

No. SC88453

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI *ex rel.* AMBASSADOR PROPERTIES, L.L.C. and
KARL THOMAS,
Relators,

v.

THE HONORABLE THOMAS C. CLARK, JUDGE,
Circuit Court of Jackson County, Missouri,
Respondent.

HOUSE RESCUE CORPORATION,
A Missouri Not-for-Profit Corporation,
Real Party in Interest.

Original Proceeding on Petition for Writ of Mandamus
to the Jackson County Circuit Court, 16th Judicial Circuit,
Cause No. 04CV225744, the Honorable Thomas C. Clark, Presiding

BRIEF OF THE IVANHOE NEIGHBORHOOD COUNCIL, THE LAND
CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS
CITY, BLUE HILLS COMMUNITY SERVICES AND THE BLUE HILLS
NEIGHBORHOOD ASSOCIATION, AS AMICI, IN OPPOSITION TO
PETITION FOR WRIT OF MANDAMUS

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PRELIMINARY STATEMENT

Relators Ambassador Properties, LLC (“Ambassador”) and Karl Thomas (“Mr. Thomas”) argue in their Statement, Brief and Argument in this matter (the “Brief”) that the Abandoned Housing Act, R.S.Mo. Section 474.620 et seq. (the “Act”), has created a “wild-west free-for-all” in which not-for-profit organizations can make “cost-free seizures of private homes.” Brief at 20.

Relators cite no factual basis for these strong assertions. They describe the problems that the Act was created to address as “minor ills” and claim that the Act is “truly irrational.” Brief at 30. They also describe the Act as being “breathtaking in its assault on basic notions of justice and fairness.” Brief at 16.

It is unclear what experience relators have with the application of the Act. Amici, on the other hand, are not-for-profit organizations, neighborhood associations and other entities that deal with abandoned properties in Kansas City’s urban core on a daily basis and have done so for years.

Amici write to give the Court the factual background that gave rise to the Act.¹ As discussed below, the problem of abandoned houses in Missouri is not a “minor ill.” Instead, it is a problem of monumental proportion. As discussed below, in Kansas City alone there are literally thousands of abandoned houses. The presence of these vacant and often-dilapidated properties in urban core

¹ In compliance with Missouri Supreme Court Rule 84.05(f)(2) all parties to this matter have consented to the filing of this brief by amici.

neighborhoods leads to increased crime and decreased tax revenues. More importantly, they severely damage the quality of life for low-to-middle income people who live near them. They are a serious blight on urban neighborhoods and discourage redevelopment in those neighborhoods.

Given the damage that abandoned properties inflict on urban communities, Missouri has a strong, governmental interest in reducing the number of those properties in the state. The Act is a rational response to a serious public problem. Accordingly, amici respectfully submit that the Court should find that the Act does not violate relators' substantive due process rights. A ruling to the contrary would undermine one of the best resources that the state has to improve urban communities.

JURISDICTIONAL STATEMENT

Amici respectfully submit that Relators have not established the Court's jurisdiction to decide the issues raised in their Petition. Amici incorporate by reference the argument and authority cited by Respondent in regard to this issue. *See* Brief of Respondent in Opposition to Petition for Writ of Mandamus at Point I.

STATEMENT OF FACTS

A. Identification of Amici and Their Experience With Abandoned Houses

Amici have substantial experience with abandoned properties and the impact that those properties have on neighborhoods.

1. The Ivanhoe Neighborhood Council

The Ivanhoe Neighborhood Council (“INC”) is a not-for-profit Missouri corporation and the neighborhood association for Kansas City’s Ivanhoe neighborhood, which is south and east of downtown Kansas City.² Affidavit of Margaret J. May (“Ms. May”) at Paragraph 2. Ms. May’s Affidavit is Exhibit 1 to the Amici’s Appendix in this matter (the “Appendix”).

The Ivanhoe neighborhood is a low-income neighborhood in Kansas City’s urban core. Forty percent of the property in Ivanhoe is either vacant lots or abandoned buildings. *Id.* Forty-five percent of homes in the Ivanhoe neighborhood are owner-occupied. *Id.*

There are more than 317 abandoned houses in the Ivanhoe neighborhood. *Id.* at Paragraph 10. The abandoned houses in the Ivanhoe neighborhood increase crime and the risk of fire. They also discourage development in the neighborhood,

² The boundaries of the Ivanhoe neighborhood are Paseo Boulevard (on the west) to Prospect Avenue (on the east) and 31st Street (on the north) to Emmanuel Cleaver, II Blvd. (on the south). May Affidavit at Paragraph 2.

because they are poorly maintained, eye-sores. Most importantly, they substantially reduce the quality of life for people who live in the neighborhood. *Id.* at Paragraphs 11 and 16.

**2. The Land Clearance For Redevelopment Authority of
Kansas City**

The Land Clearance for Redevelopment Authority of Kansas City (the “Authority”) is a quasi-governmental, municipal agency, created by the City of Kansas City pursuant to R.S.Mo. §99.300-660. It has the authority to condemn blighted property, issue bonds, and authorize property tax abatement to support redevelopment of such blighted property. Affidavit of Joseph F. Egan (“Mr. Egan”) at Paragraphs 2-3. Mr. Egan’s Affidavit is Exhibit 2 to the Appendix.

The Authority’s mission of abating blighted conditions is based in part upon the statutory finding that “... this menace (blighted property) is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise” R.S.Mo. §99.310. Egan Affidavit at Paragraph 4.

The Authority supports the Abandoned Housing Act because the Act is aimed at abating blighted conditions caused by the hundreds of abandoned houses in the Kansas City area. Abandoned houses substantially increase the blight in Kansas City's urban core and hinder the Authority's efforts to encourage community development in Kansas City. The Act is an effective tool to

supplement the municipal police regulatory system and the Authority's efforts, which alone are insufficient to control the problem. *Id.* at Paragraphs 5-7.

3. Blue Hills Community Services

Blue Hills Community Services ("Blue Hills") is a Missouri not-for-profit corporation in good standing. Affidavit of Troy Osborne ("Mr. Osborne") at Paragraph 2. Mr. Osborne's Affidavit is Exhibit 3 to the Appendix.

Blue Hills does community development work in the Blue Hills neighborhood in Kansas City, Missouri, which has the following boundaries: Forty-Seventh Street to the north; Sixty-Third Street to the south; Prospect Avenue to the east; and, Paseo Boulevard to the west. *Id.* at Paragraph 3.

The Blue Hills neighborhood is a low-to-moderate income neighborhood in Kansas City's urban core. *Id.* at Paragraph 4. Abandoned houses are a serious problem in the Blue Hills neighborhood. *Id.* at Paragraph 5.

Abandoned houses in Blue Hills attract vandalism. *Id.* at Paragraph 6. Homeless people sometimes break into abandoned houses. *Id.* Many of the abandoned houses in the Blue Hills neighborhood have had no utilities for three or more years and have serious, long-term codes violations. *Id.*

Blue Hills renovates homes in the Blue Hills neighborhood. Having abandoned houses in the neighborhood greatly reduces Blue Hills' ability to sell homes that it has renovated to homeowners who will live in the homes. Few people want to live in a neighborhood with abandoned houses in it. *Id.* at Paragraph 7.

The Kansas City Neighborhood Alliance (“KCNA”) has brought several actions pursuant to the Act in the Blue Hills neighborhood and has acquired property in the neighborhood through those cases. *Id.* at Paragraph 8.

KCNA went out of business in August of 2007. While KCNA was in business, it acquired and renovated several properties in the Blue Hills neighborhood through the Act.³ *Id.* at Paragraph 9. The properties that KCNA acquired in Blue Hills were serious blights upon the neighborhood. These buildings had long-standing codes violations. They had been abandoned for many years and some of them had structural problems. *Id.* at Paragraph 10.

KCNA’s work on these properties eliminated the code violations and all structural problems. KCNA turned the abandoned houses that were blights on the Blue Hills neighborhood into owner-occupied homes that greatly improved the neighborhood. *Id.* at Paragraphs 11-12.

From Blue Hills’ experience, the Act is the only tool available to neighborhoods that force owners of abandoned properties either to take action to remedy the blight that their houses are causing to neighborhoods or to surrender their property for renovation. *Id.* at Paragraph 14.

³ Before KCNA went out of business, it completed renovation work on all of the buildings it had acquired under the Act and sold all of those buildings to owner occupants. Affidavit of Ed Linnebur (“Mr. Linnebur”) at Paragraph 26. Mr. Linnebur’s Affidavit is Exhibit 6 in Amici’s Appendix.

4. **The Blue Hills Neighborhood Association**

The Blue Hills Neighborhood Association is, as the name implies, the neighborhood association for the Blue Hills neighborhood in Kansas City, Missouri (the “Neighborhood Association”). Affidavit of Paul Tancredi (“Mr. Tancredi”) at Paragraphs 1-3. Mr. Tancredi’s Affidavit is Exhibit 7 to the Appendix.

The Neighborhood Association has the same concerns about abandoned properties in the Blue Hills neighborhood as does Blue Hills Community Services. *Id.* at Paragraphs 4-15.

B. The Abandoned Housing Problem in Kansas City

It is difficult to grasp the extent of community development problems in Kansas City’s urban core without visiting the area. The Ivanhoe Neighborhood, which is south and east of downtown Kansas City, is a good example.

The average household income in Ivanhoe is roughly \$19,000 per year. May Affidavit at Paragraph 5. Forty-five percent of the homes in the Ivanhoe neighborhood are owner-occupied. *Id.* at Paragraph 5.

In the 1980’s and 1990’s there were drug houses on virtually every block in the neighborhood and drug dealers openly sold drugs on street corners on some of the busiest intersections in the area. *Id.* at Paragraph 6.

The Ivanhoe Neighborhood Council (“INC”), however, became active in the neighborhood in the early 1990’s and has made significant progress in forcing drug dealers out of the neighborhood and reducing crime. *Id.* at Paragraph 7. INC

has also created partnerships with the City of Kansas City, Missouri (the City) and many not-for-profit organizations, including community development corporations, to help revive the neighborhood. *Id.* at Paragraph 8. Through these partnerships, property values have increased in the neighborhood and developers are beginning to invest in remodeling properties and actually building new homes in the neighborhood. *Id.* at Paragraph 8.

Abandoned houses remain one of the biggest impediments to community improvement in the Ivanhoe neighborhood. *Id.* at Paragraph 9. A video showing abandoned houses that have been procured and renovated under the Act is Exhibit A to the Affidavit of Betsy Blake (“Ms. Blake”). Ms. Blake’s Affidavit is Exhibit 9 to the Appendix.

In 2006, Dr. Peter Eaton (“Dr. Eaton”), a professor at the University of Missouri, Kansas City’s Center for Economic Information, conducted a survey of abandoned houses in the Ivanhoe neighborhood. Affidavit of Peter Eaton (“Dr. Eaton”) at Paragraph 3. Dr. Eaton’s Affidavit is Exhibit 4 to the Appendix.

The survey identified 317 of the 4,023 parcels in the Ivanhoe Neighborhood to be abandoned residential structures. Dr. Eaton’s Affidavit at Paragraph 5. Using the results of the Ivanhoe survey, Dr. Eaton has estimated that, within a

reasonable degree of scientific certainty, there are between 3,078 and 6,514 abandoned houses in Kansas City's urban core.⁴ *Id.* at Paragraphs 7-9.

Although Amici are not aware of any comparable study in other major metropolitan areas in Missouri, it is likely that St. Louis has a comparable problem and that smaller urban areas, like Columbia and Springfield, have similar problems. Thus, there are thousands of abandoned homes in Missouri.

C. The Causes And Consequences Of Abandoned Homes

There are three major sources of abandoned homes. First, landlords in low-income neighborhoods often acquire rental properties at low-cost. They maximize their profits by renting the property for as long as they can without paying for significant improvements in the property. Then, when the property falls into such disrepair that they can no longer rent it, they simply abandon the property. May Affidavit at Paragraph 12.

Second, when homeowners pass away without any close family members in the area and without a will or other means of transferring the property, the home may become abandoned. *Id.* at Paragraph 13.

Third, the most frequent cause of abandoned homes is the inability of homeowners to pay their mortgages. This frequently leads to foreclosures. *Id.* at Paragraph 14. In Jackson County, Missouri, in 1981 there were 506 foreclosures.

⁴ Dr. Eaton defines the City's urban core as the area east of Troost and west of I-435, north of 85th Street and south of the Missouri River.

The City of Kansas City, Missouri maintains foreclosure statistics on the World Wide Web at <http://records.co.jackson.mo.us/search.asp?cabinet=opr>. In 2006, there were 1,791 foreclosures in the county, which is an increase of more than 500 foreclosures over the 2005 rate of 1,267 foreclosures. *Id.* The 2006 foreclosure rate was the highest rate of foreclosures in Jackson County in the last 25 years. *Id.*

Often the homes are sold in foreclosure to absentee landlords who take poor care of the properties and ultimately abandon them. May Affidavit at Paragraph 14. It is also common for the lender who originally held the loan to buy the property in foreclosure and to have difficulty subsequently selling it. *Id.* Instead of having to recognize the property as a loss, the lenders will sometimes just hold the property and let it fall into disrepair. *Id.*

Other times homeowners who are behind on mortgage payments, and who have difficulty in dealing with the stress of being in default, will simply move out of the property and abandon it. *Id.* at Paragraph 15. Here, too, some lenders, instead of recognizing the loss, will simply abandon the property. *Id.*

Whatever the cause, there are now thousands of abandoned houses in Kansas City's urban core. As discussed below, these properties exact a heavy burden on local government entities and nearby neighbors in many ways.

Abandoned buildings, by their nature, invite and encourage crime. A survey in Austin, Texas found that crime rates were twice as high on blocks with open abandoned buildings compared to similar blocks without open buildings.

William Spelman, "Abandoned Buildings: Magnet for Crime?" *Journal of*

Criminal Justice, 21:481, (1993). Eighty-three percent of open, abandoned buildings in the Austin study showed evidence of illegal use by prostitutes, drug dealers or others. *Id.*

Abandoned buildings also create fire risks.

The U.S. Fire Administration reports that over 12,000 fires in vacant structures are reported each year in the U.S., resulting in \$73 million in property damage annually. Fires are likely in vacant properties because of poor maintenance, faulty wiring, and debris. In the winter, homeless people burn candles for light and heat and may even bring in outdoor grills. But more importantly, vacant buildings are a primary target of arsonists... The National Fire Protection Association estimates that 6,000 firefighters are injured every year in vacant or abandoned building fires.

Vacant Properties: The True Cost to Communities, National Vacant Property Campaign (2005) at 4.

Abandon properties also create tremendous costs for cities and counties where they are located. Cities spend thousands of dollars per year to clean and demolish abandoned buildings.

In 2006, the City of Kansas City, Missouri demolished 219 abandoned houses. Affidavit of Nathan Pare (“Mr. Pare”) at Paragraph 3. Mr. Pare’s Affidavit is Exhibit 5 to the Appendix. The City has budgeted approximately \$1,500,000 for the demolition of dangerous, abandoned houses in 2007. *Id.* at Paragraph 5. This will pay to demolish approximately 200 abandoned houses, *id.*, and there are currently more than 300 abandoned houses on the City’s list of properties to be demolished. *Id.*

Lost tax revenues to the Missouri cities, counties and school districts are also a major cost of abandoned properties.

Private property owners also have to share the cost of abandoned properties. A study of more than 14,000 home sales in Philadelphia in 2000 found that houses that were within 150 feet of an abandoned house sold for \$7,627 less than a comparable home that had no nearby abandoned properties. “Blight Free Philadelphia,” Temple University Center for Public Policy and Eastern Pennsylvania Organizing Project (2001) at 20-22, available at <http://www.temple.edu/rfd/content/BlightFreePhiladelphia.pdf>. Lowered property values from properties that are near abandoned homes also, of course, also create lower property tax revenues.

Perhaps the worst damage done by abandoned properties is the toll that they exact on the quality of life of low and middle income people who have little or no choice but to live near abandoned properties. The increased crime, the increased risk of fires and the sense of powerlessness to improve the neighborhood that inherently accompanies living near run-down property greatly reduces the quality of life for urban homeowners and renters who live near abandoned homes. May Affidavit at Paragraph 16.

In short, abandoned houses in neighborhoods lead to higher crime, greater fire danger, increased maintenance and demolition costs, decreased tax revenues, decreased property values and decreased quality of lives for low and middle

income residents of neighborhoods in which abandoned properties are present.

Simply put, they are a blight on urban areas in Missouri.

POINTS RELIED ON

- A. The Trial Court Correctly Denied Relator's Motion for Summary Judgment, Because the Abandoned Housing Act does not Violate Relator's Substantive Due Process Rights in that the Act is a Narrowly Tailored Response to a Compelling State Interest.**

Bank of Columbia v. Okely, 17 U.S. 235 (1819);

Lane v. State Commission, 954 S.W.2d 23 (Mo. App. 1997).

ARGUMENT

A. The Trial Court Correctly Denied Relator's Motion for Summary Judgment, Because the Abandoned Housing Act does not Violate Relator's Substantive Due Process Rights in that the Act is a Narrowly Tailored Response to a Compelling State Interest in Decreasing Abandoned Properties.

Relators' lead argument is that the Abandoned Housing Act violates their substantive due process rights. Brief at 27-31.⁵

⁵ Amici have chosen to address only the core, substantive issue in Relators' Brief. There are, however, numerous other arguments, both substantive and procedural, for a finding in favor of Respondent. These include, but are not limited to: Relator's do not have standing to bring this action because there is insufficient evidence to prove their chain of title to the subject property; Relator's have improperly attempted to invoke the Court's jurisdiction in a mandamus action, when they have adequate remedies at law; and, Relators have improperly invoked substantive due process arguments because they do not have a fundamental interest that has been infringed and because the Abandoned Housing Act does not call for a governmental taking of property. *See* Brief of Respondent. Amici incorporate by reference all of Respondent's arguments in support of the denial of the writ in this matter.

The United States Supreme Court has long held that substantive due process rights were intended to protect individuals only from extreme government misconduct. As the Court held in *Bank of Columbia v. Okely*, 17 U.S. 235 (1819):

As to the words from Magna Carta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at last settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.

Id. at 235-36 (quoted in *Hurtado v. California*, 110 U.S. 516, 527, 4 S.Ct. at 117 (1884); and quoted in *County of Sacramento v. Lewis*, 118 S.Ct. 1708, 1716 (1998)).

In order to prove a substantive due process claim Relators “must establish that the government action complained of is ‘truly irrational,’ more than arbitrary, capricious, or in violation of state law.” *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 24-25 (Mo. App. 1997). Relators concede this point. Brief at 27-28.

Amici respectfully submit that the Abandoned Housing Act, both in general terms and as applied to relators, is not irrational.

As discussed in the Statement of Facts above, the state of Missouri has a serious problem with abandoned properties in urban neighborhoods. *See supra* at 10-16. Given all of the negative consequences of abandoned houses, the State of

Missouri has a compelling interest in taking action to reduce the number of abandoned houses in the state and to encourage neighborhood associations, community development corporations and other not-for-profit organizations to take action to renovate these properties.

The Abandoned Housing Act is a narrowly tailored response to Missouri's compelling state interest in reducing the many problems caused by abandoned houses. The Act only allows a plaintiff, not-for-profit organization to take possession of an abandoned property if:

- (1) The property has been continuously unoccupied by persons legally entitled to possession for at least six months prior to the filing of the petition;
- (2) The taxes are delinquent on the property;
- (3) The property is a nuisance; and
- (4) The organization intends to rehabilitate the property.

R.S. Mo. Section 447.622.

In addition to these requirements, the not-for-profit plaintiff must record a notice of lis pendens with the recorder of deeds of the county in which the property is located, providing notice to all potential future owners of the property that there is an Abandoned Housing Act case pending against the property.

R.S.Mo. Section 447.628.

There is also substantial judicial oversight of Abandoned Housing Act cases. The plaintiff in an Abandoned Housing Act case cannot take control over

the property until the circuit court judge assigned to the case has held a hearing on the issue. R.S.Mo. Sections 447.630, 447.632. In that hearing, if the defendant can show any cause as to why the plaintiff should be denied possession of the property, the court may, in its discretion, deny plaintiff's motion to take possession of the property. *Id.* The court is given this discretion even if the plaintiff meets all of the stated, statutory requirements of the Act. *Id.*

Furthermore, the not-for-profit organizations that take possession of these properties are required to provide quarterly reports to the court showing that they are actually making improvements to the property, including a precise accounting of their expenses for the renovation. R.S.Mo. Section 447.636.

Relators hypothesize that the Act could be used by unscrupulous, profit-seeking, not-for-profit organizations to take the homes of members of the military who are on assignment overseas, people who have been transferred to jobs in other cities or grandparents who are visiting their out-of-town grandchildren. Relator's Brief at 7-8. Relators, however, cite no evidence to support their allegations of abuse of the Act.

The fact is that, from Amici's substantial experience with the Act, the hypothetical abuses simply do not happen. Affidavit of Edward Linnebur ("Mr. Linnebur") at Paragraph 12. Mr. Linnebur's Affidavit is Exhibit 6 to the Appendix.

First, use of the Act is relatively uncommon. To amici's knowledge, the Kansas City Neighborhood Alliance ("KCNA") has used the Act more frequently

than any other organization in the Kansas City area. *Id.* at Paragraphs 4-7. From 1995 through February 2007, KCNA issued demand letters to a total of approximately 50-60 property owners, seeking to acquire their property under the Act. *Id.* at Paragraph 5. In approximately 20 of these cases, KCNA acquired the property, either as the result of formal litigation or through informal negotiations. *Id.* at Paragraph 6. So, even the most prolific not-for-profit organization in bringing cases under the Act averaged fewer than two property acquisitions per year (including negotiated settlements).

Second, relator's speculation that the Act might be used to deprive military personnel or care-giving grandparents of their homes, Brief at 7-8, has no basis in fact. *Id.* at Paragraphs 12-13. The organizations that have brought these cases have, consistent with statutory requirements, only brought action against houses with a history of serious codes violations and have required that the utilities for the houses have been shut off for at least six months before the case is brought. *Id.* at Paragraphs 13-14. Even then, KCNA always sought to negotiate with the homeowner before pursuing formal litigation. *Id.* at Paragraph 14.

Furthermore, the not-for-profit organizations that have used the Abandoned Housing Act have consistently lost money when they have renovated homes under the Act. *Id.* at Paragraphs 15-21. There have been a small number of situations in which not-for-profit organizations have made a net profit from the sale of a house acquired under the Act, but these are rare and the profits are small. To Amici's knowledge, the not-for-profit organizations that have renovated properties that

they have acquired under the Act have lost money overall in doing so. *Id.* at Paragraphs 20-21. KCNA, for example, on the average, lost between \$12,000 and \$15,000 on every house it acquired under the Act. *Id.* at Paragraph 21.

The litigation expenses alone in pursuing cases under the Act are likely to discourage any rouge not-for-profits from abusing the Act. Lawrence Hamel, an attorney who has been practicing for 23 years as an attorney with Legal Aid of Western Missouri (“LAWMO”), has acted as counsel to not-for-profit organizations in roughly 50 actions under the Act. Affidavit of Lawrence Hamel (“Mr. Hamel”) at Paragraphs 1-4. Mr. Hamel’s Affidavit is Exhibit 8 to the Appendix. These cases, on the average take approximately 100 hours per case to complete and can range from 50 to 300 hours per case for an experienced litigator. *Id.* at Paragraphs 5-6. Although LAWMO does not charge its clients for this work, the amount of time that the litigation requires would certainly discourage abuse of the Act.

Given that not-for-profit organizations consistently lose money and other precious resources in pursuing properties under the Act, their motive for pursuing these cases clearly is not greed. To the contrary, they have brought and continue to bring the actions because of the substantial benefit they provide to low-income, urban neighborhoods. Linnebur Affidavit at Paragraph 22.

The properties that these organizations have pursued were the source of serious blight on neighborhoods in which they were located. *Id.* at Paragraphs 8-11. Using the Act, these not-for-profit organizations have been able to turn these

blighted properties into owner-occupied homes. *Id.* at Paragraph 19. All of the codes violations on the properties have been eliminated. *Id.* at Paragraph 17. All back taxes have been paid. *Id.* at Paragraph 16. And properties that once offered invitations for crime and strongly discouraged neighborhood development now are at the other end of the spectrum, encouraging development, increasing neighborhood pride and improving the quality of life for their neighbors. *Id.* at Paragraph 24. A video showing abandoned houses that have been procured and renovated under the Act is Exhibit A to the Affidavit of Betsy Blake (“Ms. Blake”). Ms. Blake’s Affidavit is Exhibit 9 to the Appendix.

This work has also resulted in higher property values in the neighborhoods in which not-for-profit organizations have renovated homes acquired under the Act. *Id.* at Paragraph 24.

In addition to the statutory requirements of the Act and the discretion that circuit courts are given in finding cause to maintain possession of the property with the owner of record, the Act provides yet another safeguard to protect the interest of homeowners. Even after the not-for-profit organization has taken possession of the property, the owner may petition the court to regain possession. R.S.Mo. Section 447.638.

The court is required to return possession to the property owner if the owner can show that he or she has the capacity and resources to complete the rehabilitation plan for the property or if the owner pays the not-for-profit organization proper compensation for the cost of the renovation work that it has completed as of the time the property is to be returned to the owner. *Id.* Realtor's describe this as a "king's ransom" for return of the property. Brief at 14. In fact, it is simply reasonable compensation, to be determined by the court, for the not-for-profit's work in improving the property. This work will always improve the value of the property and it is reasonable that the home owner should pay for the reasonable value of that work, as determined by the Court.

Thus, the Act provides reasonable and limited circumstances under which a not-for-profit organization may take control of an abandoned property. It also provides close court supervision of the process, with substantial court discretion to make sure that the Act is not abused. Furthermore, as a matter of practice, the Act is used infrequently, but when it has been used it has proven itself to be an effective tool to remove the blight of abandoned properties from urban areas. There is no evidence that the Act has been abused.

CONCLUSION

In short, the Act is a narrowly tailored response to a compelling state interest. It is a rarely used, but noble, experiment in community development that has repeatedly transformed blighted properties in neighborhoods into centerpieces for community development.

Amici, therefore, respectfully submit that the Court should find that the Act does not violate Relators' substantive due process rights under the United States Constitution and should, therefore, deny Relators' Petition for a Writ of Mandamus in this matter.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(c) of the Missouri Rules of Civil Procedure, I
hereby certify that the foregoing brief is proportionately spaced, has a typeface of
13 points, complies with Rule 84.06(b) and contains 4,997 words.

By _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was mailed via U.S. Mail, on this 2nd day of October, 2007, to the following:

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No. SC88453

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI *ex rel.* AMBASSADOR PROPERTIES, L.L.C. and
KARL THOMAS,
Relators,

v.

THE HONORABLE THOMAS C. CLARK, JUDGE,
Circuit Court of Jackson County, Missouri,
Respondent.

HOUSE RESCUE CORPORATION,
A Missouri Not-for-Profit Corporation,
Real Party in Interest.

Original Proceeding on Petition for Writ of Mandamus
to the Jackson County Circuit Court, 16th Judicial Circuit,
Cause No. 04CV225744, the Honorable Thomas C. Clark, Presiding

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