Memorandum[*]

To: Governance of Bethel AME Church
From: Duquesne Law Students, Bethel AME Pro Bono Project
Date: August 15, 2022
Re: ***Possible Legal & Equitable Issues Concerning the Taking of Bethel AME***

I. INTRODUCTION

In 1957, the Urban Redevelopment Authority of Pittsburgh ("URA") used the power of eminent domain to take Bethel African Methodist Episcopal Church's ("Bethel's") land in the Lower Hill District. The URA proceeded to demolish Bethel's church and clear the land, making way for the construction of the Civic Arena, highway routes, and other developments. Bethel and the rest of the Lower Hill District community were forced to relocate into neighborhoods farther away from downtown Pittsburgh. For compensation, the city paid Bethel less than one-fifth as much as it paid for the contemporaneous taking of the comparably sized St. Peters Italian Roman Catholic Church. The Catholic Church of the Epiphany, which stood only 400 feet away from Bethel, was exempted from the taking altogether. The taking of Bethel's church inflicted incalculable damage on Bethel and the community that it served. The Bethel community now seeks restitution from the URA and the city for the unjust taking of their land and their church.

A. Bethel AME Grew to be a Citadel of Hope in Pittsburgh's Black Community.

The African Methodist Episcopal ("AME") Church is a Christian denomination, founded in 1787 in the city of Philadelphia as a protest against racial discrimination in the Methodist Episcopal Church.[1] The idea to cultivate a form of Methodist Christian worship that was free

[*] This memorandum was prepared by law students from Duquesne University School of law, who volunteered to assist the church over the summer. The students on the Bethel AME project ranged in experience (from rising 2Ls to 3Ls and 3Es) but had a common interest in learning more about the events surrounding the taking of Bethel. This document and information contained within are intended to be informative and not to serve or be interpreted as legal advice. It is a brief review of the legal claims and a discussion of how other states have provided reparations to right past injustices.

from racial discrimination caught on, and over time, communities across the country formed AME congregations in their locales.[2] From this humble beginning, AME churches eventually grew into a large network with more than 7000 locations throughout North and South America, and have been instrumental in the fight for racial equality in America.[3] Today, AME churches across the nation continue to serve their communities with the mission "to minister to the social, spiritual, and physical development of all people" by teaching biblical principles, gospel, and providing programs to enhance people's social development and education.[4]

In approximately 1808, the congregation that would later become known as Bethel AME Church in the Hill District was formed, becoming Pittsburgh's first Protestant congregation founded by African American citizens.[5] Since its earliest days, Bethel played an important role in the fight for racial equality. For example, before and during the Civil War, Bethel covertly operated as a stop on the Underground Railroad.[6] In 1831, Bethel opened Pittsburgh's first school for Black students, as part of its efforts to promote literacy and education.[7] Today, Bethel continues to provide spiritual leadership to its community, as well as outreach programs, which provide food to neighborhood families monthly, scholarships for young adults seeking higher education, and assistance to families with single mothers in the Pittsburgh area.[8]

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[1] Yale Divinity School, *African Methodist Episcopal Church*, Yale University, https://divinity.yale.edu/academics/vocation-and-leadership/denominational-programs/african-methodist-episcopal-church.
[2] Dennis C. Dickerson, *Our History*, African Methodist Episcopal Church, https://www.ame-church.com/our-church/our-history/.
[3] *Id.*
[4] *Church Mission*, African Methodist Episcopal Church, https://www.ame-church.com/our-church/our-mission/.
[5] Chris Hedlin, *How did Pittsburgh's oldest Black church form? What was its role in the Underground Railroad and fighting slavery?*, Public Source (Jan. 31, 2021), https://www.publicsource.org/pittsburgh-faith-race-place-oldest-black-church-underground-railroad-anti-slavery/.
[6] *Id.*
[7] *Id.*
[8] *Celebrating 200+ Years (1808 – 2017)*, Bethel A.M.E. Church, https://www.bethelpittsburgh.org/about.

The original church building was destroyed by the Great Fire of 1845.[9] However, Bethel's constituents were strong and determined people. After the fire, they purchased a new parcel of land and raised money to build a new church for their growing congregation.[10] Within a few decades, Bethel had grown to such an extent that they needed to build a larger church to house their congregation; they undertook to build a large church at the corner of Wylie Avenue and Elm Street in the Lower Hill District.[11]

The church, affectionately called "Big Bethel" by some, was finally completed in 1906.[12] In its day, it housed a congregation of 1900, complete with a school that could support 1000 students.[13] Reverend Dale Snyder, the current Pastor at Bethel, reflects that Big Bethel was a "citadel of hope"—proof that despite adversity, through God's grace, a united community can accomplish great things.[14] In the mid 1950's, the Lower Hill District, where Big Bethel stood, was home to over 8000 people and 400 businesses, and it was known for its jazz music and vibrant culture.[15] The Lower Hill was home to "bars, restaurants, coffee shops, beauty shops, barbershops, theaters, markets, fruit stands, bakeries, laundries, candy stores, hat stores, clothing stores, bookstores, schools, churches, social clubs, tailors, repair shops, music clubs," and more.[16] The documentary "Wylie Avenue Days" declared the Lower Hill community, at the

[9] Beth Price-Williams, *One of the Worst Disasters in Pennsylvania History Happened Right Here in Pittsburgh*, Only in Your State (Nov. 5, 2017), https://www.onlyinyourstate.com/pennsylvania/pittsburgh/great-fire-1845-pittsburgh/.
[10] *Celebrating 200+ Years (1808 – 2017)*, *supra* note 8.
[11] Chris Hedlin et al., *Pittsburgh's oldest Black church was demolished as 'blight' in the 1950s Lower Hill. Today, members seek justice*, Public Source (Apr. 14, 2021), https://www.publicsource.org/bethel-ame-black-church-history-racism-reparations-lower-hill-penguins/.
[12] *Celebrating 200+ Years (1808 – 2017)*, *supra* note 8.
[13] Interview with Rev. Dale B. Snyder, Sr., Pastor, Bethel A.M.E. Church, in Pittsburgh, Pa. (June 7, 2022).
[14] *Id.*
[15] Diana Nelson Jones, *The Lower Hill before the arena: A rambunctious, crowded, loud place with 'everything you needed'*, Pittsburgh Post-Gazette (Apr. 17, 2011), https://www.post-gazette.com/local/city/2011/04/17/The-Lower-Hill-before-the-arena-A-rambunctious-crowded-loud-place-with-everything-you-needed/stories/201104170282.
[16] *Id.*

time, one of the most prosperous and influential Black communities in the United States. [17] Reverend Snyder recalls that, while the people knew the Lower Hill District was not a rich area, it felt to many in the community like a paradise or an oasis because many poor families had come there fleeing far worse conditions, such as the violence of the Jim Crow-era south.[18]

B. The Taking and Destruction of Bethel AME by the URA Caused Loss, which Cannot be Measured by Compensation Paid.

Unfortunately, by the 1950s, a sequence of events was already in motion that would culminate with the destruction of Big Bethel, and the decimation of this entire community. In 1945, the "Urban Redevelopment Law" was enacted into law, establishing new public corporate bodies known as Redevelopment Authorities for each county and city in Pennsylvania, in order "to promote the elimination of blighted areas" through acquisition, replanning, and redevelopment.[19] These Redevelopment Authorities were set up to operate independently of the city government but required approval from the city or local government to execute redevelopment plans.[20] The Act provided a statutory definition of the term "blighted," and granted broad discretion to the Redevelopment Authorities to determine whether a property was blighted.[21] The act further granted the Redevelopment Authorities broad power to carry out their missions, including the power to seize property from owners who were unwilling to sell, using

[17] *History of the Hill*, Hill CDC, https://hilldistrict.org/history.
[18] Interview with Rev. Dale B. Snyder, Sr., *supra* note 12.
[19] 35 Pa. Stat. Ann. § 1701 (LexisNexis, Lexis Advance through 2022 Regular Session Act 24; P.S. documents are current through 2022 Regular Session Act 24).
[20] *Belovsky v. Redevelopment Auth. of Phila.*, 357 Pa. 329, 54 A.2d 277 (1947) (noting that URAs are "not in any way to be deemed an instrumentality of the city or county engaged in the performance of a municipal function.").
[21] 35 Pa. Stat. Ann. § 1712.1 (LexisNexis, Lexis Advance through 2022 Regular Session Act 24; P.S. documents are current through 2022 Regular Session Act 24).

the power of eminent domain.[22] In 1946, the Urban Redevelopment Authority of Pittsburgh was incorporated pursuant to the Urban Redevelopment Act, and began exercising its authority.[23]

Within ten years, the URA developed a plan to rid Pittsburgh of the Lower Hill District community, which it deemed blighted, while also clearing the way for the Civic Arena, a highway interconnect system, and several other developments.[24] The URA's plan fits a nationwide trend wherein predominantly poor Black and minority communities were targeted by governmental entities as part of a post-WWII effort to modernize cities and eliminate slums.[25] Officials such as Robert Moses, one of the leading minds behind the plan to raze the Lower Hill, are believed to have made statements outside the public record that indicate that invidious racial discrimination was a significant factor in urban redevelopment planning.[26]

This URA's redevelopment plan for Pittsburgh was approved by the city and was announced in 1955.[27] "City officials cited deplorable conditions as justification for their decision to eliminate an entire neighborhood."[28] However, reports and photographs show that many properties were in good condition.[29] The then-mayor of Pittsburgh, David L. Lawrence, in a report to the city council, advocated for the "social desirability of complete clearance" of the

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[22] 35 Pa. Stat. Ann. § 1712 (LexisNexis, Lexis Advance through 2022 Regular Session Act 24; P.S. documents are current through 2022 Regular Session Act 24).
[23] *Here Is The URA*, Urban Redevelopment Authority of Pittsburgh, https://www.ura.org/pages/history-of-the-urban-redevelopment-authority-of-pittsburgh-ura
[24] Dan Fitzpatrick, *The story of urban renewal*, Pittsburgh Post-Gazette (May 21, 2000), https://old.post-gazette.com/businessnews/20000521eastliberty1.asp.
[25] Joseph R. Biden, Jr., *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies*, The White House (Jan. 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.
[26] Thomas J. Campanella, *Robert Moses and His Racist Parkway, Explained*, Bloomberg (July 9, 2017, 12:03 PM EDT), https://www.bloomberg.com/news/articles/2017-07-09/robert-moses-and-his-racist-parkway-explained; Dan Fitzpatrick, *supra* note 23.
[27] Diana Nelson Jones, *Traces of a lost neighborhood*, Pittsburgh Post-Gazette (June 18, 2018), https://newsinteractive.post-gazette.com/lower_hill/.
[28] *Id.*
[29] *Id.*

Lower Hill.[30] With support from the mayor and the council, Pittsburgh Ordinance No. 255 was enacted on July 13, 1955, giving the URA permission to use eminent domain to seize property in the Lower Hill District. The URA immediately began the process.[31]

On December 5, 1956, the URA appropriated the property where Big Bethel stood using eminent domain.[32] Bethel church retained attorney J. Alfred Wilner to oppose the URA's action, but ultimately was unable to resist the coercive power of the URA and the city. Bethel church was demolished soon thereafter in 1957.[33] In 1958, Bethel was left with no reasonable choice but to accept an agreement wherein URA paid $240,000 for the taking of Big Bethel. The URA paid as if Big Bethel was residential property, so the church was never compensated for its air rights, as residential zoning should not have applied to Big Bethel at the time.[34] As part of the deal, Bethel church had to agree to waive all claims against the URA.[35] Notably, the amount Bethel received is less than one-fifth of the $1.24 million that the URA paid for the taking of St. Peter's Catholic Church, which was also located in the redevelopment zone and was similarly sized.[36] Also notably, Epiphany Catholic Church, which still stands to this day, was granted an exception to the URA's use of eminent domain. Epiphany stood only 400 feet away from Big Bethel.

The URA's and City's actions threw the Lower Hill District community into chaos, as thousands were forced from their homes and relocated to other neighborhoods. The majority of the Black residents of the Lower Hill were forced into the Middle and Upper Hill, or Homestead; and the majority of White residents were relocated to Brookline, Beechview, Mount Washington,

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[30] *Id.*
[31] *"Pittsburgh Municipal Record, 1955"*, Internet Archive, https://archive.org/stream/Pghmunicipalrecord1955/Vol_88_1955_djvu.txt.
[32] Allegheny County, Pennsylvania Deed Book, Volume 3628, pp. 660-61.
[33] Chris Hedlin et al., *supra* note 11.
[34] Interview with Rev. Dale B. Snyder, Sr., *supra* note 12.
[35] Bethel deed, *supra* note 30.
[36] *Compare* Bethel deed, supra note 30, *with* St. Peter's deed to URA, Allegheny County Deed Book Volume 3871, pp. 653, 657.

and Mount Lebanon.[37] Many businesses, unable to lay new roots in a new community, were forced to close permanently. The city proceeded to systematically flatten the Lower Hill block-by-block as members of the now-defunct community looked on.[38] Ultimately, one-fifth of the residents of the Lower Hill District were displaced by the URA's plan.[39] On July 24, 1957, the contractors working for the URA reduced Big Bethel to a pile of rubble.[40]

However, Bethel's constituents were too determined to give up. After Big Bethel was demolished, Bethel's leadership negotiated a deal with the Seventh Day Adventist Church, allowing the Bethel Congregation to meet and worship weekly at the Seventh Day Adventist Church, then located on Center Avenue at Morgan Street.[41] Under the pastorate of Reverend Charles S. Spivey, Jr., Bethel acquired new land at the corner of Webster Avenue and Morgan Street and built a new church, which was opened in July 1959.[42] The new Bethel church could only hold 900 members—less than half of what Big Bethel could hold.[43] Many members of Bethel church who previously lived in the Lower Hill were relocated to other neighborhoods, which would make it more difficult to commute to weekly service or participate fully as members of Bethel.[44] The new Bethel church also could not build an educational wing like the one Big Bethel possessed, as the church never received enough money for the project.[45] Also, when Big Bethel was demolished, Bethel had nowhere to store its records, and had to seek assistance from members of the congregation to store and manage in their homes. Many records

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[37] Jones, *supra* note 26.
[38] *Id.*
[39] *Beginning of demolition in the Lower Hill District*, University of Pittsburgh, https://digital.library.pitt.edu/islandora/object/pitt%3AMSP285.B033.F07.I07.
[40] Chris Hedlin et al., *supra* note 11.
[41] *Celebrating 200+ Years (1808 – 2017)*, *supra* note 8.
[42] *Id.*
[43] Interview with Rev. Dale B. Snyder, Sr., *supra* note 12.
[44] Jones, *supra* note 26.
[45] Interview with Rev. Dale B. Snyder, Sr., *supra* note 12.

were damaged or lost during this period, causing financial and legal turmoil for Bethel.[46] When compared with AME churches in other similarly situated cities in the 1950s, Bethel's growth stagnated, causing Bethel to lose expected revenue from tithes.[47] Nevertheless, the congregation managed to find ways to survive. Despite all the hardships that Bethel faced as the result of URA and the city's actions, Bethel continues to serve the community as best as possible through spiritual leadership and outreach programs.[48]

The Civic Arena was built and opened in 1961 on the land where Big Bethel stood.[49] Despite the URA's promise that its redevelopment plan would usher in a "renaissance" for the city of Pittsburgh, several notable investors pulled out, and most of the land surrounding the Civic Arena remains undeveloped, used only for surface parking, to this day.[50]

In 2011-2012, the Civic Arena was demolished to make room for PPG Paints Arena, a modern hockey and concert venue which serves as the home for the Pittsburgh Penguins.[51] During the negotiations for the new stadium, the city and the Penguins organization entered into a structured options contract, wherein the Penguins are incentivized to help the city redevelop the Lower Hill.[52] Thus far, the city has pushed to introduce high-wealth commercial and entertainment businesses into the area, and has not shown substantial interest in Bethel or the displaced members of the Hill District community.[53] Bethel has voiced opposition to these plans,

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[46] *Id.*
[47] *Id.*
[48] *Celebrating 200+ Years (1808 – 2017)*, *supra* note 8.
[49] *Arena: History*, Wayback Machine, https://web.archive.org/web/20081208034146/http://www.mellonarena.com/site41.php.
[50] Dan Fitzpatrick, *supra* note 23.
[51] Mark Belko, Ceremony marks reopening of link between Downtown and Hill District, Pittsburgh Post-Gazette (Oct. 8, 2016, 12:07 AM EDT), http://www.post-gazette.com/local/city/2016/10/07/Pittsburgh-reconnecting-former-Civic-Arena-site-with-Downtown-Hill-District/stories/201610070209.
[52] Edward G. Randall et al., *Pittsburgh Arena Memorandum of Understanding*, https://www.pgh-sea.com/userfiles/MOUCommonwealthSEALemieuxGroup.pdf.
[53] Mark Belko, *URA rejects Penguins' deadline extension to buy land for former Civic Arena development*, Pittsburgh Post-Gazette (Dec. 10, 2020, 5:55 AM EDT), https://www.post-

fearing that URA's plans will further damage the Hill District communities, and contribute to increased racial inequality in Pittsburgh, by driving costs up and forcing lower-income families and businesses out of the area.[54]

Bethel now seeks restitution from the city and URA. It is difficult to calculate the extent of Bethel's losses as the result of the taking of Big Bethel and the flattening of its community. Bethel lost not only its land and its church, but also the opportunity to exist, worship, and grow without unjust interference from the government. It is not possible to undo the injustices that Bethel was subjected to by the actions of the URA and City in the 1950s, however; the URA and city can begin rectifying old wrongs by providing Bethel reparations and a seat at the table when making plans for redeveloping the Lower Hill District area.

II. Urban Redevelopment Authorities Were Created by the State and Authorized to Use the State's Power of Eminent Domain

A. The Creation of the URA allowed for broader exercise of eminent domain powers to redevelop areas deemed blighted that would normally be exempt.

In Pennsylvania, the power of eminent domain is not subject only to state statutes or regulations, cities and counties have also implemented their own codes to further govern and limit the localities' power of eminent domain. Based on the number of individuals residing in the City and the County, Pittsburgh is a second-class city[55] and Allegheny County is a second-class county.[56] So, the applicable provisions to Pittsburgh and Allegheny County are the Second-Class City Code and the Second-Class County Code.

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gazette.com/business/development/2020/12/10/URA-SEA-won-t-grant-Penguins-more-time-to-buy-land-for-former-Civic-Arena-development/stories/202012100083.

[54] Interview with Rev. Dale B. Snyder, Sr., *supra* note 12.

[55] 53 Pa. Stat. § 101 (West Current through 2022 Regular Session Act 40).

[56] 16 Pa. Stat. § 210 (Current through 2022 Regular Session Act 40).

Per the Second-Class County code, eminent domain is limited, and shall not be exercised to enter upon or take any church property, graveyard, or cemetery.[57] Thus, in any county considered a second-class county, such as Allegheny County, eminent domain may not be utilized in the taking of church property. The Second-Class City Code authorizes the use of eminent domain except for when used to obtain property "devoted to a public use, property of a public service company, property used for burial purposes, or a place of public worship."[58] The City of Pittsburgh, under the second-class city code, could not utilize the power of eminent domain to take land belonging to a church or religious organization.

Contrarily, the Urban Redevelopment Law created state-run Redevelopment Authorities for municipalities and cities.[59] The Authorities are tasked with carrying out the act's provisions, including remediating blight and unsafe or unsanitary property conditions.[60] The Authorities may exercise the state's power of eminent domain to accomplish these goals.[61] This grants the Urban Redevelopment Authorities for each city broader eminent domain power than the cities themselves because the authority comes from the state.[62]

Additionally, the Urban Redevelopment Law does not contain the same limitations placed on municipalities, and it was intended to give wide scope to municipalities in redesigning and rebuilding previously exempted areas within their limits as such areas may no longer meet the economic and social needs of modern city life and progress.[63] This scheme is controversial because

[57] Pa. Stat. and Const. Ann. § 2602 (West Current through 2022 Regular Session Act 40).
[58] Title 53 Pa. Stat. and Const. Ann. § 5509 (West Current through 2022 Regular Session Act 40).
[59] 35 P.S. § 1704 (West Current through 2022 Regular Session Act 40).
[60] *Id.* § 1702.
[61] *Id.* § 1709.
[62] The Redevelopment Authority "is not in any way to be deemed an instrumentality of the city or county engaged in the performance of a municipal function." *Belovsky v. Redevelopment Authority of City of Philadelphia*, 54 A.2d 277, 280 (Pa. 1947).
[63] COMMENT: THE PROPERTY RIGHTS PROTECTION ACT: AN OVERVIEW OF PENNSYLVANIA'S RESPONSE TO KELO V. CITY OF NEW LONDON, 18 Widener L.J. 205 (2005).

municipalities operated with limited power of eminent domain, and the URA removed these limitations and allowed the exercise of the broad power of the state.

Here, once the property owned by Bethel was deemed blighted, as discussed below, by the URA, the taking could be effectuated under the eminent domain power of state law through the Urban Redevelopment Law. Since state eminent domain power does not limit the takings of places of worship, the taking of Big Bethel and the land it encompassed by the URA was authorized by law.

B. The Urban Redevelopment Authority of Pittsburgh Used the Urban Redevelopment Law to Declare the Lower Hill Blighted and Use its Power of Eminent Domain to Take Bethel Church

The URA used the Urban Redevelopment Law to take Bethel Church, ostensibly to remediate blight.[64] The Urban Development Law gave authority to the Redevelopment Authorities of Pennsylvania to take buildings within blighted areas.[65] First, the statute acknowledges that some areas have become blighted due to "unsafe, unsanitary, inadequate, or overcrowded condition of the dwellings therein."[66] The statute then goes on to describe, in more detail, what conditions mean an area is considered "blighted." More specifically, the statute states:

> That such derelict properties individually and collectively constitute a blight and nuisance in the neighborhood; create fire and health hazards; are used for immoral and criminal purposes; constitute unreasonable interferences with the reasonable and lawful use and enjoyment of other premises in the neighborhood; are harmful to the social and economic well-being of any municipality; depreciate property values; and, generally jeopardize the health, safety and welfare of the public.[67]

[64] 35 Pa. Stat. § 1701
[65] *Id.*
[66] 35 P.S. 1701(a)
[67] 35 P.S. § 1701(f)

The statute also specifies that some areas within the blighted area may require total acquisition while others may be considered for rehabilitation or conservation.[68]

In 1955, the URA had planned to redevelop the Lower Hill District of Pittsburgh.[69] The city of Pittsburgh had planned to build the Civic Arena, which fell within the Lower Hill. Already, this area was considered "blighted," but exactly what about the area made it "blighted" is unclear.

An interview with Bob Pease, who joined the URA in 1953 and became its executive director in 1958, sheds light on the potential rationale for deeming the area blighted. [70] Pease worked on multiple projects with the URA, including the Lower Hill. During an interview with the Carnegie Museum of Art in 2016, when asked about the conditions of the buildings and area of the Lower Hill before the URA stepped in, Pease described the area as a "slum."[71] He went on to describe buildings with no plumbing and heating that caused high carbon monoxide levels and poor air quality. Pease also recalled taking Lewis Mumford, a historian, through the Lower Hill as Mumford was interested in seeing if any buildings were worth saving. Pease stated that at the end of the walk Mumford said "I really don't see any redeeming grace; I don't see anything that is worth saving."[72]

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[68] 35 P.S. § 1701(c.1)
[69] Chris Hedlin, Rich Lord, and Naomi Harris, *Public Source, Pittsburgh's oldest Black church was demolished as 'blight' in the 1950s Lower Hill. Today, members seek justice.* (April 14, 2021). https://www.publicsource.org/bethel-ame-black-church-history-racism-reparations-lower-hill-penguins/
[70] Rami El Samahy, *Carnegie Museum of Art Storyboard*, *Bob Pease: The Man Who Helped Remake Postwar Pittsburgh* (March 30, 2016), https://storyboard.cmoa.org/2016/03/bob-pease-the-man-who-helped-remake-postwar-pittsburgh/
[71] *Id.*
[72] *Id.*

i. ***The Statute of Limitations for Challenging Compensation Paid at the Time of Taking is Six Years***

The Pennsylvania Constitution guarantees "certain inherent and *indefeasible* rights," including "acquiring, possessing and protecting property." [73] Curiously, the indefeasibility of the Pennsylvanian's rights to possess and protect their property lasted just ten sections in the Commonwealth's founding document. While principles in a vacuum may persevere unspoiled, the Commonwealth's founders soon recanted and determined that, perhaps, a practical and successful exercise in government could not withstand such zealous devotion to private property rights. Instead, they provided *some* deference to the individual's property rights by ensuring that private property would not be "taken or applied to public use, without authority of law and without just compensation being first made or secured."[74] Consistent with the Pennsylvanian's state constitutional rights, an authority exercising the powers of eminent domain pursuant to the Urban Redevelopment Law would be obligated to pay just compensation for properties declared blighted and condemned throughout the Commonwealth.

Interestingly, the original Urban Redevelopment Law included no statute of limitations for challenging just compensation or other damages suffered by a property owner. To address that omission, the General Assembly created a one-year statute of limitations in its 2002 amendment to the law.[75] Although the Urban Redevelopment Law empowered the URA to confiscate Bethel's blighted property, the Eminent Domain Code of 1956 specifically governed the Authority's exercise of eminent domain in the Commonwealth at that time.[76] When a redevelopment authority exercises the power of eminent domain, it must do so pursuant to the

[73] Pa. Const. art. I, § 1 (emphasis added).
[74] Pa. Const. art. I, § 10.
[75] ECONOMIC DEVELOPMENT—URBAN REDEVELOPMENT CONTRACT AND BLIGHT REMOVAL, 2002 Pa. Legis. Serv. Act 2002-113 (H.B. 1952) (PURDON'S).
[76] *See O'Keefe v. Altoona City Authority*, 304 A.2d 916, 916 (Pa. Cmwlth. 1973).

procedures set forth in the Eminent Domain Code.[77] When the URA seized Bethel AME's property in 1958, the Urban Redevelopment Law disclosed no statute of limitations for challenging an award of just compensation. The General Assembly, cognizant of that omission, explicitly imposed a deadline in the Eminent Domain Code:

> In any case whereby the exercise of the power of eminent domain a political subdivision or authority has become entitled to the possession of private land, property or material or any interest therein proper prior to the effective date of this act, a petition for the appointment of viewers for the assessment of damages may be filed or an action for damages may be brought within six years from such date and not thereafter. All claims shall be forever barred after the expiration of the period of six years.[78]

By passing a retrospective statute of limitations, the Commonwealth allowed Bethel six years during which it could challenge the URA's payment. If the Authority became "entitled to the possession" of Bethel's property upon execution of their February 15, 1958, agreement, then Bethel had until February 15, 1964, during which they could have filed a petition to appoint viewers to assess the damages they suffered. That critical deadline passed more than 58 years ago. Therefore, unfortunately for the congregation, the expiration of the statute of limitations bars Bethel AME from challenging the compensation paid by the URA for the church's property.

ii. ***The compensation award was for residential property and did not contemplate air rights (ability to build 1000+ feet)***

As previously discussed, the Pennsylvania Constitution requires entities with eminent domain powers, like the Urban Redevelopment Authority of Pittsburgh, to pay just compensation to a property owner, like Bethel AME, for their condemned and confiscated property. According to parties' agreement in February 1958, the URA paid Bethel $240,000 for their property.[79] An overall evaluation of damages during a condemnation proceeding must "obtain the difference in

[77] Pa. Stat. Ann. tit. 35, § 1712.1 (West).
[78] *Id.* (quoting Pa. Stat. Ann. tit. 26, § 153)(repealed by 1964, Sp.Sess., June 22, P.L. 84, art. IX, § 902) (West).
[79] Allegheny County, Pennsylvania Deed Book, Volume 3628.

the market value of the tract as a whole before the taking and afterwards as affected by it."[80] In assessing a property's value, a qualified valuation expert may testify to, *inter alia*, its market value and its reproduction costs.[81] Valuation experts have specifically considered reproduction costs following the condemnation of churches "[d]ue to the unique use of the property."[82] Therefore, any overall evaluation of damages should have acknowledged the historic nature of Bethel's congregation and, congruently, the exceptional use of the property itself.

Additionally, Bethel AME believes that their award of just compensation did not contemplate the rights in air space above their property. Chapter 19 of Title 68 establishes the foundation for treatment of air space, also known as air rights, in the Commonwealth.[83] According to the statute, "[e]states, rights and interests in air space above the surface of the ground may be held, enjoyed, possessed, aliened, conveyed, leased or mortgaged as real property . . . and shall be dealt with for all purposes and in all respects as estates, rights and interests in real property."[84] Air space is distinct from the surface below and may be conveyed or transferred to an individual other than the one presently owning the surface.[85] The owner of surface rights also owns the air space above the surface, "but the ownership extends only so far as is necessary to the enjoyment of the use of the surface without interference."[86] When assessing taxes on real property in a Second Class City, like Pittsburgh, taxing authorities consider air space to be part of the building occupying the surface.[87] The instrument conveying Bethel's property to the URA transferred "the described parcel of land in

[80] *Spiwak v. Allegheny Cnty.*, 77 A.2d 97, 98 (Pa. 1950).
[81] 26 Pa. Stat. and Consol. Stat. Ann. § 1105.
[82] *First Christian Church of Turtle Creek v. Redevelopment Auth. of Allegheny County*, 324 A.2d 821, 822 (Pa. Cmmw. 1974).
[83] *See In re Appeal of Bigman*, 533 A.2d 778,780 (Pa. Cmwlth 1987).
[84] Pa. Stat. Ann. tit. 68, § 802 (West).
[85] Pa. Stat. Ann. tit. 68, § 801 (West).
[86] 74 Pa. Stat. and Consol. Stat. Ann. § 5501 (West).
[87] *Bigman*, 533 A.2d at 782.

fee simple with the improvements and fixtures thereupon."[88] From the hypothetical perspective of a taxing authority, the dollar amount assigned to Bethel's "improvements and fixtures thereupon" necessarily captured the air space above the surface and building. In *Bigman*, the Commonwealth Court also noted that ultimately, "the utilization of the air space . . . is determinative of its value."[89]

Logically, the *potential* for air space utilization also factors into the calculation of real property value. Given the proximity of the Lower Hill to Downtown Pittsburgh and the plans for building the Civic Auditorium, City officials presumed that new construction would exploit the neighborhood's air space to a greater degree and with greater commercial success generally than the existing structures. Accordingly, although the deed did not enumerate air space, the URA's appraisal of Bethel's parcel and building likely *contemplated* their air space in the property's valuation. Given the ubiquitous deleterious effects of urban redevelopment upon poor, Black, or immigrant residents, and particularly Pittsburghers in the Lower Hill, it is not hard to imagine the URA contemplating Bethel's air space in the compensation calculation and determining that it could undervalue Bethel's real property without experiencing any repercussions. Even those unequipped with a colorful imagination can imagine the unwritten policies of favorable treatment and cooperation for those with means and political influence, while those without the funds to raise a meaningful legal challenge or connections on Grant Street were preyed upon. One need not look further than the nearby St. Peter's Roman Catholic Church, another Lower Hill faith community, whose property the Authority condemned in 1957 and whose $1,240,000 settlement from the URA dwarfs Bethel's by more than five times.[90]

[88] Allegheny County, Pennsylvania Deed Book, Volume 3628**.**
[89] *Bigman*, 533 A.2d at 782.
[90] *St. Peter's Roman Catholic Par. v. Urb. Redevelopment Auth. of Pittsburgh*, 146 A.2d 724, 725 (Pa. 1958).

Although the compensation award may not have explicitly contemplated the air rights of Bethel's property or, more generally, its inimitable nature, their mere dissatisfaction with the award does not automatically create a colorable claim. "A condemnor's estimate of just compensation . . . in an amount greatly less than the condemnee's expectations" is not sufficient justification to set aside the condemnor's declaration.[91] "Only fraud or palpable bad faith in making the declaration, described by clear averments of facts in the condemnee's pleading and thereafter proved by clear, precise and indubitable evidence" permits a court to set aside a condemnor's declaration.[92] Should Bethel succeed in establishing those elements, however, then a trial court may set aside the URA's declaration. That said, given the passage of time since the seizure of and compensation for Bethel's property, Bethel would face a colossal challenge in compiling and positing such evidence in an attempt to circumvent the statute of limitations.

iii. ***When a challenge is barred by the statute of limitations, there are two doctrines under which the statute mat be tolled***

The *Airportels* test created by Commonwealth Court established the framework for Bethel establishing their award of just compensation. As previously discussed, however, the statute of limitations in the Urban Redevelopment Law has presumptively expired, thereby precluding a challenge to Bethel's just compensation. For Bethel to initiate their *Airportels* claim, they must demonstrate that the statute of limitations should be tolled. "Generally speaking, tolling 'pauses the running of, or 'tolls,' a statute of limitations when a litigant has pursued [their] rights diligently but some extraordinary circumstance prevents [them] from

[91] *In re Condemnation by City of Philadelphia of Leasehold of Airportels, Inc.*, 398 A.2d 224, 229 (Pa. Cmwlth. 1979).
[92] *Id.*

bringing a timely action.'"[93] Thus, to toll the statute of limitations, Bethel may look to assert two distinct equitable doctrines: the discovery rule and fraudulent concealment.

The discovery rule "is a judicially created device which tolls the running of the applicable statute of limitations until the point where the complaining party knows or reasonably should know that he has been injured and that his injury has been caused by another party's conduct."[94] When the discovery rule applies, the statute of limitations will not begin to run "until the injured party discovers or reasonably should discover that he has been injured and that his injury has been caused by another party's conduct."[95] A finder of fact will determine "when a party's injury and its cause were discovered or discoverable."[96] In applying the discovery rule, Pennsylvania courts employ the standard of reasonable diligence, whereby "the finder of fact focuses on whether the plaintiff was reasonably diligent in discovering [the] injury."[97] To ascertain when the statute of limitations should commence, the finder of fact must determine whether or not the injured party "was reasonably diligent in discovering their injury.[98] Reasonable diligence is "a reasonable effort to discover the cause of an injury under the facts and circumstances present in the case."[99]

Fraudulent concealment also involves a party initially oblivious to their injury. Fraudulent concealment "is rooted in the recognition that fraud can prevent a plaintiff from even knowing that [they have] been defrauded."[100] "[W]here fraud has prevented the plaintiff from knowing of [their] cause of action, that cause of action simply does not even exist until the

[93] *Rice v. Diocese of Altoona-Johnstown*, 255 A.3d 237, 247 (Pa. 2021) (citations omitted).
[94] *Crouse v. Cyclops Industries*, 745 A.2d 606, 611 (Pa. 2000).
[95] *Fine v. Checcio*, 870 A.2d 850, 859 (Pa. 2005).
[96] *Id.*
[97] *Crouse*, 745 A.2d at 611.
[98] *Id.*
[99] *Id.*
[100] *Rice*, 255 A.3d at 248.

plaintiff becomes aware of, i.e., 'discovers' the fraud."[101] Hypothetically, if Bethel successfully asserted the doctrine, then the URA would be estopped from invoking the statute of limitations in the Urban Redevelopment Law. The fraud does not actually require deceptive intent; unintentional deception can suffice.[102] Furthermore, "fraud or concealment incorporates a causal element by asking whether the fraud or concealment 'cause[d] the plaintiff to relax [their] vigilance or deviate from [their] right of inquiry.'"[103]

Like the discovery rule, the standard of reasonable diligence also applies to parties attempting to toll a statute: "even affirmatively misleading acts do not estop a defendant from invoking the statute of limitations" when a party does not act with reasonable diligence.[104] Thus, a statute of limitations "that is tolled by virtue of fraudulent concealment begins to run when the injured party knows or reasonably should know of [their] injury and cause.[105] A plaintiff can prove fraudulent concealment by "clear, precise, and convincing evidence."[106]

Since fraud fits more intuitively with the *Airportels* test's spirit and evidentiary burden, Bethel's prospects for tolling the statute of limitations may fare marginally better using fraudulent concealment than the discovery rule. Rather than argue that Bethel was ignorant to their injury, Bethel is better positioned to present evidence that (1) the City's and URA's conduct amounted to fraud or concealment and (2) the Authority's fraud or concealment prevented Bethel from discovering than injury.

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[101] *Id.*
[102] *Fine*, 870 A.2d 850 at 860.
[103] *Rice*, 255 A.3d at 248.
[104] *Id.* at 249.
[105] *Fine*, 870 A.2d 850 at 861.
[106] *Molineaux v. Reed*, 532 A.2d 792, 794 (Pa. 1987).

However, notwithstanding the City's and URA's predatory blight declaration and eminent domain policies during Urban Renewal, the inescapable reality is that 64 years have passed since the URA seized Bethel's property and compensated the congregation. That lapse poses a significant obstacle to Bethel asserting either the discovery rule or the doctrine of fraudulent concealment to toll the statute of limitations in the Urban Redevelopment Law. Under either doctrine, a factfinder's determination of reasonable diligence requires them to evaluate an injured party's actions to ascertain whether they demonstrated "'those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others.'"[107] While this standard can be accommodating of parties' different abilities and varying situations, a court would gauge Bethel's conduct "in terms of what [they] should have known at a particular time by following a course of reasonable diligence.[108]

In Pennsylvania, generally, a party's claim will be barred if they have the means to discover their injury and its cause but neglect to employ those means.[109] Thus, the crucial task for a factfinder would be to assess whether Bethel exercised reasonable diligence in waiting 64 years to assert either doctrine for purposes of tolling the statute of limitations. More likely than not, a jury would make the factual determination that Bethel did not exercise reasonable diligence, or in the alternative, a judge would reach the same conclusion as a matter of law on summary judgment. Furthermore, notwithstanding the injustice suffered by Bethel and other Lower Hill property owners, a court may be wary to permit the church's discovery rule or fraudulent concealment claims for fear of unleashing a torrent of litigation on Pennsylvania

[107] *Burnside v. Abbott Laboratories*, 505 A.2d 973, 988 (Pa. Super. 1985) (citation omitted).
[108] *Id.*
[109] *DeMartino v. Albert Einstein Medical Center, Northern Div.*, 460 A.2d 295, 303 (Pa. Super 1983) (citation omitted).

governments that relied upon applicable statutes of limitation in wielding their eminent domain powers during various redevelopment eras or campaigns of "renewal." But convenience for or deference to the powerful often masquerade as judicial pragmatism. Courts endeavor to maintain their reputation as facilitators of justice, while generally acting as conservators of the presiding system or attitude, regardless of justice or morality. That cynicism aside, however, Bethel's 64-year delay in attempting to redress their injury would likely render impotent any argument that the statute should be tolled.

III. Addressing the Potential Constitutional Civil Rights Issues Stemming from the Taking of Bethel AME.

A. Title 42, Section 1983 of the United States Code Enables Individuals to Bring Suit for Government Violation of Federal Law

In response to violence against Blacks in the South following the Civil War, the United States Senate conducted investigations into this lawlessness, primarily focused on the Ku Klux Klan.[110] In response to this investigation, Congress enacted the Civil Rights Act of 1871.[111] Title 42, Section 1983 of the United States Code ("42 U.S.C. § 1983") stems from the Civil Rights Act, and it is the principal method of enforcing Civil Rights today.[112] 42 U.S.C. § 1983 holds liable "[any] person who under color of any statute, ordinance, regulation, custom, or usage, of any state … subjects … any citizen of the United States … [to] the deprivation of any rights, privileges, or immunities secured by the Constitution."[113] This statute provides a method for a plaintiff to file suit against the government when his Constitutional rights are violated. Claims

[110] ERWIN CHEMERINSKY, FEDERAL JURISDICTION 453-55 (3d. ed. 1999).
[111] *Id.*
[112] *Id.*
[113] 42 U.S.C. § 1983.

brought under § 1983 must allege two elements: 1) that a federal constitutional or statutory right was violated; and 2) that the party who violated this right did so under the color of state law.[114]

Three federal rights have potentially been violated in this situation: 1) The Takings Clause of the Fifth Amendment of the United States Constitution; 2) The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and 3) The Due Process Clause of the Fourteenth Amendment. All of these challenges, however, are unlikely to succeed as legal claims for two reasons: 1) there is likely no proper party to name as required by the second element of section 1983; and 2) the statutes of limitations have run.

Although municipalities may be sued under section 1983,[115] the same is not true of the state. The URA, as an agency of the Commonwealth of Pennsylvania, is part of the state government.[116] First, as an agency of the state, the URA may have immunity under the Eleventh Amendment of the United States Constitution, which prohibits suits against states in federal courts.[117] This immunity has further led the U.S. Supreme Court to determine that states and state agencies are not, in fact, "persons" for the purposes of section 1983.[118] Potential plaintiffs may circumvent this immunity by naming a state officer rather than the state government itself.[119] However, there are also limitations on this solution: First, courts are hesitant to award money

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[115] *Monell v. Department of Social Services*, 436 U.S. 658 (1978).
[116] *Here Is The URA,* Right to Know Policy, https://www.ura.org/pages/right-to-know-policy (stating "The law requires that the Urban Redevelopment Authority of Pittsburgh (URA), as an agency of the Commonwealth of Pennsylvania, publish a policy which explains how members of the public can gain access to public information under the Right to Know Act.")
[117] U.S. Const. amend. XI. ("The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."). Courts have extended the definition of "state" as used in the Amendment to include some agencies of the state. See, e.g., *Titus v. Illinois Dept. of Trans*, 828 F.Supp.2d 957 (N.D. Ill. 2011); *Jones v. Gahn*, 246 F.Supp.2d 622 (S.D. Tex. 2003); *Holland v. Taylor*, 604 F.Supp.2d 692 (D. Del. 2009).
[118] *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (holding that the state is not a "person" for purposes of § 1983 also ensures that a state cannot be a defendant in a § 1983 in state court, where the Eleventh Amendment is inapplicable).
[119] *Ex Parte Young*, 209 U.S. 123 (1908).

damages and rely mainly on enjoining the state actions.[120] Being that the land was taken and Big Bethel was destroyed nearly seventy years ago, the state action cannot be enjoined. Additionally, it may be difficult to find a defendant who acted in their official capacity at the time of the taking, as seven decades have passed.

The URA, however, is under the jurisdiction of the City of Pittsburgh, and the mayor approves its board of directors. The City also contributes to the URA's funding.[121] Thus, it is possible to argue that the URA is actually a City agency. Yet, even if this argument were successful, a claim would still be barred by the statute of limitations.

Furthermore, even if the URA or an official of the URA were able to be named as defendants, the statutes of limitations for any potential violation of a federal right would have run. No statute of limitations is specified in section 1983, so courts will generally use the state's statute of limitations.[122] Any statute of limitations for potential violations of federal rights has long since expired.

i. The Fifth Amendment of The United States Constitution Requires the Government to Pay Just Compensation for Taken Property

Bethel AME's primary objection is that it was not paid just compensation for the taking of Big Bethel. It is axiomatic that the government can take private property by its power of eminent domain. Thus, the Fifth Amendment of the Constitution of the United States guarantees that when property is taken for public use, just compensation will be paid.[123] This concept is central to our system of government and integral to a sense of justice and fairness.

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[120] *Edelman v. Jordan*, 415 U.S. 651 (1974).
[121] Hannah Schneider, *Construction and criticism: The history, mission and inner workings of Pittsburgh's Urban Redevelopment Authority*, Public Source (https://www.publicsource.org/pittsburgh-urban-redevelopment-authority-explained/)
[122] *Wilson v. Garcia*, 471 U.S. 261 (1985).
[123] U.S. Const. amend. V. ("[N]or shall private property be taken for public use, without just compensation.")

"Just compensation" requires that the deprived owner be paid the full monetary equivalent of the property taken and put in the same position monetarily as they would have occupied if their property had not been taken.[124] Bethel AME was the stalwart of the Pittsburgh's Black community. It was the cornerstone of the Lower Hill, which was one of the most prosperous and influential Black communities in the United States. It is impossible to assign a dollar amount to the position Bethel AME would have occupied if their property had not been taken. But, the evidence indicates that Bethel did not receive just compensation for the taking when comparing the amount paid to St. Peter's Church and the complete exemption of Epiphany Church to the compensation received by Bethel AME.

Although AME Bethel would likely not be able seek recourse though the courts due to the potential lack of defendant and the expiration of the statute of limitations, it is important to recognize that its rights to just compensation still exist. This principle buttresses the very foundation of our society's notion of private property rights. Regardless of an aggrieved former landowner's ability to challenge compensation in court, their rights should be recognized.

ii. The Fourteenth Amendment of The United States Constitution Requires the State to not Discriminate Based on Irrelevant Differences

Bethel AME—a Black church—also objects that it was treated differently than white churches in the Lower Hill at the time of the taking. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits state governments from drawing distinctions among people being justified by a sufficient purpose.[125] The Fourteenth Amendment was enacted after the Civil War to combat widespread discrimination against former

[124] *U.S. v. Reynolds*, 397 U.S. 14 (1970).
[125] U.S. Const. amend. XIV, section 1. ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.")

slaves, and the Equal Protections Clause remains essential in protecting against invidious discrimination.

Courts analyze equal protection issues based on how a government action affects a group of people with certain inherent characteristics. The court uses three tiers of scrutiny, strict scrutiny, intermediate scrutiny, and rational basis scrutiny to analyze how a government action affects different groups of people. Strict scrutiny applies when a classification burdens a fundamental right or a suspect class, such as race, citizenship, and national origin.[126] Here, Bethel opposes the amount of compensation it was paid because white churches were paid more—that is, the URA taking was effectuated in a way that was discriminatory by race. Therefore, strict scrutiny would apply in evaluating the URA's action.

Under this tier, the courts uphold the challenged action only if the government can show that such action is narrowly tailored to serve a compelling government interest and that the end cannot be accomplished through less discriminatory means. The government can seldom overcome strict scrutiny, and it is generally fatal to the government's action.

Additionally, laws can be facially discriminatory or facially neutral, but be applied in a way that has a discriminatory impact. Facially discriminatory laws are written to treat one class different than another, and facially neutral laws are written to treat all classes of people in the same manner. In this case, the URA statutes are facially neutral—they are written to apply the same to all groups. But the allegation is that they were applied in a discriminatory manner, and thus had a discriminatory impact on Black churches.

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[126] Intermediate scrutiny is reserved for classifications involving gender and illegitimacy. The test for intermediate scrutiny is whether the classification is substantially related to a significant governmental interest. This test is less stringent than strict scrutiny. Rational basis scrutiny is applied for social or economic classifications that are not based on race, citizenship, gender, or illegitimacy. An action considered under rational basis scrutiny is constitutional if it is rationally related to a legitimate state interest. This standard is deferential to the legislature. Courts employing this method almost always uphold actions as long as some possible, conceivable basis can justify it.

Discriminatory impact is insufficient to prove a racial classification. If a law is facially neutral, demonstrating a race classification requires proof that there is a discriminatory purpose behind the law.[127] So, in bringing an equal protection challenge against the URA based on race, AME Bethel would be required to show not only that Black churches were compensated unfairly as compared to white churches, but also that the URA's purpose was to discriminate based on race.

Although AME Bethel may have a difficult time proving a violation of equal protection even if it were able to get into court, viewing the taking through the lens of equal protection illustrates the importance of treating people equally under the law. There is a long history of unfair treatment of Black communities, which the Equal Protection Clause was designed to protect. Even where it provides no legal recourse, the goal of equal protection remains and must be advanced.

iii. The Fourteenth Amendment of The United States Constitution Prohibits the State from Depriving Persons of Property Without Due Process of Law

The Fourteenth Amendment of the United States Constitution prohibits state governments from depriving any person "of life, liberty, or property without due process of law." This has imposed two separate limits on state government—procedural due process and substantive due process.

When the government passes a law that creates a total deprivation of a right, they are effectively violating substantive due process rights. Substantive due process requires there to be sufficient justification for the deprivation, and the sufficiency of that justification will depend on the right that is being deprived. Thus, there are two tests to determine whether substantive due

[127] *Washington v. Davis*, 426 U.S. 229 (1976).

process is violated: strict scrutiny and the rational-basis test. Strict scrutiny is applied to fundamental rights, which include privacy rights, voting rights, and speech and religious rights among others. Strict scrutiny requires the government to prove that the law passed that restricts a fundamental right is necessary to achieve a compelling government interest. Economic rights are generally not deemed fundamental, and thus would be reviewed on rational basis scrutiny, requiring the government's action to be rationally related to a legitimate government interest.

Procedural due process, on the other hand, refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. The government must accord certain assurances to meet procedural due process requirements, such as notice of the charges or issue, the opportunity for a meaningful hearing, and an impartial decision maker. Thus, when AME Bethel was deprived of its property, the URA was required to provide these safeguards.

Again, AME Bethel is likely foreclosed from bringing a due process claim, but in considering its request for reparations, due process is a critical consideration. Due process of law is a concept that is central to our society's conception of fairness. Even if there is no legal recourse, it should be respected as a societal goal.

IV. States Have Recognized Their Harmful Use of Eminent Domain and Have Begun Taking Reparative Steps

Although AME Bethel may not be able to present a legal argument to support its position due to the relevant statute of limitations, a discussion regarding equitable remediation is necessary to correct the harm caused by Pittsburgh's discriminatory application of eminent domain during its urban renewal projects. A 2007 study found that between 1949 and 1973, Black families and businesses were five times more likely to be displaced as a result of urban

renewal projects, despite only making up 12% of the United States population.[128] Other states, such as California, have recognized that their use of eminent domain has led to the furtherance of racial wealth and land ownership disparity within their states and have begun taking reparative steps to return land and opportunity to the communities of color they decimated. Pittsburgh should now follow the examples set by these states and engage in reparation efforts with AME Bethel.

According to a California Legislative report issued by the Task Force to Study and Develop Reparation Proposals for African Americans, urban renewal efforts in the 1950s and 1960s led to the discriminatory displacement of families and communities of color across the country.[129] During this period, the city of Santa Monica destroyed the neighborhood of Belmar Triangle, a "formerly thriving Black neighborhood", to construct the Los Angeles County Courthouse, as well as a civic center and auditorium.[130] The city further displaced hundreds more families when it constructed the Santa Monica 10 Freeway through the predominantly Black neighborhood of Pico.[131]

In Santa Monica and Los Angeles County, much like in Pittsburgh, the city effectively wielded eminent domain to diminish or obliterate the strength of Black communities, "confiscat[ing] private land owned by African Americans for [] public uses."[132] With the intention of beginning to correct the detrimental effects of urban renewal, Santa Monica announced that, beginning in 2022, it would offer below-market rents to the African American

[128] California Task Force to Study and Develop Reparation Proposals for African Americans, *Interim Report*, (June 2022), https://oag.ca.gov/system/files/media/ab3121-reparations-interim-report-2022.pdf.
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*

families that were displaced due to the city's destruction of the Belmar Triangle and Pico neighborhoods.[133]

With similar motivation, LA County has returned a stretch of unjustly taken beachfront property to the descendants of its rightful owners. In 1912, Willa and Charles Bruce purchased Manhattan Beach land for $1,225.[134] On it they built "Bruce's Beach", a resort for the area's Black residents, who were not permitted to use most other beaches.[135] The resort included a restaurant, dining hall, bathing suits for rent, and changing tents.[136] It became a social focal point for the community and hosted popular events attended to by politicians, business owners, socialites, entertainers, and jazz artists.[137] However, Bruce's Beach was not welcomed by all. The Klu Klux Klan and other local white residents continuously harassed the resort, constructing barriers to prevent Black beachgoers from accessing the ocean, slashing visitor's tires, committing arson on the property, and attempting to blow up a gas meter.[138]

Despite being a focal point in the Black community, LA County seized Bruce's Beach in 1924 and the Bruce family was forced off of their land.[139] The city claimed to be using its eminent domain power to convert the property into a park; however, the area remained vacant for decades.[140] The Bruce family requested $120,000 from the city for their property, which is now valued at $75 million, but were only given $14,500.[141]

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[133] Liam Dillon, *Santa Monica's Message to People Evicted Long Ago for the 10 Freeway: Come Home*, L.A. Times (Dec 26, 2021, 5:00 PM), https://www.latimes.com/homeless-housing/story/2021-12-26/santa-monica-to-people-long-evicted-by-freeway-come-back-home.
[134] Kelley Dickens, Danny Hajek, & A. Martinez, *A Black Family Got Their Beach Back — and Inspired Others to Fight Against Land Theft*, NPR (Oct. 10, 2021), https://www.npr.org/2021/10/10/1043821492/black-americans-land-history.
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*

Until the passage of California Senate Bill 796 (SB 796), California law prohibited the transfer of state beach property and restricted its use to that of a public beach.[142] This bill carved out an exception for Bruce's Beach that allowed LA County to transfer the property if it was in the general public's best interest.[143] On April 20, 2021, the LA County Board of Supervisors voted unanimously to pass SB 796 and approved a motion to return the land to the descendants of Willa and Charles Bruce, noting that "historical acts o[f] racism [had] deprived African American [LA] County residents of opportunity, fairness, and justice" and that returning the land was "in the public's interest to eliminate structural racism and bias in all of its forms." According to the Land Loss and Reparations Research Project, it is believed that LA county and the Bruces have entered into a lease agreement that grants the County an option to purchase the property at a future date for $20 million and requires that it pay the current owner of Bruce's Beach an annual rent of $413,000.[144] Much like the Bruces, Pittsburgh inadequately compensated AME Bethel for its land. Thus, Pittsburgh has an ethical duty to return AME Bethel's land or confer to the church the value it lost when the city unjustly seized the church's property for a fraction of its worth.

Discriminatory eminent domain practices are not the sole focus of reparation efforts. States and cities have also repeatedly made reparations for racially motivated violence, destruction, and property theft. One such instance came in response to the Tulsa Race Massacre. On May 31st, 1921, a white mob attacked the affluent neighborhood of Greenwood in Tulsa, Oklahoma after a Black teenager was accused of assaulting a white teenager.[145] The mob murdered hundreds of Black Tulsans in the streets and in their homes, decimating thirty-five

[142] S.B. 796, 2021-22 Leg., Reg. Sess. (Cal. 2021).
[143] *Id*.
[144] Rosanna Xia, *History Made: Bruce's Beach Has Been Returned to Descendants of Black Family*, LOS ANGELES TIMES (July 20, 2022, 4:42 PM), https://www.latimes.com/california/story/2022-07-20/ceremony-marks-official-return-of-bruces-beach.
[145] Meagan Day, *The History of the Tulsa Race Massacre that Destroyed America's Wealthiest Black Neighborhood*, TIMELINE (Sep. 21, 2016), https://timeline.com/history-tulsa-race-massacre-a92bb2356a69.

blocks of thriving Black-owned businesses and homes-effectively obliterating the town.[146] The destruction of Greenwood, which was referred to in its heyday as Black Wall Street, led to the displacement of hundreds of Black families as well as an unbelievable loss of economic opportunities for their future generations.[147]

In 2001, Oklahoma state legislators passed the 1921 Tulsa Race Riot Reconciliation Act (TRA) which led to the creation of a memorial, scholarships for low-income Tulsans, and incentivized outside investment in Greenwood, though it failed to make reparations to the survivors and their families for the loss of life and wealth they sustained.[148] Survivors of the Tulsa Race Massacre (TRM), as it is now referred to, brought forth a civil rights action under § 1983 against the state in 2003 based on evidence gathered in a legislative report which confirmed that government officials had provided the white mob with ammunition and firearms.[149] Tulsan officials not only failed to protect the Black citizens of Greenwood; the report showed that they also actively participated in the violence perpetrated against their citizens.[150] In the 2003 action, TRM survivors sought monetary, injunctive, and declaratory relief for the personal injuries and property damage they sustained during the riot.[151] However, the court ruled against the plaintiffs' argument for equitable tolling, and the action was dismissed as the two-year statute of limitations had run.[152] In September of 2020, the three remaining survivors of the TRM filed a public nuisance action against the city of Tulsa for failing to protect the residents of Greenwood.[153] This

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[146] *Id.*
[147] Steve Osunsami & Kendall Ross, *Tulsa Race Massacre Survivors Lawsuit to Move Forward*, ABC News (May 3, 2022, 5:35 PM), https://abcnews.go.com/US/tulsa-race-massacre-survivors-lawsuit-move-forward/story?id=84442534.
[148] Mihir Desai, *The Tulsa Massacre and the Call for Reparations*, HARVARD BUS. SCH. (May 3, 2022, 5:35 PM), https://courseware.hbs.edu/public/tulsa/.
[149] *Alexander v. Oklahoma*, 382 F.3d 1206, 1211 (10th Cir. 2004).
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] Osunsami & Ross, *supra* note 148.

action is not privy to the same statute of limitations because the plaintiffs are seeking relief for *ongoing* damages, as the loss of life and wealth caused by the TRM continues to have a negative effect on survivors and their descendants.[154] Oklahoma defines a public nuisance as an unlawful act or omission that "annoys, injures, or endangers the comfort, repose, health, or safety of others".[155] The court denied the city's motion to dismiss the action in May of 2022 and the case is still pending.[156]

Another instance of unjust and racially motivated land seizure is the taking of Fones Cliffs from the Virginian Rappahannock Tribe. Fones Cliffs is a spectacular stretch of land which includes 100-foot-high sandstone bluffs and rich wildlife habitats, particularly for bald eagles.[157] According to Rappahannock records, it is believed that this land, which is sacred to the tribe, was taken beginning in the 1640s by English colonizers.[158] Twenty years after they began forcing their way onto Fones Cliffs, the English began to forcefully remove the Rappahannock tribe.[159] After many years and generations of Rappahannock advocating for the return of their ancestral homeland, Fones Cliffs was officially returned to the Rappahannock tribe in 2022.[160] On April 4, 2022, several hundred people, including the Secretary of the Interior, gathered to celebrate the event and to witness the Rappahannock perform sacred rituals on the land.[161] Fones Cliffs will remain accessible to the public and the Rappahannock tribe is planning to construct

[154] *Id.*
[155] Okla. Stat. tit. 50, § 1 (1980).
[156] Osunsami & Ross, *supra* note 148.
[157] John Page Williams, *Ancestral Land at Fones Cliffs Returned to Rappahannock Tribe*, CHESAPEAKE BAY MAGAZINE (Apr. 4, 2022) https://chesapeakebaymagazine.com/ancestral-land-at-fones-cliffs-returned-to-rappahannock-tribe/.
[158] Joseph McCauley, *The Rappahannock Tribe's Return to the River: Conserving Fones Cliffs*, CHESAPEAKE CONSERVANCY, https://www.chesapeakeconservancy.org/fonescliffs (last visited Aug. 5, 2022).
[159] *Id.*
[160] Williams, *supra* note 158.
[161] McCauley, *supra* note 159.

educational components to share its history with visitors, including a replica 16th-century village and learning centers.[162]

In addition to the return of the Rappahannock's rightful land, which was one of several recent instances of federally recognized Virginia Native Tribes having their land returned to them, (the Chickahominy Tribe and Monacan Tribe also successfully advocated for the return of some of their stolen lands in 2021-2022), the Virginia state Legislature passed the Virginia Black, Indigenous, and People of Color Historic Preservation Fund.[163] This bill will allow recognized tribes and nonprofit organizations to acquire grant funding in order to acquire and preserve land that is of cultural or historic significance to Black and Indigenous communities.[164]

When it passed the TRA, Oklahoma made it clear that the state recognizes it has a moral duty to reconcile its failure to protect the Black community of Greenwood during the TRM. The Act was a small step forward in setting right a wrong that the city failed to prevent, which negatively affected the well-being of generations of Black Tulsans. The pending public nuisance action seeks to bolster this progress by establishing the victims' right to reparations for Oklahoma's racially motivated negligence. The return of Bruce's Beach and Fones Cliffs are additional examples of governments taking responsibility and action to repair the damage they caused to historically marginalized communities. Additionally, in passing its preservation fund bill, Virginia created a precedent for states to fund the restoration and return of stolen lands.

Though AME Bethel and its congregation may not have a legal remedy, the City of Pittsburgh should seek to align itself with the right side of history and either return the land it

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[162] *Id.*
[163] Monica Alarcon-Najarro, *Lawmakers Create the Virginia Black, Indigenous, and People of Color Historic Preservation Fund*, NBC 12 (Mar. 28, 2022, 6:49 PM), https://www.nbc12.com/2022/03/28/lawmakers-create-virginia-black-indigenous-people-color-historic-preservation-fund/.
[164] *Id.*

unjustly took from the church during urban renewal efforts or offer fair compensation for the property, which was grossly undervalued. When Pittsburgh unjustly seized the church's place of worship and its land, AME and its congregation lost more than a mere piece of property; it lost the sense of community it had fostered over decades of service, its irreplaceable and historic flagship worship hall, and a proximity to downtown which would have lent the church more opportunity and potential for growth, had it maintained possession. Pittsburgh must follow in the footsteps of other states and cities that have recognized the wrongs of former administrations and taken initiative to right them. Accordingly, it is imperative that Pittsburgh now return to AME Bethel its land or adequately compensate the church for its value- it is time for those in positions of power to rectify the mistakes of past generations.