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COMMENTS

THE PRIVATE-PUBLIC PARTNERSHIP: HOW LESSONS LEARNED FROM DISASTER RELIEF AND RECONSTRUCTION EFFORTS IN POST-KATRINA NEW ORLEANS CAN BE APPLIED TO POST-SANDY NEW YORK AND NEW JERSEY

Daniel Abramson

I. Introduction

In 2012, a Category 1 hurricane named Sandy made its way up the East Coast of the United States, leaving in its wake a path of destruction.¹ Despite the categorical lack of severity compared to other hurricanes, Sandy caused unprecedented devastation in New York and New Jersey which was said to be worse than that done by Hurricane Katrina, which hit New Orleans, Louisiana in 2005.² Sandy's devastation in the region included 94 of the known 125 U.S. fatalities caused by the storm as well as the destruction of tens of thousands of homes.³ While the residents were left to pick up the pieces, many asked what larger action was called for to address the destruction caused by Sandy.

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1. *Hurricane Sandy*, NASA, http://www.nasa.gov/mission_pages/hurricanes/archives/2012/h2012_Sandy.html (last visited April 18, 2013). A Category 1 hurricane is the least severe designation for a storm strong enough to be a hurricane. Categories range up to 5.
 2. See Charline Israel, *Hurricane Sandy's Devastation Deeper than Katrina*, CHRISTIAN BROADCASTING NETWORK (Nov. 27, 2012) <http://www.cbn.com/cbn-news/us/2012/November/Hurricane-Sandys-Devastation-Deeper-than-Katrina/> (quoting New York governor Cuomo as estimating the cost of storm damage in New York to be approximately \$32 billion); Brent Johnson, *Hurricane Sandy caused \$29.4B in Damage to N.J., Christ Administration Estimates*, THE STAR-LEDGER (Nov. 23, 2012), http://www.nj.com/news/index.ssf/2012/11/hurricane_sandy_causes_294b_to.html (quoting New Jersey governor Chris Christie as estimating the cost of storm damage in New Jersey to be approximately \$29.4 billion).
 3. The Associated Press, *Superstorm Sandy Deaths, Damages, and Magnitude: What We Know One Month Later*, HUFFINGTON POST (Nov. 29, 2012), http://www.huffingtonpost.com/2012/11/29/superstorm-hurricane-sandy-deaths-2012_n_2209217.html.

With the massive damage left behind in the New Orleans area in 2005 by Hurricane Katrina,⁴ questions arise as to what lessons can be learned as New York and New Jersey attempt to rebuild. In the years since Katrina, there have been various critiques of state action to handle the reconstruction of New Orleans, particularly in the hard-hit and low-income Ninth Ward.⁵ While opinions on the effectiveness and fairness of the reconstruction efforts vary, commentaries suggest that at least some state action is necessary to recover from a natural disaster.⁶

Given the wide breadth of Sandy's damage, any comprehensive grant of authority to a single body to repair the devastation will necessitate some level of governmental involvement. After analyzing the initial uncoordinated, inefficient local efforts in New Orleans to rebuild, followed by the establishment of the highly successful Louisiana Land Trust, I conclude by advocating for the enactment of New Jersey land bank enabling legislation and for the expansion of the New York land bank that was just enabled by legislation enacted last year.

II. Background

A. *New Orleans and Hurricane Katrina*

Hurricane Katrina was a Category 3 hurricane that made landfall on August 29, 2005 along the coast of Louisiana.⁷ The devastation consisted of 1,527 deaths, damage to 90,000 square miles of land—including the destruction of 300,000 homes—an estimated economic loss of \$150 billion and a population loss immediately following the storm of two thirds of New Orleans' residents.⁸ What may be most troubling is the slow rate at which the city recovered after the storm. Eighteen

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4. *Hurricane Katrina*, NAT'L OCEANIC AND ATMOSPHERIC ADMIN. (updated Dec. 29, 2005), <http://www.ncdc.noaa.gov/special-reports/katrina.html>.
 5. The Ninth Ward is the largest of 17 wards that make up New Orleans and is the easternmost downriver portion of the city. John J. Costonic, *New Orleans, Katrina and Kelo: American Cities in the Post-Kelo Era*, 83 TUL. L. REV. 395 (2008); William P. Quigley, *Obstacle to Opportunity: Housing that Working and Poor People can Afford in New Orleans since Katrina*, 42 LAKE FOREST L. REV. 393 (2007) [hereinafter Quigley, *Obstacle to Opportunity*]; William P. Quigley, *Thirteen Ways of Looking at Katrina: Human and Civil Rights Left Behind Again*, 81 TUL. L. REV. 955, (2007) [hereinafter Quigley, *Thirteen Ways of Looking at Katrina*]; Shelby C. Stone, *Two Tales of One City: Eminent Domain Post-Katrina and a Response to Kelo*, 53 LOY. L. REV. 115 (2007).
 6. Both citizens and academics point to instances in which successful redevelopment has been accompanied by a focused, organized, and even-handed approach by elected officials pairing with private groups. Eve Abrams, *Blight and Rebuilding New Orleans*, WWNO (May 20, 2012), <http://wwno.org/post/blight-and-rebuilding-new-orleans>.
 7. Quigley, *Thirteen Ways of Looking at Katrina*, *supra* note 5, at 956; *Hurricane Katrina*, *supra* note 4.
 8. DANIEL A. FARBBER & JIM CHEN, *DISASTERS AND THE LAW: KATRINA AND BEYOND 17* (2006); John J. Costonic, *New Orleans, Katrina, and Kelo: American Cities in the Post-Kelo Era*, 83 TUL. L. REV. 395, 400-01 (2008).

months after Katrina, approximately 300,000 former New Orleans residents had not returned and drinkable tap water was not restored to the entire city for over a year.⁹

The population loss to New Orleans flung survivors of Katrina all across the country.¹⁰ Because New Orleans had a significant problem with affordable housing prior to the storm, the destruction of those properties and subsequent removal of the residents led to a wave of quick evictions.¹¹ The problem with this policy was that low income residents had no way of knowing that they had been served an eviction notice by their landlord having tacked one on their door.¹² Federal litigation in the fall of 2005 changed the requirements to allow more fair practices to tenants, but the resulting restrictions on development hindered rebuilding efforts and drove the cost of the limited available rentals very high.¹³

In response to the challenges of rebuilding blighted and storm-wrecked New Orleans, the governor and state legislature created the Louisiana Recovery Authority (LRA), which was charged with overseeing, planning, and coordinating the distribution of funds received for hurricane recovery.¹⁴ Local recovery efforts in New Orleans were bogged down by a multitude of competing plans that the LRA was initially unsuccessful in distilling and bringing to fruition, despite its considerable financial and legal authority over planning in the affected areas and millions of dollars spent on various private consulting firms and think tanks.¹⁵ However despite the disjointed beginnings of

9. Quigley, *Obstacle to Opportunity*, *supra* note 5, at 393-95.

10. Federal Emergency Management Agency (FEMA) has been criticized for their handling of displaced New Orleansians. Congress estimated that approximately 78,000 residents were left behind in the city who lacked the means to transport themselves to shelters and were taken to the New Orleans Convention Center. From there they were bused to various shelters all across the U.S. A correlation has been suggested between the distance from home people were sent and their rate of poverty. Quigley, *Thirteen Ways of Looking at Katrina*, *supra* note 5, at 959-60.

11. Louisiana state law provides that adequate notice of eviction is met by "tacking" an eviction notice on the door of the residence, with eviction hearings following as soon as a few days later. See LA. CODE CIV. PROC. ANN. arts. 4701-05 (1998). Under Article 4732, "[t]he court shall make the rule returnable not earlier than the third day after service thereof, at which time the court shall try the rule and hear any defense which is made."

12. Some residents would only learn that eviction proceedings had occurred upon returning home after being told their neighborhood had been cleared and restored only to find their furniture gone and someone else living in their house. Quigley, *Obstacle to Opportunity*, *supra* note 5, at 401.

13. See Quigley, *Obstacle to Opportunity*, *supra* note 5, at 401.

14. *Id.*; LA. REV. STAT. ANN. § 49:220.5(C)(1)(a) (Supp. 2007), *repealed by* Acts 2006, 1st Ex.Sess., No. 5, § 4, eff. July 1, 2010.

15. Various initiatives included an unfunded program by the mayor called Bring New Orleans Back Commission, a plan by a D.C.-based think tank called the Urban Land Institute, and a \$2.9 million grant to a Miami consultant to create a plan for the 49 affected neighborhoods. The LRA put pressure on the municipality for failing to advance one cohesive proposal

recovery efforts in post-Katrina New Orleans, the LRA, together with the Office of Community Development and the leadership of the various parishes, was able to establish the Road Home Program.¹⁶ The Road Home Program's broad authority to engage in matters related to its mission is tempered by existing law and infrastructure as well as its status as a nonprofit corporation.¹⁷ In the years since its founding, the Road Home Program has boasted remarkable success in the rebuilding of the Louisiana coastal region.¹⁸

B. Land Banks

Land banks are government or nongovernmental nonprofit organizations that work towards eliminating blight through "the conversion of vacant, abandoned properties into productive use."¹⁹ Land banks operate by purchasing properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties.²⁰ Land banks are "[e]nabled by state legislation and enacted by local ordinances."²¹ This allows individual communities to determine whether they wish to make use of land bank enabling legislation and to tailor individual articles of incorporation for the land bank to combat the problems

and created its own plan called the Unified New Orleans Plan (UNOP). Quigley, *Obstacle to Opportunity*, *supra* note 5, at 408-09.

16. The Road Home Program (doing business as the Louisiana Land Trust) has been given broad powers to create a land bank and handle all matters, including the entering into of any agreements necessary to carry out its stated mission which is "[t]o finance, own, lease as lessee or lessor, sell, exchange, donate or otherwise hold or transfer a property interest in housing stock damaged by Hurricane Katrina or Hurricane Rita." LOUISIANA LAND TRUST, <http://www.lalandtrust.us/> (last visited April 7, 2013).
17. The Louisiana Land Trust is governed by a seven member Board of Directors, "with one member appointed from a list of three persons nominated by the president of the Senate and with one member appointed from a list of three persons nominated by the speaker of the House of Representatives. No less than three of such members shall be a domiciliary of one of the parishes most affected by Hurricane Katrina and no less than three members be a domiciliary of one of the parishes most affected by Hurricane Rita." *Id.* Additionally, any project undertaken by the Road Home Corporation must adhere to the policy guidelines set forth by the LRA and provide for the financing thereof as administered by the office of community development. 40 La. Rev. Stat. § 600.66 (2013).
18. Through the program, almost 130,000 Louisiana coastal residents have received \$8.9 billion dollars in aid to rebuild their homes and rental properties, which comprises more than 99% of eligible applicants. THE ROAD HOME, <http://www.road2la.org/Default.aspx> (last visited April 7, 2013).
19. *Foreclosure Recovery and Land Banks*, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, <http://www.hud.gov/offices/cpd/about/conplan/foreclosure/landbanks.cfm> (last visited April 18, 2013).
20. *See id.*
21. OFFICE OF POLICY DEVELOPMENT AND RESEARCH, DEP'T OF HOUSING AND URBAN DEVELOPMENT, REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 1 (Aug. 2012), <http://huduser.org/portal/publications/landbanks.pdf>.

specific to that community.²² By concentrating authority and bargaining power, municipalities may handle the various transactions necessary to repurpose and redevelop blighted areas in the most efficient manner possible. Land banks are a relatively new practice that are gaining popularity as a means for blighted communities to combat the negative effects of high foreclosure rates and the high volume of abandoned properties in deindustrialized urban areas.²³ Given land banks were originally designed for the purpose of addressing high foreclosure and abandonment, Louisiana's adoption of the model for storm relief is a novel and inventive method of handling a similar problem.²⁴

C. *New York and New Jersey and Hurricane Sandy*

i. New Jersey

Prior to the storm, New Jersey was facing challenges in real estate and finance far above the national average.²⁵ In September, New Jersey ranked second only to Florida as the state with the highest number of mortgages facing foreclosure.²⁶ One suspected cause of the above-average backlog in foreclosure proceedings in New Jersey was a state law that mandates judicial review of all foreclosure cases.²⁷ When Sandy hit, she caused major damage to the Jersey Shore and Atlantic City, which are the primary destinations for the state's \$38 billion tourism industry.²⁸ Despite the high rates of foreclosure and blight across the state of New Jersey prior to Sandy, the state has declined to enact land bank enabling legislation.²⁹

22. *Id.* at 1-2.

23. *Id.*

24. For more information on land banks, *see generally* OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, DEP'T OF HOUSING AND URBAN DEVELOPMENT, NEIGHBORHOOD STABILIZATION PROGRAM: LAND BANK FACT SHEET (JULY 9, 2010), <http://www.hud.gov/offices/cpd/about/conplan/foreclosure/doc/landbanksfactsheet.doc>.

25. John Gittlesohn, *Sandy Batters New Jersey's Struggling Housing Market*, BLOOMBERG BUSINESSWEEK (Nov. 1, 2012), <http://www.businessweek.com/news/2012-11-01/sandy-slamming-new-jersey-s-already-struggling-housing-market#p1>.

26. 7.3% of NJ mortgages were seriously delinquent or had foreclosure proceedings pending compared with the national average of 3.3%. *Id.*

27. The law was in response to the sharp rise in foreclosures in 2008 in order to protect mortgagees as victims of predatory lending and the economy that suffers as a result of high foreclosure rates. Save New Jersey Homes Act of 2008, 46 N.J. STAT. ANN. tit. 46, Subt. 2, Ch. 10B §§ 36-52 (West 2008); Gittlesohn, *supra* note 25; Stark & Stark, *Mandatory Mediation in New Jersey Foreclosure Cases*, NEW JERSEY LAW BLOG (Oct. 29, 2008), <http://www.njlawblog.com/2008/10/articles/community-associations/mandatory-mediation-in-new-jersey-foreclosure-cases/>.

28. Brent Johnson, *Hurricane Sandy caused \$29.4B in Damage to N.J., Christ Administration Estimates*, THE STAR-LEDGER (Nov. 23, 2012), http://www.nj.com/news/index.ssf/2012/11/hurricane_sandy_causes_294b_to.html.

29. Identical bills were put before the New Jersey State Senate and Assembly on January 11, 2012 to allow municipalities to designate existing entities as

ii. New York

New York was in better economic shape than New Jersey when the storm hit, but was still damaged badly by Sandy.³⁰ Though New Jersey was second only to Florida in the volume of seriously delinquent mortgages, New York was quickly catching up.³¹ Foreclosure proceedings in New York take longer than anywhere else in the country which is causing a swelling backlog of cases that is worrying to investors.³² The high rates of foreclosure, blight, and inefficient management practices in place to handle these concerns have led to broader action being taken to rebuild affected communities, including the passage of land bank enabling legislation in 2012.³³

D. *Eminent Domain Combating Blight*

Eminent domain, like the police power, is not enumerated specifically, but is simply understood to exist.³⁴ When deciding whether the government is constitutionally entitled to invoke eminent domain, two determinations must be made: first, whether the taking is a valid “public use” and, second, whether the property owner has been provided “just compensation.”³⁵

land banks, yet the bills have not been voted on as of the writing of this recent development. Kate M. Kelly, *New Jersey Advocates Advance New Land Bank Legislation*, MONARCH HOUSING ASSOCIATES, (Mar. 7, 2012), <http://monarchhousing.org/2012/03/07/new-jersey-advocates-advance-new-land-bank-legislation/>.

30. See Israel, *supra* note 2.

31. A seriously delinquent loan is one that is 90 days late or in foreclosure. Dan Levy & Prashant Gopal, *New York Area has Biggest Jump in Foreclosure Filings*, BLOOMBERG BUSINESSWEEK, (Oct. 25, 2012, 12:45 PM) <http://www.bloomberg.com/news/2012-10-25/new-york-area-has-biggest-jump-in-foreclosure-filings.html>.

32. In the third quarter of 2012, when Sandy hit, the foreclosure process in New York reportedly took “1,072 days, up from 974 days a year earlier.” New Jersey came in second at 931 days. *Id.*

33. Gov. Cuomo called the program “[a] central part of [his] administration’s urban agenda to help transform struggling urban communities. With these applications being approved, municipalities will be able to return vacant, abandoned and tax delinquent properties to productive use.” Press Release, Governor’s Press Office, Governor Cuomo Announces Five Municipalities Approved to Create Land Banks (May 17, 2012), <http://www.governor.ny.gov/press/05172012-Five-Municipalities-Approved-Create-Land-Banks>.

34. The police power is how governments, both national and state/local, possess the power to act in the citizens’ best interests. Broadly understood to mean any regulations that pertain to the health, safety, and welfare of the citizens, eminent domain is the power by which governments may force a sale of private property by the owner if the land will be put to a public use either by the government itself or to be assigned to a private third party for such a use.

35. The Fifth Amendment of the United States Constitution curbs the inherent power of eminent domain by requiring that any taking of private property for a public use must be accompanied by just compensation paid to the

The definition of “public use” in relation to eminent domain is a far more elusive concept than “just compensation” and has been left to the courts and legislatures to define. The definition of “blight” has also remained vague and elusive.³⁶ The Supreme Court has historically taken a highly deferential approach to the determination of blight and public use.³⁷ In the decades since *Berman v. Parker*, eminent domain has been used with ranging levels of success to combat blight in urban areas.³⁸ In addition to the elimination of blight, the Supreme Court has also recently held that major, private, commercial redevelopment of a distressed area may also satisfy the Fifth Amendment in *Kelo v. City of New London*.³⁹ The *Kelo* ruling was highly controversial, though it had the effect that the Supreme Court apparently intended.⁴⁰ By granting a high level of deference to municipal efforts to combat blight, the ruling invited state legislatures to provide additional protection to property owners as they deemed necessary to prevent the abuse of eminent domain.⁴¹ While various schools of

owner. “No person. . . shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. CONST. amend. V. Just compensation is typically defined as the “fair market value” (FMV) of the property at the time of the commencement of the action as opposed to the actual sale. FMV is typically settled as what the property would fetch on the open market absent the eminent domain action.

36. Blight is a term for the areas of a city affected by high poverty and crime to such a degree that their very affectation has been argued to be a potential cause for the complete economic destruction of an entire community. This vague and relative definition has drawn some criticism since it opens the door to potential abuse of the eminent domain power by private parties seeking to develop on owned property. Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 6, 18 (2003).
37. The Supreme Court originally held that private-to-private transfers were not in violation of the Fifth Amendment and that appellant property owners’ contention that “blight” should be defined and interpreted narrowly was invalid. The Court went on to hold that the D.C. legislature was more qualified than the Court to determine the scope of blight in its own city and that, because the taking was found not to violate the Constitution, it would defer to the city’s determination. *Berman v. Parker*, 348 U.S. 26 (1954).
38. The most notable movement, which is now largely considered to have been a failure, was “urban renewal,” which was a popular movement that cleared slums across American cities. The most popular criticisms are that it destroyed existing communities, concentrated poverty, and effectively gutted sections of cities that have yet to be fully redeveloped. See Pritchett, *supra* note 36.
39. *Kelo v. City of New London*, 545 U.S. 469 (2005).
40. The majority notes the Court’s historic practice of deference, “Our earliest cases in particular embodied a strong theme of federalism, emphasizing the ‘great respect’ that we owe to state legislatures and state courts in discerning local public needs.” *Id.* at 482.
41. Unease with the *Kelo* decision prompted no fewer than 42 states to enact reactionary legislation to curb what was seen as a large grant of power by the Court. Costonis, *supra* note 8. For an inventory of state post-*Kelo* responses, see 50 State Report Card: *Tracking Eminent Domain Reform Legislation*

thought have influenced different states' legislative reactions to *Kelo*, both New York and New Jersey have provided in their constitutions that blight is a permissible justification for eminent domain and have upheld that principle with case law.⁴²

III. Analysis

A. *Private-Public Partnership for Greatest Efficiency*

Large-scale social problems like blight or widespread destruction following a storm such as Sandy or Katrina are best handled through a cooperative partnership between the public and private sectors. Sweeping grants of authority necessary for the implementation of broad redevelopment efforts must be made by the state in order to be constitutionally valid and enforceable.⁴³ However the state alone cannot efficiently manage such projects. This is evidenced by the initial failure of the LRA and various private actors to put forth any cohesive plan of action for rebuilding New Orleans following Katrina.⁴⁴ However, the remarkable rate of success of the Road Home Program is further evidence of the benefits of a private-public partnership.⁴⁵

Absent a grant of power by the state like the Louisiana Road Home Housing Corporation Act, no private entity, whether profit-seeking, nonprofit, or charitable, would ever have valid authority to initiate all the necessary actions that have allowed the Louisiana Land Trust to be so successful.⁴⁶ If a change in the method of allocating relief and rebuilding the coastal region had not been made, the inefficiency of the LRA's initial efforts combined with competing private firms and interests would have continued. It is the state's responsibility to ensure that any grant of power such as the Act is tightly controlled so that the private actor is allowed to operate with market efficiency while continuing to act in the interests of the legislature's constituents as opposed to other market forces.⁴⁷ However, absent profit motive,

Since *Kelo*, CASTLE COALITION (2007), <http://www.castlecoalition.org/about/38> (follow "50 State Report Card" hyperlink; then follow "All states with synopsis and grade summary" hyperlink) (last visited April 9, 2013); *State Eminent Domain and Ballot Measures*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Jan. 1, 2012), <http://www.ncsl.org/issues-research/env-res/eminent-domain-legislation-and-ballot-measures.aspx>.

42. N.J. CONST. art. VIII, § 3, para. 1; N.Y. CONST. art. XVIII, §1; Ronald K. Chen, Gallenthin v. Kaur: A Comparative Analysis of How the New Jersey and New York Courts Approach Judicial Review of the Exercise of Eminent Domain for Redevelopment, 38 FORDHAM URB. L.J. 987, 988-89 (2011).

43. Only the government is legally empowered to initiate an eminent domain action or a tax seizure. U.S. CONST. amend. V.

44. See Quigley, *Obstacle to Opportunity*, *supra* note 5, at 408-09.

45. For more information on the Road Home Program's success, see Background *supra* Part II.A and accompanying notes 16-18.

46. La. Rev. Stat. § 40:600.66 (2008).

47. This is indicated by the Supreme Court's precedent set by the *Kelo* ruling, which upheld private-to-private transfers via eminent domain actions as

the state alone cannot efficiently handle such large-scale market initiatives.⁴⁸ This is exemplified by the legislation in New York and New Jersey that makes foreclosure proceedings take longer in the two states than anywhere else in the country.⁴⁹

B. *New York and New Jersey*

The laws inhibiting foreclosure proceedings in New York and New Jersey are designed to protect homeowners who may have been the victims of predatory lending.⁵⁰ While well intentioned, the market effects of these after-the-fact attempts at consumer protection are significant, negative, and cannot be ignored.⁵¹ The situation created by the growing shadow inventory may become disastrous in the region with so many homeowners affected by Sandy.⁵² In order to effectively repair the regions affected by Sandy and most efficiently allocate the billions of dollars in federal relief, both states should apply lessons taught by Louisiana and enable state land trusts.⁵³

Land bank enabling legislation facilitates the private-public partnership while still allowing individual municipalities the sovereign determination whether and how to most efficiently implement the program to meet their specific needs.⁵⁴ This notion is consistent with the precedent set by the Supreme Court in *Kelo*, acknowledging the efficiency of private actors, deferring to local municipalities in their own determinations of blight and recovery, and leaving the decision as to whether to provide greater protection in eminent domain actions to the states themselves.⁵⁵ The facilitation of a central land trust in each state will concentrate bargaining power and allow for less risky and

constitutional, and prompted individual states to afford further protection to property owners if they saw fit. *Kelo v. City of London*, 545 U.S. 469 (2005); see also information on legislative responses to *Kelo*, *supra* note 41.

48. The “profit motive” is a term used by economists to refer to the motivation that enables private entities who must remain profitable to survive to manifest efficient practices that the state, which is not motivated by a need to achieve profits to survive, cannot match. PAUL BOWLES, *CAPITALISM: A SHORT HISTORY OF A BIG IDEA* 9 (2007).

49. See *supra* note 27.

50. Stark, *supra* note 27.

51. The disabling legislation has created a ballooning backlog “shadow inventory” that “remains a threat to [the states’] home price stability and growth.” Levy & Gopal, *supra* note 31.

52. *Id.*

53. Initial emergency relief in the amount of \$9.7 billion was issued to the affected areas. Since then Congress has approved \$50.7 billion in emergency aid for storm victims. Hurricane Sandy Relief Bill, H.R. 41, 113th Cong. § 1 (2013); Raymond Hernandez, *House Approves \$50.7 Billion in Emergency Aid for Storm Victims*, THE NEW YORK TIMES (Jan. 15, 2013), http://www.nytimes.com/2013/01/16/nyregion/house-passes-50-7-billion-in-hurricane-aid.html?_r=0.

54. See OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, DEP’T OF HOUSING AND URBAN DEVELOPMENT, *supra* note 24.

55. *Kelo v. City of London*, 545 U.S. 469 (2005).

less expensive redevelopment in the same way that the Road Home Act put an end to the skyrocketing rents caused by the shortage of units that resulted from the judicial interference with redevelopment in New Orleans.⁵⁶

Additionally, the concentrated bargaining power would add some desperately needed efficiency to the backlogged states by reducing tertiary costs associated with the various transactions necessary for rebuilding.⁵⁷ Another advantage is that this would address the existing situation with the shadow inventory in both states as it relates to the process of storm recovery without attempting to take on the additional problem of foreclosure backlog or requiring that the legislature abandon their existing methods of lender protection. Proponents of measures like the Save New Jersey Homes Act would likely reject any attempt to establish a central land trust equivalent to the Road Home Corporation if they believed it would come at the cost of such measures.⁵⁸ This would make equivalent legislation to Louisiana's Road Home Act much easier to pass in each state and would allow for the swift addressing of the Sandy crisis while leaving the more controversial issue of foreclosure reform to be dealt with in the future.

IV. Conclusion

The need for drastic and efficient action in the critical revitalization of communities, devastated either by blight or hurricane, necessitates allowing one body to act with relative autonomy. This has been seen with the success of land banks nationally and in Louisiana where the Road Home Corporation can boast the replacement of 99 percent of qualified applicants to their homes.⁵⁹ In situations where such a large grant and use of power is necessary, it is important the government facilitate such action to ensure that the grant is legal, constitutional, and tailored so that the interests of the public are protected. Since the government is never as efficient as private actors in the marketplace, the optimal solution is to facilitate redevelopment through a private-public partnership by issuing carefully considered grants of authority in land bank organizations. This will facilitate market-efficient outcomes and operations as well as keep risk down. So long as the

56. Quigley, *Obstacle to Opportunity*, *supra* note 5, at 401.

57. Tertiary costs are costs that result from various legal fees resulting from a transaction. Tertiary costs are not sought by any party or negotiated as part of the deal, nor does any party benefit from them other than the lawyers and various legal administrations who collect them in order to facilitate the bargain. Tertiary fees must be internalized by one or all of the parties to a negotiation and can rob the process of efficiency, ultimately jeopardizing contracts that otherwise might have been formed.

58. 46 N.J. STAT. ANN. tit. 46, Subt. 2, Ch. 10B §§ 36-52 (West 2008) (state law mandating judicial review in all foreclosure cases).

59. THE ROAD HOME, <http://www.road2la.org/Default.aspx> (last visited 1/27/12).

government ensures that the people and individual property owners do not unconstitutionally suffer as a result of the grant of power, everyone's needs will be met in the most efficient and prudent manner possible.