A (2009) (48% of landowners in Great Lakes Basin do not operate the agricultural land they own; most common method of acquiring land was purchase, and second most common was inheritance).

¹⁹⁶ Peter Haden, *For Mormons, ‘Prepping’ Is An Article Of Faith*, WJCT (Sept. 30, 2014), <http://news.wjct.org/post/mormons-prepping-article-faith> [<https://perma.cc/3YCA-CVFK>].

¹⁹⁷ W. VA. CTR. ON BUDGET & POLICY & AM. FRIENDS OF SERV. COMM., *WHO OWNS WEST VIRGINIA?* 13 (2013), <https://d3n8a8pro7vhmx.cloudfront.net/wvcbp/pages/468/attachments/original/1511177697/land-study-paper-final3.pdf?1511177697> [<https://perma.cc/5LFA-WFUH>].

¹⁹⁸ Sammy Fretwell, *Mega-farms bring odors, cleared forests, huge water demands to rural SC*, STATE (Apr. 22, 2017, 7:08 PM), <http://www.thestate.com/news/local/article146223014.html> [<https://perma.cc/3QJS-DGPF>].

¹⁹⁹ Johnathan Hettinger et al., *Foreign investment in U.S. farmland on the rise*, DES MOINES REGISTER (July 3, 2017, 3:07 PM), <http://www.desmoinesregister.com/story/money/agriculture/2017/07/03/foreign-investment-u-s-farmland-rise-iowa-law/448506001/> [<https://perma.cc/8S5P-437S>].

holders in inherited property,²⁰⁰ and domestic or foreign speculative investors²⁰¹ are common examples of out-of-state or absentee owners.²⁰²

Absentee property ownership has negative effects on rural communities.²⁰³ “The [United States Department of Agriculture] National Commission on Small Farms associates absentee land ownership with deterioration of rural communities, while recognizing that local and ‘[d]ecentralized land ownership produces more equitable economic opportunity for people in rural communities, as well as greater social capital.’”²⁰⁴ Properties owned by those who do not live near the property are naturally harder for the owners to monitor and maintain, if they ever intended to at all.²⁰⁵ If an absentee owner fails to provide for a local overseer, disrepairs, hazards, and issues such as crime can occur with little accountability, contributing to blight.²⁰⁶ Perhaps more importantly, out-of-state or absentee owners may lack any sense of investment in the community, and exhibit less concern for how their properties affect residents.²⁰⁷

An additional concern is that local governments face greater hurdles when trying to hold out-of-state landowners accountable for the owners’ properties that have fallen into disrepair. First, the owners are more difficult to contact.²⁰⁸ Localities may not require some form of local agent or contact information for an owner living out of state.²⁰⁹ Yet, even if the owners are

²⁰⁰ See Petrzela, *Absentee Landlords*, *supra* note 195, at 1 (listing “individuals who inherit land but live elsewhere” as among absentee landowners); Heidi Marttila-Losure, *Ownership of land affects rural communities and conservation*, DAKOTAFIRE MEDIA (July 2, 2013), <http://dakotafire.net/farms/ownership-of-land-affects-rural-communities-and-conservation/5155/> [<https://perma.cc/56RB-KNT2>] (discussing Iowa State University study that attributes drop in locally owned land to the “next generation” inheriting land and also moving out of state).

²⁰¹ See *e.g.*, Dionne Searcey & Keith Bradsher, *Chinese Cash Floods U.S. Real Estate Market*, N.Y. TIMES (Nov. 28, 2015), <https://www.nytimes.com/2015/11/29/business/international/chinese-cash-floods-us-real-estate-market.html> [<https://perma.cc/J2YA-ZDMZ>].

²⁰² See Richardson, Jr., *supra* note 181 (in Iowa in 2007, twenty-one percent of farm landlords did not live in Iowa full time).

²⁰³ See Kathryn Benz, *Saving Old McDonald’s Farm after South Dakota Farm Bureau, Inc. v. Hazeltine: Rethinking the Role of the State, Farming Operations, the Dormant Commerce Clause, and Growth Management Statutes*, 46 NAT. RESOURCES J. 793, 800 (2006) (“[A]s farm size and absentee ownership increase, social conditions in the local community deteriorate.”).

²⁰⁴ Susan E. Stokes & Christy Anderson Brekken, *The Eighth Circuit Grants Corporate Interests a New Weapon Against State Regulation in South Dakota Farm Bureau v. Hazeltine*, 49 S.D. L. REV. 795, 798 (2004).

²⁰⁵ See Richardson, Jr., *supra* note 181, at 805–06 (suggesting that out-of-state ownership correlates with landlords’ reduced involvement in making decisions on property).

²⁰⁶ *Absentee Rural Land Ownership*, LAND THINK (Sept. 20, 2011), <https://www.landthink.com/absentee-rural-land-ownership/> [<https://perma.cc/ZKE4-GMBG>] (“Land that is not regularly maintained can invite damage, misuse, trespassers, hunters, loggers, overgrazing, plant diseases and many other undesirable scenarios.”).

²⁰⁷ *Cf.* Petrzela, *supra* note 195, at 94A; Ngai Pindell, *Fear and Loathing: Combating Speculation in Local Communities*, 39 U. MICH. J.L. REFORM 543, 590 (2006) (recommending anti-speculation ordinances requiring out-of-state individuals to move into residential homes they purchase).

²⁰⁸ See Petrzela, *supra* note 195, at 95A.

²⁰⁹ *Cf.* HOUS. ALL. OF PA., FROM BLIGHT TO BRIGHT: A COMPREHENSIVE TOOLKIT FOR PENNSYLVANIA 8 (2014) [hereinafter FROM BLIGHT TO BRIGHT], <http://www.reptaylor.com/Display/SiteFiles/98/Taylor%20Blight%20toolkit2215.pdf> [<https://>

known and communicative, there may be barriers to achieving results for a particular property. For instance, properties with a negative or very low value will offer little leverage to the local government to force an out-of-state owner to take action.²¹⁰

III. RURAL BLIGHT REMEDIATION

A. *Effective Local Approaches*

Addressing Rural Blight sought to further discussion of rural blight among scholars and practitioners. In addition to revealing obstacles, interviews with West Virginia stakeholders uncovered many success stories. Challenges notwithstanding, rural residents have found innovative solutions to repair, tear down, or repurpose problem properties through a variety of legal and non-legal approaches.²¹¹

The interviews in West Virginia suggested that the most successful communities recognized the benefits of approaches that worked for them according to their resources.²¹² These communities approached blight remediation as part of a long-term process that benefited from planning and public buy-in.²¹³ They also used tools such as vacant property registries, that were low-cost to run but could also generate modest revenue streams.²¹⁴ They took advantage of “the easiest strategies” and “relatively mild preventative and remedial tactics,” rather than the complex and sophisticated approaches often discussed for urban contexts.²¹⁵ They also took advantage of the nature of rural life, where communication, negotiation, and residents’ interconnected well-being revealed opportunities for minimizing costs and creating win-win solutions.²¹⁶ *Addressing Rural Blight* deemed approaches such as land banks and eminent domain to be “drastic measures . . . reserved for long-term problem properties where no other solutions have proven effective.”²¹⁷

Addressing Rural Blight proposed eight elements for a locally driven strategy for tackling rural blight. These elements include: (1) an emphasis on people as a resource;²¹⁸ (2) local government engagement;²¹⁹ (3) participatory

perma.cc/NA46-2M8V] (advising that local governments require rental-property owners to provide contact information for owners or local agents).

²¹⁰ Cf. Lior Jacob Strahilevitz, *The Right to Abandon*, 158 U. PENN. L. REV. 355, 363 (2010) (“Property that is devoid of both subjective value and market value is likely to be abandoned unless forbidden by law.”).

²¹¹ *Addressing Rural Blight*, *supra* note 3, at 537–43.

²¹² *Id.* at 544.

²¹³ *Id.* at 537.

²¹⁴ *Id.* at 539.

²¹⁵ *Id.* at 538.

²¹⁶ *Id.* at 545.

²¹⁷ *Id.* at 542.

²¹⁸ *Id.* at 543 (“Local residents are one of a community’s most important assets. Rural communities ‘depend more on citizen leadership.’ Early successes from easier tasks and public education can be effective in garnering public support and building momentum for change.”)

planning;²²⁰ (4) establishment of a legal framework;²²¹ (5) regional cooperation;²²² (6) partnerships;²²³ (7) negotiations for creative solutions;²²⁴ and (8) the use of “rural agility,” or the ability to avoid complex legal processes by taking advantage of informal communication.²²⁵ This framework suggests that rural blight remediation is unlikely to succeed without some level of local political will or community motivation, but it also suggests that entrepreneurialism, relationships, creativity, and persistence are among the most important tools for blight remediation at the local level.

Nonetheless, much more could be done at the state and regional level to facilitate local efforts. *Addressing Rural Blight* noted that more study was needed as to the potential role for reform to catalyze effective rural blight remediation. While entrepreneurial local approaches can be effective, state governments can provide support through law and policy reform. I argued specifically that “West Virginia’s approach to tax lien foreclosures, federal requirements for asbestos mitigation, the lack of legal tools available for addressing out-of-state property owners, and a lack of guidance and informational resources” illustrates how “legislative change and policymakers’ recognition of both urban and rural issues are also necessary to address blight more effectively.”²²⁶ Leaving questions of federal law aside for this discussion, the next section picks up where this part of *Addressing Rural Blight* left off.

²¹⁹ *Id.* at 543–44 (“Local government initiative and enthusiasm is nevertheless essential. In one examination of case studies in small towns, more specific staff time that was dedicated to sustainability increased adoption of related policies. Entrepreneurial, creative leaders are a fundamental component for galvanizing support and implementing relevant policies.”).

²²⁰ *Id.* at 544 (“Just as no one planning or redevelopment vision will apply to all communities, so too will a standard blight redemption plan not work everywhere. But planning principles and participatory decision-making can inform and strengthen local blight redemption strategies. Residents and local government must work together to assess strengths and weaknesses, prioritize, and plan action steps, creating a plan tailored to local circumstances.”).

²²¹ *Id.* (“Communities need to work on making basic legal tools available before trying to jump ahead to large-scale, sophisticated approaches to blight redemption. . . . [T]he most successful municipalities ‘started with the easiest strategies that made the most sense in their community.’ Incorporation, comprehensive plans, relevant building codes, zoning, and measures such as uninhabitable or vacant property registries may need to come before land banks; other complex, resource-heavy approaches; or major grant initiatives.”).

²²² *Id.* (discussing pooled resources as a way to overcome the obstacle of limited resources).

²²³ *Id.* (“Although they may be more difficult to form than in metropolitan areas, public-private partnerships may be more critical to successful rural blight redemption due to limitations on public resources.”).

²²⁴ *Id.* at 545 (“Communities can utilize aspects of small-town life as an asset, and interest-based negotiation should not be overlooked as a substantial tool. Local officials can take advantage of the fact that it may be easier to communicate and negotiate with stakeholders in their communities. Creative, win-win solutions may be more readily formulated and implemented due to ease of communication and community interconnectedness. . . .”).

²²⁵ *Id.* at 543.

²²⁶ *Id.* at 536.

B. State and Regional Law and Policy Options

This section explores existing and potential policy approaches for addressing rural blight. Some of the approaches are drawn from urban blight literature, while others are more narrowly tailored to rural concerns. State legislation that exhibits some apparent concern or lack of concern for rural circumstances — including laws from New York, Pennsylvania, West Virginia, Kentucky, Georgia, Texas, North Dakota, Missouri, and Nebraska — has also informed this discussion.

These proposals do not address questions that are primarily about funding. It is presumed that resource-focused programs have the potential to help catalyze rural blight remediation. Grants and loans to struggling homeowners for property repairs,²²⁷ historic preservation incentives for local governments and developers,²²⁸ demolition assistance,²²⁹ and other programming to support local efforts have demonstrated potential to make a dent in rural blight. Non-profit organizations such as South Carolina’s Center for Heirs Property would be models to support, or to replicate elsewhere.²³⁰ Legislatures and other funders could also finance the creation of “legal toolkits” for local governments, like the West Virginia project that informs this research, which has proven very helpful for rural local governments with limited informational and fiscal resources.²³¹ Similarly, these proposals do not address the substantial and highly relevant question of rural economic development.²³² It is assumed that economic diversification and comprehensive community planning should be a fundamental part of rural revitalization efforts in places that can be revitalized.²³³ However, more robust measures for filling rural

²²⁷ Cf. 42 U.S.C. § 12806 (2018) (directing Secretary of Housing and Urban Development to make available a model program to provide home repair services for older, disabled, or low-income homeowners).

²²⁸ E.g., *Grants & Incentives*, VA. DEP’T OF HISTORIC RES., http://www.dhr.virginia.gov/homepage_general/finance.htm [<https://perma.cc/G6VQ-X6V2>] (describing grants to local governments certified as eligible for grants related to historic preservation and rehabilitation).

²²⁹ Many states and localities have taken advantage of federally-funded Community Development Block Grants. See *Community Development Block Grant Program*, U.S. DEP’T HOUS. & URBAN DEV., https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs [<https://perma.cc/2QTU-89MR>]. However, states may also have similar programs. See, e.g., *Rural Building Demolition Program*, N.C. DEP’T OF COMMERCE, <https://www.nccommerce.com/ruraldevelopment/rural-grants-programs/building-demolition> [<https://perma.cc/AV9M-X84C>]; *Strategic Demolition Fund*, MD. DEP’T OF HOUS. & CMTY. DEV., <http://dhcd.maryland.gov/Communities/Pages/programs/SDF.aspx> [<https://perma.cc/LL7P-GULJ>].

²³⁰ CTR. FOR HEIRS PROP. PRES., <http://www.heirsproperty.org/> [<https://perma.cc/R5P5-9RT3>].

²³¹ See, e.g., FROM BLIGHT TO BRIGHT, *supra* note 209.

²³² See, e.g., Andrew Schwartz, *Rural Crowdfunding*, 13 U.C. DAVIS BUS. L.J. 283, 285 (2013) (noting that one cause of the lack of economic development in rural areas, among the “many causes,” is “the unavailability of financing for startup companies and small businesses”).

²³³ Cf. Nancy Cook, *The Economic Plan That Could Help Rural America*, THE ATLANTIC (May 8, 2015), <https://www.theatlantic.com/business/archive/2015/05/the-economic-plan-that-could-help-rural-america/425796/> [<https://perma.cc/QRV3-CTLB>] (discussing strategy to shift from large industrialized farms to smaller ones as successful instance of economic development in rural Iowa county).

local government population rosters and tax coffers are outside the scope of this paper.

This discussion focuses on state legislative options. These options may require additional resources, but their more central purpose is enabling legal mechanisms. The options discussed range from aggressive and radical—i.e., approaches that go more deeply into aspects of overall rural decline—to more targeted and specific legal tools. They are informed, it is hoped, by an accurate sense of common rural conditions, rather than stereotypes. However, the policy solutions that will be most effective in addressing rural blight in a particular area will depend on that area's history, resources, needs, and limitations. The options discussed here are not guaranteed to succeed. More evidence-based research on this issue can help inform their potential effectiveness. Each approach also raises risks, some of which are addressed in Part III.C.

1. *Reconfiguring, Enabling, or Supporting Rural Local Governments*

- a. *Local Government Mergers, Dissolution, and Annexation*

Scholars have noted the limited success of calls to consolidate local governments in metropolitan America, despite recognition of the problematic nature of local political fragmentation and a widespread desire to reduce the number of local governments.²³⁴ However, the possibility of restructuring rural local governments remains an under-discussed option for enhancing rural local government capacity. Mergers aim to combine the resources of struggling municipalities or counties in order to create stronger, more efficient regional governments.²³⁵

Few communities have actually pursued merging, in part because the political complexities may be daunting and residents may be concerned about a loss of place-based identity.²³⁶ While state legislatures have the

²³⁴ See Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93 (2003); *Dissolving Cities*, *supra* note 12, at 1431.

²³⁵ Cf. Andrew J. Bruck & H. Joseph Pinto III, *Overruled by Home Rule: The Problems with New Jersey's Latest Effort to Consolidate Municipalities*, 32 SETON HALL LEGIS. J. 287, 295–300 (2008) (discussing costs and negative effects of local government fragmentation).

²³⁶ See Estep, *supra* note 12. Commentators have called for reductions in rural infrastructure in other contexts where it has also become superfluous. See Cathy A. Hamlett & C. Phillip Baumel, *Rural Road Abandonment: Policy Criteria and Empirical Analysis*, 72 AM. J. AGRIC. ECON. 114, 114 (1990) (“Appalachian and Delta states had the highest percentage of intolerable local rural roads (eighty-one percent and seventy-seven percent, respectively) . . . [Our] estimation indicated that between four percent and twelve percent of the roads in the areas studied could be abandoned with a net gain to society. . . . [T]here is a need for legislation to reduce the political and financial liability from abandonment. Legislative changes could include denying claims to an individual if the road proposed for abandonment is a second access, placing an upper limit on damage claims, permitting local governments to withdraw or revise a proposed abandonment if a court appeal may result in an excessive damage award, or authorizing the appointment of committees to develop and implement abandonment proposals to relieve elected officials of the political liability.”).

power to mandate political consolidation, they do so rarely.²³⁷ Citizen referenda are instead the most common avenue to political consolidation.²³⁸ However, voters approve referenda for political consolidation only 15 percent of the time.²³⁹ Thus, the United States has only a few dozen examples of politically consolidated local governments.²⁴⁰ Critically, too, mergers may not be permitted or facilitated through state legislation.²⁴¹ Michelle Wilde Anderson recommends that states examine their merger laws “to ensure that the state is not blocking valuable modes of restructuring.”²⁴²

The potential for rural counties and small cities to merge has received more attention of late, in large part because of what is, in some states, a dramatically high number of rural local governments.²⁴³ Kentucky, for example, has 120 counties, “the highest counties per capita in the nation”—a fractured governance model that a former state auditor called “patently absurd.”²⁴⁴ Kentucky’s 2017 population was just short of 4.5 million people,²⁴⁵ meaning counties have an average of 37,500 residents, compared with, for example, Utah’s average of one hundred thousand residents per county.²⁴⁶ As of this writing, three small Kentucky municipalities are conducting a study to determine the potential benefits of a merger, in part because almost one third of the houses in Lynch, Kentucky, are vacant.²⁴⁷ In West Virginia, too, commentators have argued that despite cultural and political obstacles, “[i]t is not beyond the realm of practical possibility and necessity that counties may need to be merged or consolidated.”²⁴⁸

Dissolution offers another option for struggling rural local governments.²⁴⁹ Dissolutions tend to involve deconstructing municipalities with the aim of strengthening county governments.²⁵⁰ “Instead of creating new re-

²³⁷ ERIC BOWEN ET AL., A ROADMAP ON MAXIMIZING LOCAL GOVERNMENT EFFECTIVENESS IN WEST VIRGINIA 20 (2017), <http://busecon.wvu.edu/bber/pdfs/BBER-2017-01.pdf> [<https://perma.cc/89ZJ-ZFPS>].

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *The Western, Rural Rustbelt*, *supra* note 36, at 498.

²⁴² *Id.*

²⁴³ See, e.g., *Who Needs Local Government*, *supra* note 46, at 155.

²⁴⁴ Nick Fouriezos, *The County-by-County Fight for West Virginia’s Soul*, OZY (Jan. 22, 2017), <http://www.ozy.com/politics-and-power/the-county-by-county-fight-for-west-virginias-soul/75018> [<https://perma.cc/X5PQ-PABG>].

²⁴⁵ *QuickFacts: Kentucky*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/KY> [<https://perma.cc/T2PU-88FG>].

²⁴⁶ *QuickFacts: Utah*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/UT> [<https://perma.cc/56WF-YX64>] (Utah’s 2017 population was approximately 3 million residents); *Utah Counties by Population*, CUBIT, https://www.utah-demographics.com/counties_by_population [<https://perma.cc/S8GC-PUNG>] (Utah has 29 counties).

²⁴⁷ Estep, *supra* note 12.

²⁴⁸ BOWEN ET AL., *supra* note 237, at 17.

²⁴⁹ See *Dissolving Cities*, *supra* note 12, at 1428 (“[D]issolution offers an unusual and non-coercive mode of regionalism, particularly in suburban and rural areas, that might reduce local fragmentation without coercing municipal residents.”).

²⁵⁰ *Id.* at 1367–68 (“[M]unicipal dissolution, also known as disincorporation, is the termination of the political unit of an unincorporated municipality, whether city, village, or unincorporated town. . . . [A] subset of dissolutions . . . indefinitely remove[s] a lawyer of municipal

gional governments—federations of municipalities and the like—dissolution offers the hope that removal of some suburban and rural local governments can strengthen counties as rational, responsive governments capable of strategic land-use control across larger areas of suburban and rural land.”²⁵¹ Unfortunately, existing dissolution laws tend to be “immature and thin,” and little is known about cities’ experiences with dissolution.²⁵² But the option seems to have natural potential. “Even where dissolution fails to unify a ‘region’ in any complete sense, it can nevertheless be said to achieve progressive modernization of local government law by reducing local fragmentation, and, in particular, by eliminating separate governments for areas that are too small to sustain them efficiently.”²⁵³ However, as with mergers, dissolution laws may not necessarily be entirely helpful. For instance, in West Virginia, “[w]hile the state code provides for ‘dissolution’ of municipalities, the manner for doing this may not be clear to all.”²⁵⁴

Annexation, meanwhile, “involves the incorporation of unincorporated portions of the county into a municipality. . . . Annexation may occur by petition, by referendum, or by minor boundary adjustment.”²⁵⁵ North Carolina’s progressive annexation law has been praised by some as a sound model for empowering municipal governments with the ability to extend their boundaries, although involuntary annexation has been far less popular than voluntary annexation.²⁵⁶ Through annexation, North Carolina municipalities “have been able to expand their territories, gain favorable debt finance ratings, and enhance their tax bases more readily than many municipalities in other parts of the country.”²⁵⁷

Each of these options has the potential to help better equip rural local governments to pursue blight remediation, in addition to strengthening their capacity to provide other needed services. States should consider whether their laws on mergers, dissolution, and annexation impede opportunities for developing more efficient, better-resourced rural local governments, especially in states with high local government fragmentation alongside high incidence of blight.

b. Enabling or Experimenting with Home Rule or Otherwise Expanding Local Government Powers

A local government’s capacity to address rural blight may depend on the legal authority it has, as granted through the state. States are generally either “home rule” states or “Dillon’s rule” states in terms of how they empower

government and return[s] a population to unincorporated county or township jurisdiction . . . requir[ing] vertical restructuring and a shift in authority to counties and their subdivisions.”).

²⁵¹ *Id.* at 1432.

²⁵² *Id.* at 1364.

²⁵³ *Id.* at 1432.

²⁵⁴ BOWEN ET AL., *supra* note 237, at 17.

²⁵⁵ *Id.* at 23.

²⁵⁶ *See* Wegner, *supra* note 159, at 168.

²⁵⁷ *Id.*

local governments.²⁵⁸ In home rule states, local governments exercise power over their own affairs as needed, even in the absence of specific statutory enabling authority.²⁵⁹ Dillon's rule states, which are the minority,²⁶⁰ provide that local governments have only powers "granted in express words" by the state legislature, and operations that are necessarily implied to achieve the explicitly granted powers.²⁶¹ Some states are hybrid states with aspects of both home rule and Dillon's rule.²⁶²

Each state's specific empowerment of local governments affects the local governments' ability to act. West Virginia, for instance, is nominally a home rule state.²⁶³ However, in light of the difficulties local governments were encountering to address blight, the West Virginia legislature nonetheless saw a need to expand local governments' powers. It therefore created the Municipal Home Rule Pilot Program in 2007 to experiment with expanding local government authority.²⁶⁴ The first stage allowed up to five pilot cities "to implement changes in all matters of local governance"²⁶⁵ after receiving approval from the Municipal Home Rule Board created by the same legislation.²⁶⁶ Local governments could apply to take any action they saw fit, without regard to state laws, rules, and regulations, with the exception that the proposals comply with the state and federal constitutions, federal law, and state criminal and drug laws.²⁶⁷

West Virginia's program has been widely regarded as very successful,²⁶⁸ and in 2017, the state legislature voted to make the program permanent.²⁶⁹ During the first phase alone, participating municipalities proposed twenty-five novel approaches to blight remediation, twenty of which were fully or partially implemented.²⁷⁰ According to a report by the state auditor, the proposals proved "beneficial to the participating municipalities by increasing revenue, streamlining administrative matters, strengthen[ing] city fee collec-

²⁵⁸ Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, 84 N.C. L. REV. 1983, 1985 (2006).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Michael R. Heim, *Home Rule Power for Cities and Counties in Kansas*, 66 J. KAN. B. ASS'N 26, 27–28 (1997) (quoting 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 237 (5th ed. 1911)).

²⁶² *Id.*

²⁶³ W. VA. CONST., art. 6, § 39a (establishing home rule for municipalities with populations exceeding 2,000).

²⁶⁴ PERFORMANCE EVALUATION & RESEARCH DIV., W. VA. LEG. AUDITOR, SPECIAL REPORT: MUNICIPAL HOME RULE PILOT PROGRAM, PE 12-14-525, at 5 (Nov. 2012), http://www.legis.state.wv.us/Joint/PERD/perdrep/HomeRule_11_2012.pdf [https://perma.cc/4HTR-L5R3].

²⁶⁵ LIABILITY TO VIABILITY, *supra* note 63, at 85–86.

²⁶⁶ See W. VA. CODE § 8-1-5a (2017).

²⁶⁷ See PERFORMANCE EVALUATION & RESEARCH DIV., *supra* note 264, at 5.

²⁶⁸ Michelle Dillon, *Home rule program gets strong support*, TIMES W. VA. (Apr. 16, 2017), http://www.timeswv.com/news/home-rule-program-gets-strong-support/article_a295743a-2277-11e7-8962-d358320d1cf4.html [https://perma.cc/WBX4-J8HV]; PERFORMANCE EVALUATION & RESEARCH DIV., *supra* note 264, at 5.

²⁶⁹ W.V. S.B. 441 (Feb. 24, 2017).

²⁷⁰ PERFORMANCE EVALUATION & RESEARCH DIV., *supra* note 264, at 5.

tions practices, simplif[ying] business licenses, and more.”²⁷¹ The proposals deemed among the most successful included streamlined annexation processes; a reduction of business license classifications and fee variations; the issuance of liens for delinquent city fees; publication of a list of the top fifteen delinquent city service fee accounts; a streamlined architect-engineering procurement process for projects; authority to issue “on-the-spot” citations, rather than mailed notice, for external sanitation violations and common nuisances; streamlined permitting processes for dredge-and-fill operations; streamlined processes for disposal of city property; streamlined processes for intergovernmental contracts; the ability to place liens on fire insurance proceeds; imposition of a one percent local sales tax; the ability to create a vacant property registration program; and streamlined modification of zoning regulations.²⁷²

West Virginia’s experience with home rule experimentation as a mostly rural state may offer lessons particularly relevant for rural blight. Moreover, in 2015, the legislature specifically opened the Home Rule program to Class IV municipalities, which are towns or villages with a population of two thousand or less.²⁷³ This was a bold development because it overrode the state constitution’s provision that communities with populations less than 2,000 would not be granted home rule powers.²⁷⁴ Thus, West Virginia’s approach to home rule has recognized that even the smallest communities stand to benefit from expanded legal authority to address blight.

In addition to empowering local governments directly, West Virginia’s Home Rule program led to the implementation of three statewide legislative provisions that had not existed prior to local governments’ experimentation with them. Since they proved effective through the program, West Virginia municipalities are now enabled through state legislation to establish vacant building registration programs;²⁷⁵ to obtain a lien on fire insurance proceeds for burned-out structures (discussed in more depth below);²⁷⁶ and to obtain a lien on property for unpaid fire, police, or street fees.²⁷⁷

Local governments and rural localities are highly variable, and “broad generalizations about how local governments nationwide will use their authority may not be particularly useful.”²⁷⁸ However, West Virginia’s success with expanded home rule could serve as a model for other states to both equip local governments to address blight better, and to inform better legislation through local experimentation, especially in light of the limited knowledge of rural conditions. At the most basic level, if states have not

²⁷¹ *Id.*

²⁷² *Id.* at 12–14.

²⁷³ S.B. 323, 2017 Reg. Sess. (W. Va. 2015) (continuing Home Rule Pilot Program and providing that four of 14 additional participating cities must be Class IV municipalities); W. VA. CODE § 8-1-3 (2018); W. VA. CODE § 8-1-5a (2018).

²⁷⁴ W. VA. CONST., art. 6, § 39a.

²⁷⁵ W. VA. CODE § 8-12-16c (2018).

²⁷⁶ W. VA. CODE § 38-10E-1 (2018).

²⁷⁷ W. VA. CODE § 8-13-13 (2018); LIABILITY TO VIABILITY, *supra* note 63, at 85.

²⁷⁸ Bluestein, *supra* note 258, at 1987.

already, they should enable local governments to pass straightforward ordinances specifically targeting problem properties, such as vacant property registries. Code enforcement officers' ability to issue on-the-spot code citations, rather than mailed ones, has also resulted in faster compliance by some West Virginia property owners.²⁷⁹ These and other mechanisms for reducing the procedural and financial costs of blight remediation, and expanding opportunities for revenue-generation, will create helpful tools for rural local governments.

c. State Intervention

While states and local governments contemplate more long-term options for buttressing rural local government capacity, urgent, immediate needs are going unmet. The anecdote above about the victim of domestic violence provides a stark example of how local government services can be life-and-death questions. Unaddressed rural blight may also have dire implications if a property is particularly hazardous to residents or neighbors.

For decades, states have had the ability to intervene when local governments fail.²⁸⁰ Under the traditional model, "states generally granted emergency bailout funding in exchange for local consent to the appointment of state receivers, and these receivers then guided financial recovery planning alongside local officials."²⁸¹ In today's local government fiscal climate, Anderson proposes that state legislation establish a bottom floor below which cuts to local government services cannot go.²⁸² A local government could either be required at a certain point to collect more taxes in order to fund baseline services, or the state could resolve to intervene directly when a local government's services drop past a certain baseline.

As Anderson articulates, "[a] state could determine, for example, that if a county government's staffing levels or total budget has fallen below a critical per capita threshold and it is nonetheless facing additional cuts of more than, say, three percent in the coming fiscal year, the county property tax rate will automatically float to the level of the statewide average until the minimum level of per capita service levels is restored."²⁸³ Similarly, legislation could include triggers for rural local governments to declare fiscal emergency and have the state provide services temporarily.²⁸⁴ Anderson argues that state interventions must find a balance between addressing this "urgent public policy problem for which there are no painless remedies," with respecting

²⁷⁹ See PERFORMANCE EVALUATION & RESEARCH DIV., *supra* note 264, at 12.

²⁸⁰ See Michelle W. Anderson, *Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577, 581 (2012) [hereinafter *Democratic Dissolution*].

²⁸¹ *Id.*

²⁸² See *The Western, Rural Rustbelt*, *supra* note 36, at 490.

²⁸³ *Id.* at 491.

²⁸⁴ *Democratic Dissolution*, *supra* note 280, at 582.

local democratic operations and finding sustainable solutions to local government financial struggles.²⁸⁵

d. Enabling Conservatorship

Enabling conservatorship can help empower private parties to act where the local government may be unable to. The Pennsylvania Abandoned and Blighted Property Conservatorship Act creates standing for community members to sue over the poor condition of problem properties in their neighborhoods.²⁸⁶ “Conservatorship allows those injured parties to seek a custodial role over the nuisance property that could potentially lead to ownership” by making a showing of abandonment, blight, and proximity.²⁸⁷ If the owner establishes its ability to bring the property into code compliance, the parties then agree on a court-monitored rehabilitation plan for the owner.²⁸⁸ If the owner declines the rehabilitation plan, legal possession of the property is transferred to a designated third party; the rehabilitation expenses then become a lien on the property, upon which the conservator may foreclose.²⁸⁹

Enabling conservatorship may stand to help rural communities with limited resources. While a local government may struggle to address a problem property through code enforcement and other standard operations, a motivated individual with resources may be able to take on this function herself. The owner of a property neighboring a blighted property in fact has the most incentive to prosecute the problem. Although it may be the rare case that an individual will have the resources to pursue such a process, this provision expands the available avenues for rural community members to address blight, widening the options beyond local government actors and thereby supporting local government indirectly.

2. Regionalist Approaches

a. Functional Consolidation or Intergovernmental Agreements to Share Resources and Services

Intergovernmental agreements (IGAs) to offer services jointly may help local governments save money and streamline blight remediation processes.²⁹⁰ They may also be a more accessible first step before local gov-

²⁸⁵ *Id.* (arguing that Michigan and Rhode Island legislation has gone too far, undermining local democracy by providing for extreme centralization that fails to enact meaningful reform); see also *Who Needs Local Government*, *supra* note 45, at 173.

²⁸⁶ See Melanie B. Lacey, *Fix It or Lose It: The Allure and Untapped Potential of Pennsylvania's Abandoned and Blighted Property Conservatorship Act*, 49 *URB. LAW.* 283, 283 (2017).

²⁸⁷ *Id.*; 68 PA. STAT. § 1105 (2018).

²⁸⁸ 68 Pa. Stat. § 1105 (2018).

²⁸⁹ *Id.*

²⁹⁰ See, e.g., BOWEN ET AL., *supra* note 237, at 17 (recommending that “[c]ounties that have limited resources may want to investigate methods to pool their resources in order to

ernments contemplate merger or dissolution. “Local governments have entered into inter-governmental agreements for decades. These agreements can achieve high levels of functional consolidation, while allowing local governments to retain their identities and their autonomy.”²⁹¹ Agreements to share code enforcement officers and other services, such as police, are common for small towns.²⁹² Successful intergovernmental agreements are shaped by “reciprocity, equity, and shared understanding of goals.”²⁹³

Functional consolidation is another form of intergovernmental cooperation. The process “is more straightforward than political consolidation, requiring only agreement of the local governments involved. . . . Local governments may also pick and choose which services to consolidate, and consolidate when economies of scale are present, while not consolidating where diseconomies of scale exist. For example, consolidating police forces results in more effective service for rural communities.”²⁹⁴ Voters approve this type of restructuring far more often than political consolidation.²⁹⁵ In New York, a new law enabling both political and functional consolidation resulted in a notable increase in functional consolidation, but not a corresponding increase in political consolidation.²⁹⁶

Not all towns are equally able to use IGAs and functional consolidation, however.²⁹⁷ Initially, local governments must have a source of authority to enter into an agreement. Nearly all states authorize them now—Alaska, Delaware, the District of Columbia, and Hawaii do not.²⁹⁸ But even if IGAs are technically allowed, they may not be meaningfully available to all small localities. First, although IGAs may be subject to contract law, they are also “governed by special rules” according to the enabling legislation.²⁹⁹ They can therefore be complex for small rural localities. Jeffrey Litwak also notes difficulties for towns on the borders of states because their closest neighbors are

purchase items and coordinate public safety and management functions”); John R. Nolon, *Grassroots Regionalism Through Intermunicipal Land Use Compacts*, 73 ST. JOHN’S L. REV. 1011 (1999).

²⁹¹ BOWEN ET AL., *supra* note 237, at 21.

²⁹² See Fouriezios, *supra* note 244; *FAQ: Code Enforcement*, COLO. MUN. LEAGUE, <https://www.cml.org/Issues/Building-Regulations/Codes-and-Enforcement/Code-Enforcement/> [<https://perma.cc/84YL-TM47>]; Jeffrey B. Litwak, *State Border Towns and Resiliency: Barriers to Interstate Intergovernmental Cooperation*, 50 IDAHO L. REV. 193, 195 (2014) (“[S]mall towns, like towns of any size and affluence, frequently turn to intergovernmental agreements with neighboring towns or county governments to jointly construct and maintain physical infrastructure and jointly purchase or share human services—they are, in resilience terms, ‘interdependent.’”); George J. Cerrone, Jr., *The IGA: A Smart Approach for Local Governments*, 29 COLO. L. 73, 77 (2000).

²⁹³ BOWEN ET AL., *supra* note 237, at 22; see also Lisa W. Foderaro, *New York Towns’ New Deal: We’ll Make Your Signs, You Sweep Our Streets*, N.Y. TIMES (Oct. 8, 2017), <https://www.nytimes.com/2017/10/08/nyregion/new-york-consolidation-shared-services.html> [<https://perma.cc/6TJJ-G6M3>].

²⁹⁴ BOWEN ET AL., *supra* note 237, at 22.

²⁹⁵ *Id.*

²⁹⁶ *Id.*; Requirements for Consolidating or Dissolving Certain Local Government Entities, Sess. Law News of N.Y. Ch. 74 (A. 8501) (2009).

²⁹⁷ Litwak, *supra* note 292, at 195.

²⁹⁸ *Id.* at 198.

²⁹⁹ Cerrone, *supra* note 292, at 77.

towns in other states with different enabling authority.³⁰⁰ These complex legal concerns, as well as political issues, may discourage interstate IGAs.³⁰¹ Informal cooperation may also be an option, but it carries with it additional risks, such as a lack of clarity about liability.³⁰²

States wishing to empower local governments to address rural blight should facilitate and streamline the creation of IGAs and functional consolidation.³⁰³ However, this issue also raises home rule considerations, as local governments tend to be able to enter into agreements only for powers that they already have. “[C]ases invalidating interlocal agreements may sometimes be explained on the ground that a contracting party did not have the substantive capacity to do what the contract was meant to accomplish.”³⁰⁴ For example, in *Goreham v. Des Moines Metropolitan Area Solid Waste Agency*,³⁰⁵ the Iowa Supreme Court held that because “[t]he power to provide collection of solid waste to their residents ha[d] not been granted to counties in Iowa,” a county could not avail itself of disposal services provided by a regional agency under an IGA.³⁰⁶ Thus, a state wishing to maximize the potential benefits of intergovernmental cooperation may wish to expand the operations for which local governments can contract or consolidate.³⁰⁷

b. Regional Land Banks

As mentioned above, the primary in-depth discussions that focus entirely on rural blight note the poor fit between urban-style land banks and rural circumstances, and call for the creation of regional land banks to facilitate rural blight remediation. In *Putting the Heart Back in the Heartland*, Ron Johnson notes that urban land banks have been a “paramount success.”³⁰⁸ With the great recession and the housing crisis, seven new states adopted land banking legislation between 2009 and 2014 alone.³⁰⁹ That success has not, however, translated at the same level to rural communities because most land bank enabling legislation only allows townships, cities, or a county containing such cities to create a land bank.³¹⁰

For rural communities, “of primary importance is the question of what kind of jurisdiction should have the power to land bank.”³¹¹ Johnson and Jourdan each propose some form of regional governing entity for creating

³⁰⁰ Litwak, *supra* note 292, at 195.

³⁰¹ *Id.*

³⁰² Richard G. Flood & Molly D. Velick, *Questions and Answers About Intergovernmental Agreements*, 85 ILL. B.J. 112 (1997).

³⁰³ Litwak, *supra* note 292, at 216.

³⁰⁴ Richard G. Hatcher, *Towards A New Form of Local Government: The Urban Common Market*, 7 DEPAUL BUS. L.J. 253, 271 (1995).

³⁰⁵ 179 N.W.2d 449 (Iowa 1970).

³⁰⁶ *Id.* at 461.

³⁰⁷ Hatcher, *supra* note 304, at 271.

³⁰⁸ *Regional Land Bank Initiatives*, *supra* note 9, at 1067.

³⁰⁹ *Id.* at 1067–68.

³¹⁰ *Id.* at 1080.

³¹¹ *Meeting Their Fair Share*, *supra* note 9, at 157; See also FRANK S. ALEXANDER, CTR. CMTY. PROGRESS, LAND BANKS AND LAND BANKING 42 (2d ed. 2015) [hereinafter LAND

and running a regional land bank. Jourdan suggests that “[r]egional rural land banks could be managed by existing regional governmental entities,” such as councils of governments.³¹² Johnson proposes that states both enable the creation of Regional Economic Development Entities (REDEs), modeled after New York’s Regional Economic Development Councils (REDCs), and allow rural local governments to form independent public legal corporations, giving land banks autonomy from local governments and state agencies.³¹³ Johnson additionally proposes several schemes for funding regional land banks, such as tax revenue-sharing.³¹⁴

Awareness of the potential for regional coordination to help address rural blight seems to be growing, however. Nine states among the most recent to adopt comprehensive land bank legislation “reflect a broad range of approaches to regional collaboration.”³¹⁵ Several new states “expressly acknowledged and facilitated more expansive options for regional and inter-governmental collaboration, allowing single land banks to be formed by multiple local governments or multiple local land banks to collaborate in achieving economies of scale in operations through intergovernmental agreements.”³¹⁶

Georgia and New York may be leading the way on regional land banks. The 2012 Georgia Land Bank Act “authorizes multiple counties and cities or consolidated governments to come together and form a single land bank. This regional option may provide a helpful tool for rural counties, cities, and local governments to collaborate in addressing the challenges of vacant, dilapidated, and tax delinquent properties across their region.”³¹⁷ The legislation also recognizes the importance of intergovernmental coordination, and “expressly permits land banks to contract with one another for services across jurisdictional boundaries.”³¹⁸ New York’s 2012 Land Bank Act created ten regional land banks with an investment of \$33 million.³¹⁹ A report from the New York Attorney General’s Office suggests that the newest New York land banks have been doing more to address rural blight.³²⁰

BANKS], <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-alexander15.pdf> [<https://perma.cc/W9FU-WNUL>].

³¹² *Meeting Their Fair Share*, *supra* note 9, at 158.

³¹³ *Regional Land Bank Initiatives*, *supra* note 9, at 1083–84.

³¹⁴ *Id.* at 1084–88.

³¹⁵ LAND BANKS, *supra* note 311, at 42.

³¹⁶ *Id.* at 85.

³¹⁷ Frank S. Alexander and Sara J. Toering, *Georgia Land Bank Resource Manual*, CTR. FOR CMTY. PROGRESS 18 (June 2013), https://www.communityprogress.net/filebin/pdf/new_resrcs/GA-LandBank-ResourceManual.pdf [<https://perma.cc/GR6Z-3YFZ>].

³¹⁸ *Id.*

³¹⁹ Timothy Knight, *County Backs Creation of Regional Land Bank*, SCHOHARIE NEWS (Apr. 21, 2015), <http://www.theschoharienews.com/2015/04/county-backs-creation-of-regional-land.html> [<https://perma.cc/DH4V-7G2W>].

³²⁰ N.Y. STATE OFFICE OF THE ATTORNEY GEN., REVITALIZING NEW YORK STATE (Nov. 2016), https://ag.ny.gov/sites/default/files/oag_land_bank_report.pdf [<https://perma.cc/8VA9-GR2R>].

c. *Centralized Approaches, Including Regional and State Vacant Property Registries*

In June 2016, New York State also passed legislation to address “zombie properties.” Zombie properties account for a substantial fraction of abandoned properties; they are properties that a borrower has abandoned, but which a lender has neglected to foreclose upon or actively maintain.³²¹ Among the law’s provisions was the creation of a statewide electronic vacant property registry.³²² The registry’s aim is to “promote communication between local governments and mortgagees responsible for property maintenance.”³²³ Small, rural, local governments may be able to create their own vacant property registries. However, a regional or a statewide registry also stands to help rural communities monitor and target their problem properties, especially for those with more limited capacity.³²⁴

Centralization may otherwise be able to help facilitate rural blight remediation. “[I]n certain conditions, centralization can be a means of both providing better services and of doing so more efficiently and cost effectively.”³²⁵ For instance, Lisa Pruitt has observed the potential for centralizing child welfare funding at the state level to “help level the playing field among counties.”³²⁶ New York State’s state-level vacant property registration system could be taken a step further, with the establishment of a statewide approach to problem properties altogether. Agricultural extension programs and other models for dispersed community engagement from a point of centralized process could be crafted to address rural blight specifically, and proactively, rather than as intervention into rural communities in distress.

3. *Targeted Law and Policy*

a. *Streamlined Tax Foreclosure Processes*

Common themes between West Virginia’s and Texas’s tax foreclosure statutes are that they take too long, are inefficient, and provide due process protections for owners over and above what is constitutionally required. In fact, scholars and practitioners have argued that virtually all states’ tax fore-

³²¹ David P. Weber, *Taxing Zombies: Killing Zombie Mortgages with Differential Property Taxes*, 2017 U. Ill. L. Rev. 1135 (2017).

³²² N.Y. REAL PROP. ACTS. LAW § 1310 (2018).

³²³ Press Release, Andrew M. Cuomo, Governor, New York State, Governor Cuomo Signs Sweeping Legislation to Combat the Blight of Vacant and Abandoned Properties (June 23, 2016), <https://www.governor.ny.gov/news/governor-cuomo-signs-sweeping-legislation-combat-blight-vacant-and-abandoned-properties> [<https://perma.cc/M9F3-TTDN>].

³²⁴ See N.Y. State Rural Hous. Coal., *Governor Cuomo Takes on Zombie Property Blight*, RURAL DELIVERY (Aug. 2016), <https://ruralhousing.org/wp-content/uploads/2013/01/August-1.pdf> [<https://perma.cc/UZ5V-54JM>].

³²⁵ BOWEN ET AL., *supra* note 237, at 24.

³²⁶ Pruitt & Showman, *Spatial Inequality*, *supra* note 10, at 74.

closure schemes need a fundamental overhaul.³²⁷ According to Frank Alexander, “[r]eform in the past has simply added steps or stages to existing laws or added new procedures as additional options available to local governments. The result is a patchwork of laws that is confusing, inconsistent, and in large measure constitutionally deficient. The existing laws should be replaced entirely by a simpler, single enforcement proceeding in which comprehensive notice is provided at once, at the commencement of the proceeding, to all interested parties.”³²⁸

The Center for Community Progress has specifically recommended that West Virginia’s tax foreclosure legislation undergo major reform. Among its recommendations are “[p]roviding additional targeted and highly visible notice of tax delinquency to property owners earlier in the delinquent tax enforcement process” to increase tax collections and reduce abandonment; “[r]educing time periods for transfer of vacant and abandoned tax delinquent properties to new ownership” to potentially reduce dilapidation; and directing interest and fees to public initiatives rather than to tax lien purchasers.³²⁹

Auctions and fees seem particularly important for rural local governments. The auction is a point of entry for out-of-state, vulture speculators.³³⁰ Investors are able to buy tax bills, after which they have the right to charge interest or gain the title to the property.³³¹ Buyers may have no intention of acquiring the property, though, meaning they may simply siphon off the interest and fees.³³² Meanwhile, the lack of local resources, both private and public, disadvantages would-be local property owners who might be more invested in the property. Similarly, the speculation process rewards vulture investors by allowing them to recoup interest and fees when a property is redeemed.

Legislative reform on tax delinquency could help rural blight remediation by countering these incentives, in addition to the general streamlining already called for. Legislation could provide a right of first refusal at auctions for local residents or non-profit organizations, for example.³³³ Perhaps most

³²⁷ Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L.J. 747, 807 (2000).

³²⁸ *Id.*

³²⁹ TOERING & KREIS, *supra* note 166.

³³⁰ See Hous. All. of Pa., *BLIGHTED PROPERTY LEGISLATION* (June 2009) [hereinafter *BLIGHTED PROPERTY LEGISLATION*], <http://www.pcr.org/wp-content/uploads/2009/06/hapa-blighted-property-legislation-update.pdf> [<https://perma.cc/RFC7-A2AF>] (“[S]elling to the highest bidder is not always in the best interest of the municipality, not if the purchaser neglects the property so it continues to be a blight on the community.”); see also, Andrew W. Kahrl, *Capitalizing on the Urban Fiscal Crisis: Predatory Tax Buyers in 1970s Chicago*, 44 J. URB. HIST. 382 (2015); Andrew W. Kahrl, *Investing in Distress: Tax Delinquency and Predatory Tax Buying in Urban America*, 43 CRITICAL SOC. 199 (2015) (article first published online on August 22, 2015; issue published March 1, 2017).

³³¹ *Cf.* Flood, *supra* note 175.

³³² *Cf. id.*

³³³ See *BLIGHTED PROPERTY LEGISLATION*, *supra* note 330, at 3 (“In order to give municipalities and redevelopment authorities greater control over properties sold at tax sale, the

importantly, redemption revenues should go directly to local governments, not to private investors.

b. Addressing Heirs Property

Two main avenues for addressing heirs' property are to help untangle or manage already-complex property titles, and to help prevent them in the future.³³⁴ A concern in both contexts is the potential for forced partition sales to dispossess one or multiple family members of an asset that they place a high value on, but which they have been unable to protect through formal legal mechanisms.³³⁵ States have explored a variety of law and policy options that may help clear heirs' property titles, thereby helping address or prevent blight, while also protecting families' interests in their property.

Enabling systematized collective ownership may help heirs simplify and manage their property.³³⁶ States can “[p]rovide statutory default rules for heirs property that mimic buy-out provisions in partnership and limited liability statutes.”³³⁷ This avenue and provisions allowing heirs to create family land trusts “provide clear title, allow for collective ownership, and protect against partition sales.”³³⁸ Several states have also adopted the Uniform Partition of Heirs Property Act (UPHPA), which aims to protect tenants in common in heirs' property from predatory partition suits by powerful interest-holders.³³⁹ State partition laws can also be reformed to protect co-owners who do not want the land to be sold.³⁴⁰

Enhanced access to legal support and estate planning services in rural areas would likely serve both preventative and remedial goals. Commentators in diverse spheres have recognized the centrality of lack of access to counsel as a fundamental part of the heirs' property conundrum.³⁴¹ The difficulty of accessing counsel—which is dramatic in many rural regions³⁴²—both exacerbates existing heirs difficulties and keeps families from preventing those difficulties.³⁴³ For prevention, a potentially important point of intervention may be when an elderly homeowner moves residence to a retirement community

right of first refusal would allow municipalities or their designees . . . to match the bid of a purchaser and take title to the property.”).

³³⁴ Richardson, Jr., *supra* note 181, at 824.

³³⁵ *See id.* at 808–09.

³³⁶ *See* CTR. FOR SOC. INCLUSION, REGAINING GROUND: CULTIVATING COMMUNITY ASSETS & PRESERVING BLACK LAND 20–24 (2011), <http://www.centerforsocialinclusion.org/wp-content/uploads/2014/07/Regaining-Ground-Cultivating-Community-Assets-and-Preserving-Black-Land.pdf> [<https://perma.cc/M73W-BS37>].

³³⁷ Richardson, Jr., *supra* note 181, at 825.

³³⁸ Dyer & Bailey, *supra* note 189, at 333.

³³⁹ Jesse J. Richardson, Jr., *The Uniform Partition of Heirs Property Act: Treating Symptoms and Not the Cause?*, 45 REAL EST. L.J. 507, 507–08 (2017).

³⁴⁰ Dyer & Bailey, *supra* note 189, at 333. For example, South Carolina passed a 2006 law creating a right of first refusal in partition sales in order to help families maintain ownership of ancestral land. 61 S.C. Code 15-61-25.

³⁴¹ CTR. FOR SOC. INCLUSION, *supra* note 336, at 20.

³⁴² *See generally* Pruitt & Showman, *Law Stretched Thin*, *supra* note 10.

³⁴³ *Cf.* Porter, *supra* note 33, at 1023 (noting limited access to attorneys in rural areas and difficulties lack of counsel poses for rural residents considering filing for bankruptcy).

or elsewhere. States should “[p]rovide low-cost or free estate planning advice and document preparation to rural landowners to prevent the proliferation of heirs property.”³⁴⁴ South Dakota’s effort to address the rural lawyer gap offers a model that could inform other state efforts to enhance rural access to justice.³⁴⁵

States can also serve both preventative and remedial goals by “[i]ncreas[ing] information available to heirs by, for example, increased access to and interpretation of property records.”³⁴⁶ A state such as West Virginia, for example, has some digitized property records, but many records remain offline and difficult to access or interpret. States could also provide for waivers of deed-recording and probate fees for low-income petitioners and clients of public interest law firms.³⁴⁷

c. Enhancing Accountability for Out-of-State and Absentee Owners

(1) Extradition

Although extradition of out-of-state property owners may seem like an extreme remedy, this mechanism seems worth contemplating in light of the central role absentee owners play in perpetuating blight. The Pennsylvania Neighborhood Blight Reclamation and Revitalization Act was enacted to counteract negligent property ownership.³⁴⁸ Section 6113 provides, “A person or other responsible party who lives or has a principal place of residence outside this Commonwealth, who owns or is responsible for property in this Commonwealth against which code violations have been cited and the person is charged under 18 Pa.C.S. (relating to crimes and offenses), and who has been properly notified of the violations may be extradited to this Commonwealth to face criminal prosecution.”³⁴⁹ Thus, owners whose negligence rises to the level of a criminal offense, or their proxies managing their properties, may be extradited to Pennsylvania to face charges.³⁵⁰

³⁴⁴ Richardson, Jr., *supra* note 181, at 824.

³⁴⁵ See generally Pruitt & Showman, *Law Stretched Thin*, *supra* note 10 (discussing South Dakota’s Project Rural Practice); *Rural Attorney Recruitment Program*, S.D. UNIFIED JUD. SYS., <http://ujs.sd.gov/Information/rarprogram.aspx> [<https://perma.cc/8XM9-B635>] (describing South Dakota’s Recruitment Assistance Pilot Program); *Talk of the Nation: Luring Doctors And Lawyers To Rural America*, NAT’L PUB. RADIO (May 1, 2013), <https://www.npr.org/2013/05/01/180329738/efforts-to-reverse-rural-brain-drain> [<https://perma.cc/EL4P-WP93>] (discussing shortage of lawyers in rural America and South Dakota’s Project Rural Practice); Hannah Alsgaard, *Rural Incentive Programs for Legal and Medical Professionals: A Comparative*, 59 S.D. L. REV. 585 (2014).

³⁴⁶ Richardson, Jr., *supra* note 181, at 825 (citing B. James Deaton, Jamie Baxter, Carolyn S. Bratt, *Examining the Consequences of “Heir Property”*, 68 ECOLOGICAL ECON. 2344, 2352–53 (2009)).

³⁴⁷ See Telander, *supra* note 183 (highlighting work by legal services non-profit Philadelphia VIP advocating for such waivers).

³⁴⁸ See 53 PA. CONS. STAT. § 6102 (2018).

³⁴⁹ 53 PA. CONS. STAT. § 6113 (2018).

³⁵⁰ See Jeffrey Esch McCombie, *Combating Blight: New Tools for the Ongoing Municipal Battle*, LEGAL INTELLIGENCER (Feb. 23, 2017), <https://www.law.com/thelegalintelligencer/almID/1202779792118/?slreturn=20171108133342> [<https://perma.cc/RXP9-WPFA>].

This provision does not appear to have been used.³⁵¹ A substantial barrier to actual use of the law is that extradition requires a municipality to obtain the governor's signature authorizing the extradition and requesting the cooperation of the governor of the owner's home state.³⁵² Practitioners in other states have similarly noted barriers to using criminal prosecution to address out-of-state owners' neglect because of the difficulties associated with service of process and extradition.³⁵³

However, if extradition were put into practice more regularly, it could wield special potential for rural areas inordinately burdened by out-of-state owners' neglect.³⁵⁴ The Catch-22 for rural properties owned by absentee owners is that the properties' often-limited value deprives the local government of any substantial leverage to force the owner to act. Thus, providing for extradition could be an avenue to create more substantial accountability. At the very least, a provision like Pennsylvania's could put absentee owners "on notice" that their neglect may not continue to be tolerated.³⁵⁵

(2) *Fire Insurance Liens*

Many mechanisms exist for local governments to place liens on abandoned and dilapidated properties. However, one under-discussed area is the nexus between property abandonment and fire hazards. Rural properties may be more vulnerable to fire because of the reduced incentives to adopt fire-prevention mechanisms, due to properties' tendency to be more spread out and the reduced threat to neighboring properties, as well as the less stringent enforcement of building codes.³⁵⁶ Fire hazards and cleanup, and local governments' struggles to deal with them, combined with the problem of absentee ownership, are another risk and potential point of intervention in rural blight prevention and remediation.

Based on local experimentation through its home rule program, the West Virginia legislature enabled local governments to impose liens on fire insurance proceeds. As the WV LEAP toolkit states:

Local governments have often been tasked with cleaning up burned and abandoned structures. To help local governments recoup the cost of these cleanups, when an insurance company receives a claim under a fire insurance policy for a loss to real property (such as land and buildings) due to fire, a lien on the insurance

³⁵¹ See FROM BLIGHT TO BRIGHT, *supra* note 209, at 48.

³⁵² See *id.*

³⁵³ E.g., DAN KILDEE ET AL., REGENERATING YOUNGSTOWN AND MAHONING COUNTY (Feb. 2009) (National Vacant Properties Campaign Program Brief), <https://smart-growthamerica.org/app/legacy/documents/youngstown-program-brief.pdf> [<https://perma.cc/F8XQ-XTN9>].

³⁵⁴ One rural community's comprehensive plan states its intention to begin taking advantage of the law's extradition provision. See A COMPREHENSIVE PLAN FOR MARIANNA BOROUGH AND WEST BETHLEHEM TOWNSHIP (Mar. 2014), <http://www.racw.net/wp-content/uploads/2016/05/FinalPlan.pdf> [<https://perma.cc/ES59-UXDF>].

³⁵⁵ Toby True, *A Township Learns to Fight Blight*, 89 Pa. B.A. Q. 22, 24 (2018).

³⁵⁶ Cf. Rosser, *supra* note 43, at 36.

proceeds is automatically created in favor of the municipality or county where the property is located.³⁵⁷

The lien is geared toward “[d]iscourag[ing] abandonment after fire by property owners, particularly for non-owner-occupied properties where those incentives are higher.³⁵⁸ However, in the event of abandonment, the provision also allows local governments a much-needed opportunity to recoup costs. Unlike a low- or negative-value property, fire insurance proceeds provide an economically valuable hook to either bring the owner into the process, or help the local government recoup costs.

(3) *Enhanced Zombie Lender Accountability*

Zombie lending—a unique form of negligent, absentee ownership—poses particular problems for rural areas. Because rural counties tend to have more liberal land use regulations, they are more susceptible to rapid growth, followed by subsequent rapid abandonment, as occurred during the housing and foreclosure crisis.³⁵⁹ Further, in rural localities, “low property values provide little incentive for banks to settle costly and time-consuming foreclosure proceedings.”³⁶⁰ The more limited population and local government capacity may allow zombie lenders in rural areas to linger without foreclosing on their properties, with more limited pressure and accountability.

New York State’s Abandoned Property Relief Act of 2016, a multi-pronged effort to target zombie foreclosures, offers potential guidance for policy geared toward addressing zombie lenders in rural and urban areas. The Act “creat[ed] new efficiencies in the foreclosure process and impos[ed] requirements for the maintenance of properties by a mortgagee or its servicing agent.”³⁶¹ Specifically, under the Act, mortgagees are required to inspect the property; post contact information on the property; and continuously address any health and safety issues on the property, including code violations.³⁶² Mortgagees may be fined up to \$500 per day for violations.³⁶³ Both municipalities and the New York Department of Financial Services are authorized to bring an action in court.³⁶⁴

³⁵⁷ LIABILITY TO VIABILITY, *supra* note 63, at 46.

³⁵⁸ *Id.*

³⁵⁹ *Cf.* Best, *supra* note 69 (describing real estate development in Teton County, Idaho).

³⁶⁰ Press Release, Assembly Speaker Carl E. Heastie, Assembly Passes Legislation to Combat Zombie Homes in New York State (May 24, 2016), <http://nyassembly.gov/Press/20160524/> [<https://perma.cc/5U2P-H2SA>].

³⁶¹ *Id.*

³⁶² N.Y. REAL PROP. ACTS. LAW § 1310 (2018); Kirsten Keefe, *Restoring Neighborhoods: New York State’s 2016 Zombie Property and Foreclosure Prevention Act*, EMPIRE JUST. CTR. 1, 3 (July 13, 2016), http://lifairhousing.org/wp-content/uploads/2016/02/Restoring-Neighborhoods-NYS2016-Zombie-PropertyForeclosure-Prevention-Act-7-13-16-K.Keefe_.pdf [<https://perma.cc/WVU7-3HJP>].

³⁶³ N.Y. REAL PROP. ACTS. LAW § 1308.8(a) (2018).

³⁶⁴ N.Y. REAL PROP. ACTS. LAW § 1308.8(b) (2018).

C. Equitable Considerations

Blight remediation carries with it substantial risks. One person's blighted neighborhood might just be another person's neighborhood; one person's nuisance property may be another person's home.³⁶⁵ The risk of governmental abuse in addressing problem properties is an innate concern of blight remediation, especially in light of blight policy's association with racial discrimination.³⁶⁶

The mechanisms described above may not necessarily proceed without legal challenges, the risk of abuse, or unintended consequences. Racial discrimination and dispossession in particular have been fundamental problems with discriminatory tax assessments and foreclosure proceedings, approaches to heirs' property, lack of access to counsel, and forced partition sales.³⁶⁷ Conservatorship, too, carries the risk that wealthy neighbors could target and exploit low-income neighbors. A fundamental tension with rural blight is that many rural property owners are living in poverty or otherwise lack the resources to maintain their properties, yet blighted properties further burden and harm entire communities.³⁶⁸ Another concern is that rural communities' isolation and limited access to justice may make it more difficult to bring abusive processes to light.³⁶⁹

Local governments and policymakers may wish to differentiate between unoccupied and occupied structures.³⁷⁰ In other words, vacant and abandoned properties could be stakeholders' first priority, with the recognition that addressing occupied structures raises serious concerns about displacement.³⁷¹ Unfortunately, though, successful blight prevention and remediation is likely not as simple as choosing to overlook occupied structures. As residents saw with the circumstances surrounding Cairo's public housing complexes, government actors have an obligation to protect their constituents

³⁶⁵ Brown, *supra* note 97, at 223, 229 (criticizing as subjective certain factors considered in some blight determinations and concluding that "the predominant test to determine whether an area is blighted appears to be 'I know it when I see it'").

³⁶⁶ Christopher J. Tyson, *Municipal Identity as Property*, 118 PENN ST. L. REV. 647, 662 n.66 (2014) (discussing urban renewal's displacement of poor and minority populations).

³⁶⁷ See CTR. FOR SOC. INCLUSION, *supra* note 336, at 6.

³⁶⁸ Jeremiah Geffe, *Rural Housing Crisis*, U. OF IOWA, J. OF GENDER, RACE & JUST.: BLOG <https://jgrj.law.uiowa.edu/article/rural-housing-crisis> [<https://perma.cc/Q9U8-8WR3>] ("One of the largest issues that is facing people living in rural communities is the maintenance of their homes.").

³⁶⁹ Pruitt & Showman, *Law Stretched Thin*, *supra* note 10, at 492 n.116 (discussing risks of political abuses and limited accountability where local control of policy is strong).

³⁷⁰ Cf. Daniel M. Schaffzin, *(b)light at the End of the Tunnel? How A City's Need to Fight Vacant and Abandoned Properties Gave Rise to A Law School Clinic Like No Other*, 52 WASH. U. J. L. & POL'Y 115, 119 (2016) (describing blight clinic that targets only abandoned and vacant properties).

³⁷¹ Cf. Norman Siegel et. al., *The Trouble with Eminent Domain in New York*, 4 ALB. GOV'T L. REV. 77, 103 (2011) (criticizing New York law's lack of procedural safeguards against favoritism as contributing to "unnecessary displacement of communities and local businesses and infringement on the rights of property owners").

from residing in buildings prone to fire, the spread of disease, and other hazards.³⁷²

One consideration for an equitable blight policy is that the prevention of decay is just as important as its remediation. While many rural property owners may lack the means to make necessary repairs, blight policy can and should strive to provide for collaborative and economically accessible rehabilitation plans for occupied structures through the adoption and compassionate enforcement of building and housing codes.³⁷³ At the very least, eviction and displacement must be considered options of last resort. Where they occur, residents should be assisted with relocation, which may be particularly difficult in rural areas.³⁷⁴ States can support responsible, compassionate code enforcement by encouraging communities to adopt building codes, providing centralized trainings to code enforcement officers, creating mechanisms for assisting struggling property owners to bring their properties into compliance, and creating policies to ensure adequate housing and relocation assistance are available statewide.

As to racial discrimination and other forms of selective enforcement, objective standards can help reduce the room for government actors' abuse of their discretion. Specific guidelines for blight designations relating primarily to health and safety are preferable to standards relating to vague concepts such as "morals."³⁷⁵ In turn, initiatives to make all stakeholders aware of constitutional obligations in blight policy and related laws—such as equal protection standards and due process requirements³⁷⁶—may help rural local governments comply with these obligations and equip potentially vulnerable individuals to better protect themselves. Measures to address the rural lawyer shortage could also help provide resources for individuals to protect their rights.

Finally, the planning stage for blight prevention and remediation must not exclude historically underrepresented populations who stand to bear inordinate burdens of blight and blight remediation policy.³⁷⁷ Initiatives to ensure that the full spectrum of the public has input into their communities'

³⁷² Cf. Brown, *supra* note 97, at 219 (discussing blight designation standards that include buildings that are unsafe to live or work in because of building code violations); *Building Codes*, FEMA, <https://www.fema.gov/building-codes> [<https://perma.cc/HYA5-N8UD>] (noting importance of adoption and enforcement of up-to-date building codes for safety from earthquakes).

³⁷³ CHANGELAB SOLS., UP TO CODE: CODE ENFORCEMENT STRATEGIES FOR HEALTHY HOUSING 15–18 (2015) https://www.changelabsolutions.org/sites/default/files/Up-tp-Code_Enforcement_Guide_FINAL-20150527.pdf [<https://perma.cc/7MKA-JJBÉ>] (describing cooperative compliance model for code enforcement).

³⁷⁴ See *id.* at 24 (recommending that localities assist residents with relocation when code violations cannot be fixed).

³⁷⁵ Cf. Brown, *supra* note 97.

³⁷⁶ Cf. WV LEAP Toolkit Appendix, The Procedure of Tax Lien Sales, <https://wvleap.wvu.edu/files/d/5c5a36cc-2a6e-4808-a694-d06f6842e511/appendix-k-tax-lien-sale.pdf> [<https://perma.cc/Q7G7-Q499>] (describing steps and constitutional requirements in tax lien sale process in West Virginia).

³⁷⁷ Cf. Jerrold A. Long, *Overcoming Neoliberal Hegemony in Community Development: Law, Planning, and Selected Lamarckism*, 44 URB. L. 345, 346 (2012).

direction, and that the public has meaningful influence, can help prevent the subordination that may arise in the implementation of blight policy.³⁷⁸ States can help secure equitable access to planning through notice and open meetings requirements in laws on the comprehensive planning process, for example.

CONCLUSION

As with local solutions to blight remediation, a single legislative reform is unlikely to serve as a silver-bullet solution to rural blight. However, approaching the issue from a variety of angles can help empower rural localities to chip away at this daunting task. First, recognition of the rural omission and stereotype concern in this context can help shape more informed law and policy addressing rural blight. At the very least, approaches to rural blight can take into account rural communities' limited legal frameworks, sparser populations, and more limited access to physical and economic resources, as well as other urban-rural differences that may be made clear through evidence-based investigation into particular regional circumstances.

A variety of law and policy options in turn seem well-positioned to help catalyze rural blight remediation and prevention. Some key options include laws geared toward reconfiguring, supporting, or enabling rural local governments; enabling and streamlining regional and state-level approaches; helping simplify needlessly complex legal areas, such as tax foreclosure and heirs property; and enhancing accountability for absentee landowners. Enabling tailored ordinances and minor changes to code enforcement may help rural communities limit their costs and generate modest revenue streams. Addressing the shortage of lawyers in rural areas may also help with blight remediation, in addition to remedying larger issues of rural access to justice.

Additional research may reveal more optimal approaches to rural blight. Yet, most importantly, some sort of action must be taken. Unmitigated rural blight is a key piece of many communities' ongoing tailspin into socioeconomic and physical decay. While many rural regions may be unlikely to return to their former prosperity, this discussion illustrates that a diverse array of low-cost law and policy measures have the potential to ease the burden posed by this widespread phenomenon.

³⁷⁸ Cf. DOUGLAS MISKOWIAK, CTR. FOR LAND USE EDU., CRAFTING AN EFFECTIVE PLAN FOR PUBLIC PARTICIPATION (Nov. 2004), https://www.uwsp.edu/cnr-ap/clue/Documents/publicProcesses/Crafting_Effective_Plan_for_Public_Participation.pdf [https://perma.cc/VR4K-WNDY] (describing best practices for planning initiatives).