

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
PRELIMINARY STATEMENT.....	1
INTEREST OF THE AMICUS CURIAE.....	1
STATEMENT OF FACTS.....	2
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
1. THE EXISTENCE OF A “PUBLIC USE” IS A CONSTITUTIONAL ISSUE THAT IS ULTIMATELY A MATTER FOR THE COURTS AND THE PLURALITY CORRECTLY REVIEWED THE RECORD FOR EVIDENCE OF PRETEXT AND BAD FAITH.....	5
A. THE DUE PROCESS AND PUBLIC USE CLAUSES OF THE NEW YORK CONSTITUTION PROTECT INDIVIDUAL RIGHTS AND LIMIT THE LEGISLATIVE POWER TO CONDEMN INDIVIDUALS’ PROPERTY.....	5
B. URBAN RENEWAL AND ECONOMIC DEVELOPMENT CONDEMNATIONS ARE PARTICULARLY SUSCEPTIBLE TO ABUSE THROUGH BAD FAITH AND THE ASSERTION OF PRETEXTUAL PUBLIC USES.....	6
C. THE PLURALITY CORRECTLY HELD THAT ESDC’S BLIGHT DETERMINATION WAS MADE IN BAD FAITH.....	8
2. THE DEFINITION OF “SUBSTANDARD AND INSANITARY” IN THE URBAN DEVELOPMENT CORPORATION ACT IS UNCONSTITUTIONALLY VAGUE ON ITS FACE AND AS APPLIED.....	11
3. THE BURDENS OF BLIGHT AND ECONOMIC DEVELOPMENT CONDEMNATIONS HAVE AND WILL CONTINUE TO FALL DISPROPORTIONATELY UPON RACIAL AND ETHNIC MINORITIES AND THE ECONOMICALLY DISADVANTAGED.....	13
A. BLIGHT CONDEMNATIONS HAVE HISTORICALLY BEEN USED TO TARGET RACIAL AND ETHNIC MINORITIES.....	14

B. BLIGHT AND ECONOMIC DEVELOPMENT CONDEMNATIONS CONTINUE TO HAVE DISPROPORTIONATE IMPACTS ON MINORITIES AND THE ECONOMICALLY DISADVANTAGED.....	17
C. THE USE OF EMINENT DOMAIN TO BENEFIT COLUMBIA WILL FOLLOW HISTORICAL PATTERNS AND DISPROPORTIONATELY IMPACT LOW INCOME AND MINORITY FAMILIES, WHILE PROVIDING SPECIAL BENEFITS TO AN ELITE AND WELL- CONNECTED INSTITUTION.....	19
4. THE DETERMINATION AND FINDINGS SHOULD BE REJECTED BECAUSE ESDC DENIED PETITIONERS THEIR RIGHT TO DUE PROCESS BY CLOSING THE RECORD WHILE WITHHOLDING DOCUMENTS WHICH WERE ORDERED TO BE RELEASED.....	22
CONCLUSION.....	23

## TABLE OF AUTHORITIES

### Cases

Berman v. Parker, 348 U.S. 26 (1954).....	12, 14
Campaign for Fiscal Equity, Inc. v. State of New York, 8 N.Y.3d 14 (2006).....	5
Cannata v. New York, 11 N.Y.2d 210 (1962).....	5
County of Hawaii v. C & J Coupe Family Ltd. P'ship, 119 Haw. 352 (2008).....	7
Denihan Enterprises, Inc. v. O'Dwyer, 302 N.Y. 451 (1951).....	5
Fink v. Lefkowitz, 47 N.Y. 2d 567 (1979).....	23
Gallenthin Realty v. Borough of Paulsboro, 191 N.J. 344 (2007).....	12
In re Petition of Deansville Cemetery Ass'n, 66 N.Y. 569 (1976).....	5
Jacobellis v. Ohio, 378 U.S. 184 (1964).....	12
Karesh v. City Council, 247 S.E.2d 342 (S.C. 1978).....	17
Kelo v. New London, 545 U.S. 469 (2005).....	6, 10, 14, 17
Levin v. Township of Bridgewater, 57 N.J. 506 (1971).....	16
Lynch v. Household Fin. Corp., 405 U.S. 538 (1972).....	3
Marbury v. Madison, 5 U.S. 137 (1803).....	5

Matter of Goldstein v. New York State Urban Dev. Corp., 13 N.Y.3d 511 (2009).....	8, 11
Matter of Kaur v. New York State Urban Dev. Corp., 2009 N.Y. Slip Op. 8976 (1st Dept. 2009).....	2, 9, 10
Matter of Tuck-It-Away Assoc., LP v. Empire State Dev. Corp., 54 A.D.3d 154 (2d Dept. 2008).....	9
Miller v. California, 413 U.S. 15 (1973).....	12
New York City Housing Authority v. Muller, 270 N.Y. 333 (1936).....	5
Norwood v. Horney, 110 Ohio St.3d 353 (2006).....	12
Poletown Neighborhood Council v. City of Detroit, 304 N.W.2d 455 (Mich. 1981).....	17
Sweetwater Valley Civic Association v. National City, 18 Cal.3d 270 (1976).....	12
United States v. Carolene Products Co., 304 U.S. 144 (1938).....	14
United States v. James Daniel Good Real Prop., 510 U.S. 43 (1993).....	3
Waldos, Inc. v. Village of Johnson City, 74 N.Y.2d 718 (1989).....	7
Yonkers Community Development Agency v. Morris, 37 N.Y.2d 478 (1975).....	5, 11, 17

### **Constitutional Provisions**

U.S. Const. amend. V.....	2
N.Y. Const. art. I, § 6.....	6
N.Y. Const. art. I, § 7.....	2, 6
N.Y. Const. art. XVIII.....	6

## **Statutes and Legislation**

Housing Act of 1949, 63 Stat. 413.....	14
Housing Act of 1954, 68 Stat. 590.....	14
The Landowner's Bill of Rights and Private Property Protection Act, 2006 Ga. Act 444.....	7
Public Authorities Reform Act, 2009 N.Y. Laws 506.....	2
N.Y. Pub. O. § 84.....	23
N.Y. Unconsol. ch. 252, § 3.....	11
N.Y. Unconsol. ch. 252, § 2.....	13
N.Y. S.B. 6791 (2010).....	13

## **Government Reports and Documents**

Community Board 9 Manhattan, 197-a Plan: Hamilton Heights, Manhattanville, Morningside Heights (Sep. 24, 2007).....	8, 20
New York City Dept. of City Planning, Manhattanville Final Environmental Impact Statement.....	20
New York City Planning Commission, In the Matter of a Plan Concerning Community District 9 in Manhattan, N. 060047 NPM, Nov. 26, 2007.....	10
New York Moreland Act Commission on the Urban Development Corporation and Other State Financing Agencies, Restoring Credit and Confidence: A Reform Program for New York State and its Public Authorities (Mar. 1976).....	11

## **Books and Law Review Articles**

Michele Alexandre, " <i>Love Don't Live Here Anymore</i> ": <i>Economic Incentives for a More Equitable Model of Urban Redevelopment</i> , 35 B.C. Envtl. Aff. L. Rev. 1 (2008).....	7, 18
Martin Anderson, <i>The Federal Bulldozer</i> (McGraw-Hill 1967).....	16
Jody Arogeti, Anita Bhushan, Jill M. Irvin & Jessica Kattula, <i>Eminent Domain</i> ,	

23 Ga. St. U.L. Rev. 157 (2006).....	7
Paul Boudreax, Eminent Domain, <i>Property Rights, and the Solution of Representation Reinforcement</i> , 83 Denv. U.L. Rev. 1 (2005).....	6, 7, 17
David A. Dana, <i>Exclusionary Eminent Domain</i> , 17 S. Ct. Econ. Rev. 7 (2009).....	17
Steven J. Eagle, <i>Kelo, Directed Growth, and Municipal Industrial Policy</i> , 17 S. Ct. Econ. Rev. 63 (2009).....	6-7
James W. Ely, Jr., <i>Thomas Cooley, "Public Use," and New Directions in Takings Jurisprudence</i> , 2004 Mich. St. L. Rev. 845 (2004).....	6
Sheila R. Foster and Brian Glick, <i>Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment</i> , 95 Calif. L. Rev. 1999 (2007).....	7, 17
Mindy Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It (One World/Ballantine 2004).....	19
Herbert J. Gans, <i>The Failure of Urban Renewal: A Critique and Some Proposals</i> , in Urban Renewal (Bellush, ed.).....	15
Herbert J. Gans, The Urban Villagers: Group and Class in the Life of Italian-Americans (2d ed. 1982).....	18
Scott A. Greer, Urban Renewal and American Cities: The Dilemma of Democratic Intervention (1965).....	19
Arnold R. Hirsch, Making the Second Ghetto: Race and Housing in Chicago 1940-1960 (University of Chicago Press 1998).....	15
Kenneth Jackson, Crabgrass Frontier (Oxford University Press 1987).....	16
Jane Jacobs, The Death and Life of Great American Cities (Vintage Books 1992).....	16
Gideon Kanner, “Unequal Justice Under Law”: <i>The Invidiously Disparate Treatment of American Property Owners in Takings Cases</i> , 40 Loy. L.A. L. Rev. 1065 (2007).....	7
Daniel B. Kelly, <i>The “Public Use” Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence</i> ,	

92 Cornell L. Rev. 1 (2006).....	6
Donald J. Kochan, “ <i>Public Use</i> ” and the Independent Judiciary: <i>Condemnation in an Interest-Group Perspective</i> , 3 Tex. Rev. L. & Pol. 49 (1998).....	6
Kevin Douglas Kuswa, <i>Suburbification, Segregation, and the Consolidation of the Highway Machine</i> , 3 J.L. Soc'y 31 (2002).....	15
Amy Lavine, <i>Urban Renewal and the Story of Berman v. Parker</i> , 42 Urb. Law --- (forthcoming, Spring 2010).....	12, 14, 15
Amy Lavine and Norman Oder, <i>Urban Redevelopment Policy, Judicial Deference to Unaccountable Agencies, and Reality in Brooklyn’s Atlantic Yards Project</i> , 42 Urb. Law --- (forthcoming Spring 2010).....	7, 9, 11, 13, 19
Joseph J. Lazzarotti, <i>Public Use or Public Abuse</i> , 68 UMKC L. Rev. 49 (1999).....	7
The Federalist No. 54 (Jacob E. Cooke ed., 1961) (James Madison).....	2
James Madison, Property, National Gazette (Mar. 27, 1792), <i>reprinted in</i> 14 The Papers of James Madison 266 (Robert Rutland, et al. eds., 1983).....	3
John E. Osborn, <i>New York’s Urban Development Corporation: A Study on the Unchecked Power of a Public Authority</i> , 43 Brooklyn L. Rev. 237 (1977).....	11
Wendell E. Pritchett, <i>The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain</i> , 21 Yale L. & Pol'y Rev. 1 (2003).....	7, 11, 14, 15
Ilya Somin and Jonathan H. Adler, <i>The Green Costs of Kelo: Economic Development Takings and Environmental Protection</i> , 84 Wash. U. L. Rev. 623 (2006).....	7
Charles Toutant, <i>Alleging Race-Based Condemnation</i> , New Jersey Law Journal, Aug. 2, 2004.....	17

## Other Sources

American Experience, Citizen King: Three Perspectives, James Baldwin video (part 2).....	15
--	----

Miriam Axel-Lute, <i>Will Columbia Take Manhattanville?</i> , Shelterforce, Mar. 22, 2008.....	8, 21
Nicholas Confessore, <i>Blight, Like Beauty, Can Be in the Eye of the Beholder</i> , The New York Times, Jul. 25, 2006.....	12
Dick M. Carpenter II, Ph.D. & John K. Ross, Victimizing the Vulnerable: The Demographics of Eminent Domain at 6 (Institute for Justice, June 2007).....	18
Daphne Eviatar, <i>The Manhattanville Project</i> , The New York Times Magazine, May 21, 2006.....	21
David Firestone, <i>Black Families Resist Mississippi Land Push</i> , The New York Times, Sep. 10, 2001.....	17
George Keller, <i>Six Weeks that Shook Morningside</i> , Columbia College Today (Spring 1968).....	16
Scott Levi, <i>Money, Words Fly in Heated Public Relations Battle</i> , The Columbia Spectator, Jan. 22, 2008.....	7
Kenneth Lovett, <i>Teachers 'Buy' Albany – Unions Drop \$3M to Lobby</i> , The New York Post, Apr. 10, 2008.....	7
Jarrett Murphy, <i>History Lesson: Three decades after the drama of '68, will Harlem make room for Columbia?</i> , The Village Voice, May 16, 2006.....	21
Senator Bill Perkins, Public Hearing: Unconstitutional: What the Appellate Division's Eminent Domain Ruling Means for the Columbia Expansion, Jan. 5, 2010 (video excerpt).....	12
Erik Schwartz, <i>Progress or Discrimination? Facing Displacement, Minorities Battle Towns' Eminent Domain</i> , The Courier Post (New Jersey), Jul. 30, 2004.....	17
Timothy Williams, <i>In West Harlem Land Dispute, It's Columbia vs. Residents</i> , The New York Times, Nov. 20, 2006.....	21
U.S. Environmental Protection Agency, Environmental Justice, Basic Information.....	21