
Political Profiteering:

How Forest City Enterprises Makes Private Profits at the Expense of America's Taxpayers



CAUSE
of ACTION

Advocates for Government Accountability



Staff Investigative Report
Political Profiteering
*How Forest City Enterprises Makes Private Profits at the
Expense of America's Taxpayers*

PART III OF III:
Unfair Enrichment: How Forest City Enterprises Acts Above the Law

About Cause of Action

Mission

Cause of Action is a non-profit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Our mission is to expose the ways our government is playing politics in its use of taxpayer dollars, in its decision-making on behalf of individual Americans, and in how it seeks to burden the economic opportunities that employ us and make our lives better. Cause of Action seeks to prevent the federal government from politicizing agencies, rules, and spending by bringing transparency to the federal grant and rule-making processes. Cause of Action's representation of organizations and individuals helps to educate the public about government overreach, waste, and cronyism.

Investigative Function

Cause of Action uses investigative tools to attack federal government waste, fraud, and mismanagement, as well as overreach in the form of arbitrary and burdensome regulations. Cause of Action employs "sunshine advocacy" tools to achieve its goals, including document and information requests, lawsuits, ethics complaints, and requests for investigation. Through its use of advocacy and investigatory tools, Cause of Action promotes transparency, integrity, and accountability in government. Cause of Action's investigations help expose the ways our government is mismanaging federal funds and educate the public on how government can be made more accountable. Rigorous oversight can prevent taxpayer dollars from being wasted on improper activities.

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I. Introduction

A new neighbor has moved to your community. But it is not someone who shares your backyard, a parking space, or neighborhood watch duties. Rather, this neighbor plans to buy the influence of your mayor, your city council member, and your Senator with campaign contributions. He wants his political cronies to declare your neighborhood blighted, and condemn its homes and businesses, so that he can build luxury apartment buildings, shopping centers, and a basketball arena. He wants to congest your streets with thousands of cars and people. And your new neighbor wants *you* to pay for it. He plans to get millions of dollars in public subsidies, tax breaks, and tax-exempt financing by spending enormous amounts lobbying your representatives in government. Not long after the ink dries on these deals, and public funding is secured, he will sell the development before it is finished, leaving you and your community without the promised public benefits.

Your new neighbor is Forest City Enterprises (FCE), a publicly-traded real estate development company with over \$10 billion in assets. Its business model involves getting unfair deals and making huge profits with the political influence it buys with campaign contributions and, if necessary, bribes.

This third and final report is the culmination of Cause of Action's (CoA) 18-month investigation of FCE, its business practices, and the influence it wields over communities and public officials through enormous political spending and lobbying. This investigation involved thorough statistical analyses of millions of dollars in public subsidies, gross and net profits, and campaign spending in federal, state, and local races across the country. It also required the review of thousands of pages of documents, including legal filings, legal opinions and transcripts; the filing of Freedom of Information Act requests in New York, Texas and the District of Columbia; and telephone and in-person interviews with individuals with personal knowledge of the events that are described herein.

CoA's first report in this series showed that FCE has a business model that depends upon political profiteering. FCE consistently uses public money and government influence to reap millions in profit. Using highly-paid lobbyists, political connections, campaign contributions, and strategic hiring of government officials, FCE obtains lavish public subsidies, tax-exempt financing, and eminent domain condemnations of private land. Between 2002 and 2012, FCE, its subsidiaries, and its employees spent \$23 million on campaign contributions and lobbying at the federal, state, and local level. In return it received 52 direct and indirect government subsidies or financial benefits totaling at least \$2.6 billion. These subsidies amounted to 23% of FCE's \$11.4 billion revenue during that time.

In its second report, CoA exposed FCE's pattern of promising local governments that its development projects would generate plentiful jobs, housing, economic development, and tax revenues. However, once FCE receives public financial support, it often renegotiates or delays implementation of the benefits that it has promised. FCE promised to create more than 70,000 permanent jobs and 3,750 affordable housing units for projects in Brooklyn and Albuquerque,

but has actually produced only 3,000 permanent jobs, in total, and built no affordable housing units. Meanwhile, FCE took in \$277.2 million in public subsidies from those communities after contributing \$310,450 to local political candidates and spending over \$8.6 million on lobbyists. In short, FCE lobbies, profits, and then bilks taxpayers by breaching its promises to the community.

This final report details ways in which FCE violated federal law, took advantage of manipulated census data, and poured hundreds of thousands of dollars into funding ballot initiatives supporting eminent domain for private use. FCE's New York subsidiary, Forest City Ratner (FCR), appears to have violated federal regulations in order to attract foreign investors to support its \$4.9 billion Atlantic Yards development in Brooklyn. It took advantage of a federal immigration program using manipulated unemployment data and misleading advertising. In 2012, when the Department of Justice secured convictions of local politicians involved in a bribery scheme that was hatched to get approval of FCR's development in Yonkers, N.Y., the evidence at trial clearly showed that at least two FCR executives were also involved. Yet, despite this evidence, no one at FCR was ever prosecuted. Finally, FCE has benefited from, and actively lobbied to expand, the government's condemnation of property for private development using eminent domain, the power that allows government to take private property for public use. All of these activities show that FCE has ignored or subverted legal norms in order to maximize its profits.

While FCE continually looks for opportunities to expand its enterprise across the country, the company and its executives often employ nefarious schemes in order to secure the land, money, and votes needed to secure multi-million dollar development contracts. In sum, FCE exploits political connections for enormous profits and fails to follow the law—the epitome of political profiteering.

II. Findings

ATTRACTING INVESTORS BY MANIPULATING UNEMPLOYMENT DATA: ATLANTIC YARDS AND THE EB-5 VISA PROGRAM

- **Finding:** *The New York Department of Labor (NYDOL) and the Empire State Development Corporation (ESDC) manipulated census data in order to create a “targeted employment area” for the New York City Regional Center (NYCRC) and Forest City Ratner (FCR) in violation of U.S. Citizenship & Immigration Services (USCIS) regulations.*
- **Finding:** *FCR and NYCRC, with the cooperation of New York elected officials, misleadingly advertised the Atlantic Yards Project to potential investors by keeping the actual purpose of EB-5 funding ambiguous and exaggerating job creation predictions. Moreover, FCR misled the public by promising that EB-5 would create a substantial number of jobs, despite ESDC predictions to the contrary.*
- **Finding:** *Job statistics for the Atlantic Yards Project are not based on actual numbers but on estimates derived from economic models and “reasonable methodologies.” Nevertheless, due to questionable USCIS rules, Atlantic Yards EB-5 investors received credit for job creation.*
- **Finding:** *The job creation predictions for the Atlantic Yards Project appear to violate federal securities law. Moreover, NYCRC contracted the same immigration lawyer and economist as GreenTech Automotive, another crony corporation currently under investigation by the Securities and Exchange Commission.*

ANATOMY OF A BRIBE: FOREST CITY RATNER AND THE RIDGE HILL DEVELOPMENT

- **Finding:** *The Department of Justice (DOJ) failed to prosecute FCR executives who bribed Yonkers City Council Member Sandy Annabi. FCR executives covered up payments to Yonkers Republican Party Chairman Zehy Jereis under the guise of a consulting contract for “retail hunting” in order to protect themselves from federal criminal liability when, in fact, Jereis’s consulting contract was in exchange for Annabi’s vote approving FCR’s Ridge Hill project. FCR executives made false promises and used political pressure to influence Annabi.*
- **Finding:** *Evidence at trial showed that Bruce Ratner appears to have participated in the bribery scheme because he gave Jereis the consulting job.*
- **Finding:** *In 2010, two Members of Congress wrote to U.S. Attorney Preet Bharara about concerns that political favoritism affected DOJ’s decision not to*

prosecute FCR. CoA's investigation reveals that FCE and members of the Ratner family have connections with noteworthy political appointees in the Obama Administration's Department of Justice, including the U.S. Attorney General. They made substantial campaign contributions to the Democratic Party and Democratic candidates in New York.

PUBLIC SEIZURES FOR PRIVATE BENEFITS: ATLANTIC YARDS AND EMINENT DOMAIN

- **Finding:** *FCE defended and benefited from eminent domain seizures for private development in California and New York. FCR benefited from eminent domain seizures for its Atlantic Yards Project and New York Times Building. FCE's California subsidiary, Forest City Residential West (FCRW), benefited from eminent domain seizures for The Uptown project in Oakland. FCRW spent a combined \$350,000 on California ballot initiatives in 2006 and 2008 to protect broad eminent domain powers that benefit private developers.*

III. Attracting Investors by Manipulating Unemployment Data: Atlantic Yards and the EB-5 Visa Program

The Immigrant Investor Program, or Employment-Based Preference Five (EB-5), is a federal program that allows foreign investors to finance commercial enterprises in the United States in exchange for a temporary visa.¹ Congress established the program in 1990 in order to facilitate “job creation and capital investment by foreign investors.”² The program consists of a simple *quid pro quo*: once a foreigner has invested \$1 million in a commercial enterprise that creates a minimum of 10 full-time jobs, the conditions on his temporary visa are lifted and he may receive a green card.³ In 1992, Congress created the “Pilot Program,” which lowered the \$1 million investment requirement to \$500,000, if a project were to be located in a rural area or area of high unemployment, and which no longer required direct investments and active management of commercial projects. Under the Pilot Program, instead of requiring direct investment and active management, foreigners seeking U.S. visas are permitted to invest in “regional centers,” which act as middleman institutions by making investments on behalf of EB-5 applicants. In short, EB-5 functions as a “cash-for-visas” program, allowing wealthy foreigners access to permanent residency in the U.S., and giving American corporations access to foreign capital without having to share corporate management.

- **Finding:** *The New York Department of Labor (NYDOL) and the Empire State Development Corporation (ESDC) manipulated census data in order to create a “targeted employment area” for the New York City Regional*

¹ *EB-5 Immigrant Investor*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=facb83453d4a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=facb83453d4a3210VgnVCM100000b92ca60aRCRD> (last visited Sept. 4, 2013).

² *Id.*

³ 8 C.F.R. § 204.6(f)(1) and (j)(4)(i). A “direct job” is understood as “full-time employment” of a minimum of 35 working hours per week. *Id.* § 204.6(e).

Center (NYCRC) and Forest City Ratner (FCR) in violation of U.S. Citizenship & Immigration Services (USCIS) regulations.

The focal point of the Atlantic Yards Project, the development built by FCE's New York subsidiary, Forest City Ratner's (FCR) is the Barclays Center, a sports arena located in the Prospect Heights neighborhood of Brooklyn, New York. The Barclays Center was built to bring the New Jersey Nets, a professional basketball team, to Brooklyn. In addition to the arena, the Atlantic Yards Project was designed to include 16 high-rise buildings containing business and residential units, including 2,250 units of affordable housing—none of which has been built.⁴

The New York Department of Labor (NYDOL)—at the request of the Empire State Development Corporation (ESDC), New York City Regional Center (NYCRC) and FCR—manipulated census data in violation of the EB-5 program's rules to designate an area of “high unemployment” around the Atlantic Yards Project, thus permitting FCR to take advantage of the EB-5 Pilot Program. Additionally, both FCR and NYCRC exaggerated the project's economic benefits to attract foreign investors.⁵

Under the rules of the EB-5 Pilot Program, foreigners can apply for a conditional U.S. visa with a \$500,000 investment—half the usual requirement of \$1 million—provided the investment is made in a rural area or in an area of high unemployment.⁶ According to U.S. Citizenship and Immigration Services (USCIS) regulations, state governments, or authorized state agencies, designate regions of high unemployment that must have an unemployment rate of at least 150% of the national average.⁷ Under these same regulations, states must designate these “targeted employment areas” (TEA) along the boundaries of existing “geographic or political subdivisions.”⁸ Once USCIS approves a state-designated TEA, states may certify EB-5 petitions from foreign investors who invest in commercial ventures located in the new district, either directly or through a regional center.⁹

However, the state agencies that designate TEAs can draw these districts so as to artificially increase their aggregate unemployment rates. This leaves open the possibility that developers of politically-favored projects will be able to attract foreign investors with the allure of U.S. visas when EB-5 funding might not otherwise be available. The likelihood of such abuse is increased when one considers that there is effectively no oversight of how states designate TEAs because USCIS, the federal agency responsible for administering the EB-5 program, routinely defers to a state's TEA determinations without reviewing the data used to calculate unemployment levels in the TEA.¹⁰ Moreover, USCIS has accommodated “politically connected

⁴ CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICA'S TAXPAYERS 6 (Aug. 2, 2013), *available at* <http://causeofaction.org/wp-content/uploads/2013/08/130731-Forest-City-Political-Profitteering-Report-Part-I1.pdf>.

⁵ *See infra* notes 34-104 and accompanying text.

⁶ 8 C.F.R. § 204.6(e).

⁷ *Id.* § 204.6(j)(6)(ii).

⁸ *Id.*

⁹ *Id.* § 204.6(j)(6)(ii)(B).

¹⁰ *See* U.S. Citizenship & Immigration Serv., EB-5 Policy Memorandum, PM-602-0083, 8 (May 30, 2013) [hereinafter EB-5 Policy Memo]. USCIS has occasionally expressed opposition to the manipulation of census tract data. *See* Notice of Intent to Deny, U.S. Citizenship & Immigration Servs. 8-9 (Mar. 11, 2011), *available at* <http://www.eb-5center.com/files/lbvdecisionredacted0002.pdf> (last visited Nov. 26, 2013) (“The plain language of

enterprises,” expediting review of EB-5 regional center applications,” and “skimping on background checks” of participating companies.¹¹

The Atlantic Yards TEA crosses every existing geographical and political boundary in Brooklyn and violates USCIS regulations by using census tracts as the only basis for its boundaries. In order to create the Atlantic Yards Project’s TEA, the NYDOL’s Division of Research and Statistics examined U.S. Census data for the area surrounding the proposed development and then drew a district based on census tract boundaries that met the minimum unemployment threshold requirement. NYDOL reported to ESDC the sixteen census tracts it had identified in Brooklyn which, when combined, had an unemployment level of roughly 14%.¹² ESDC then “certified” the Labor Department’s “determination” of the TEA for NYCRC.¹³ Federal law clearly states that agencies must design TEAs along the lines of pre-existing “geographic or political subdivisions.”¹⁴ Under the USCIS’s policy, census tracts alone cannot constitute a “geographic or political subdivision.”¹⁵ The Atlantic Yards Project is located

the regulation indicates that a TEA must be ‘a’ single geographical or political subdivision. The data provided with the State of Florida letter indicates that census tract 170.07 has an unemployment rate of 6.1 percent. This unemployment rate is significantly below the qualifying rate of 14.0 percent. Only by combining several census tracts can the petitioner demonstrate the necessary high unemployment rate. Nothing in the regulation suggests that a petitioner may qualify for the reduced investment amount by seeking government confirmation of the fact that adding several high unemployment census tracts to a low unemployment census tract produces a higher average unemployment rate. Thus, census tract 170.07 does not qualify as a TEA by itself. Census tract 170.07 qualifies as a TEA only by combining adjacent census tracts and averaging the unemployment data. Such an analysis renders the reduced investment amount meaningless as any alien could qualify for the reduced amount simply by adding high unemployment census tracts to a census tract that is otherwise not a TEA. Rather, the investment must be in ‘a’ geographic or political subdivision officially designated as a TEA. Thus, the petitioner has not shown that the job-creating enterprise is located within a TEA.” [hereinafter Notice of Intent to Deny]. However, it seems to have been inconsistent in this regard. *See, e.g., infra* notes 11-15; *see generally* Suzanne Lazicki, *USCIS questioning TEA designation*, LUCID PROF’L WRITING EB-5 BLOG, <http://blog.lucidtext.com/2011/05/16/uscis-questioning-tea-designation/> (last visited Sept. 30, 2013).

¹¹ Jeffrey Anderson & Shaun Waterman, *Homeland Security’s Fast-Tracked Checks of Foreign Investors May Put U.S. at Risk*, WASH. TIMES (Oct. 27, 2013), <http://www.washingtontimes.com/news/2013/oct/27/homeland-securitys-fast-tracked-checks-of-foreign-/?page=1>.

¹² *See* Letter from Joseph Nardone, Senior Economist, N.Y. State Dep’t of Labor, to Robert Scardamalia, Dir., Ctr. for Research & Info. Analysis, Empire State Dev. Corp. (Aug. 4, 2010) (on file with Cause of Action) [hereinafter Nardone Letter].

¹³ *See* Letter from Robert Scardamalia, Dir., Ctr. for Research & Info. Analysis, Empire State Dev. Corp., to George Olsen, Managing Principal, N.Y. City Reg’l Ctr. (Aug. 4, 2010) (on file with Cause of Action).

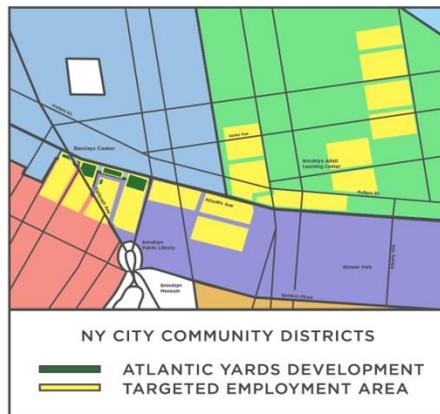
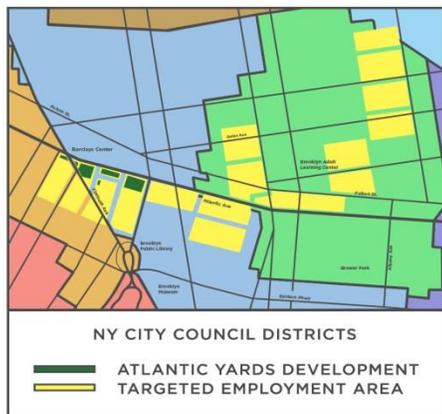
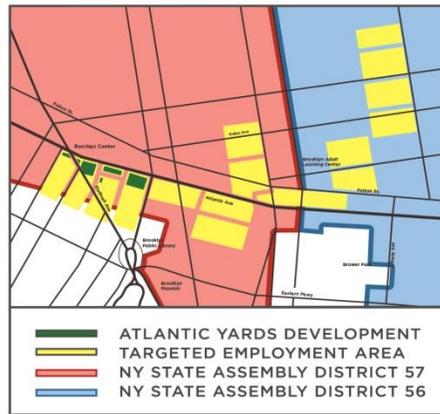
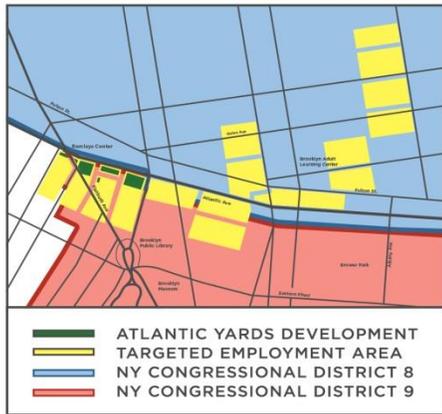
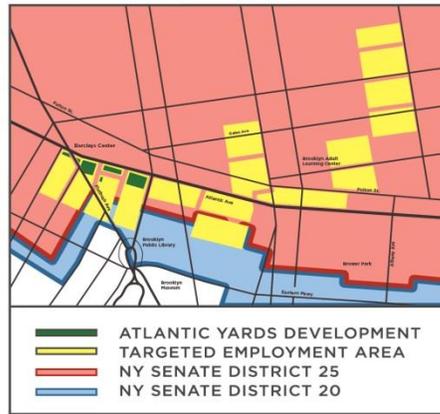
¹⁴ 8 C.F.R. § 204.6(j)(6)(ii).

¹⁵ In December 2010, an EB-5 program “stakeholder” asked USCIS whether “it was acceptable, for purposes of defining a TEA, to link a high unemployment area with census tracts . . . with low unemployment in order to arrive at an aggregate finding of high unemployment when the intent is actually to invest in the low unemployment area.” Exec. Summary, U.S. Citizenship & Immigration Servs., USCIS EB-5 (Immigrant Investor) Stakeholder Quarterly Engagement 3 (Dec. 14, 2010), *available at* <http://www.uscis.gov/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2010%20Event%20October%202010/Executive%20Summary%20EB5%20October%2014%202010.pdf>. USCIS took no action and responded merely that TEA determinations must be “based upon valid statistics . . . and comply with [all] statutory requirement[s].” *Id.* In March 2011, USCIS provided more clarification, adding: “[S]tate issued TEA designation[s] must be supported by evidence, *including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained.* PowerPoint Presentation, U.S. Citizenship & Immigration Servs., EB-5 Immigrant Investor Program Stakeholder Meeting, slide 42 (Mar. 17, 2011) (emphasis added), *available at* [http://www.uscis.gov/USCIS/Outreach/Notes from Previous Engagements/2011/March 2011/EB-5-presentation-March-2011.pdf](http://www.uscis.gov/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2011/March%202011/EB-5-presentation-March-2011.pdf). In clarifying “political subdivision,” USCIS

in the western portion of a Brooklyn neighborhood called Prospect Heights. This neighborhood has low unemployment, brownstone buildings and tree-lined streets. But, as shown in Figure 1, the Atlantic Yards Project's TEA stretches east and north, away from the development's footprint in the Prospect Heights neighborhood, and into Bedford-Stuyvesant, a predominantly low-income community that has high rates of unemployment.

defined it as a "division of the state that exists primarily to discharge some function of local government." *Id.* at slide 48. It is unlikely that a census tract would qualify by itself as a political subdivision, let alone a geographic subdivision. *See* Notice of Intent to Deny, *supra* note 10 ("The plain language of the regulation indicates that TEA must be "a" single geographical or political subdivision . . . Nothing in the regulation suggests that a petitioner may qualify for the reduced investment amount by seeking government confirmation of the fact that adding several high unemployment census tracts to a low unemployment census tract produces a higher average unemployment rate.").

Figure 1: The Atlantic Yards Project Targeted Employment Area



With this combination of census tracts, the Atlantic Yards TEA crosses two New York City Community Districts,¹⁶ two New York City Council Districts,¹⁷ two New York Assembly districts,¹⁸ two New York State Senate districts,¹⁹ and two different U.S. Congressional Districts.²⁰ There are no distinct geographic features in this area of Brooklyn to explain how this TEA might constitute a “geographic” subdivision, nor are there reasons why such a district could contribute “significantly to the supply chain . . . [or] the labor pool” of the Atlantic Yards Project.²¹ Thus, the Atlantic Yards Project is in a TEA—dubbed the “Bed-Stuy Boomerang” by one observer—that appears to have been designed so that it qualified for lower EB-5 investments, as well as numerous other concessions, including direct public funding, without actually honoring the intent and purpose of the EB-5 program.²²

U.S. Census data for these tracts confirm that NYDOL essentially gerrymandered the Atlantic Yards Project’s TEA. According to both the 2000 Census and 2005-2009 estimates from the American Community Survey (ACS), unemployment rates in the tracts where FCR’s development is located are significantly lower than in other tracts composing the entire TEA, particularly those outside of the Prospect Heights area.²³ If the Atlantic Yards TEA only included the four tracts where the Barclays Center is located and the accompanying high-rise towers will supposedly be built, the aggregate unemployment rate would be 5.18%.²⁴ This is far below the 2009 TEA unemployment threshold of 13.95% used by NYDOL.²⁵ The statutory threshold is only satisfied if employment data for these tracts is averaged with the additional twelve tracts that comprise the gerrymandered TEA—which together had an average unemployment rate of 19.23%.

¹⁶ Prospect Heights is located in N.Y. Community District 8 and the Bedford Stuyvesant neighborhood of Brooklyn is located in N.Y. Community District 3. *See New York: A City of Neighborhoods*, N.Y. CITY, DEP’T OF CITY PLANNING, <http://www.nyc.gov/html/dcp/html/neighbor/neighl.shtml> (last visited Oct. 1, 2013).

¹⁷ Prospect Heights is located in New York City Council District 35 and the Bedford-Stuyvesant neighborhood is located in New York City Council District 36. *Map of New York City Council Districts in Brooklyn*, N.Y. CITY, DEP’T OF CITY PLANNING, http://www.nyc.gov/html/dc/downloads/pdf/Brooklyn_Feb6.pdf (last visited Oct. 9, 2013).

¹⁸ While most of Bedford-Stuyvesant is located in N.Y. Assembly District 56, Prospect Heights is located in District 57. *See District Map*, ASSEMBLYMEMBER ANNETTE ROBINSON, <http://assembly.state.ny.us/mem/Annette-Robinson/map/> (last visited Oct. 8, 2013); *District Map*, ASSEMBLYMEMBER WALTER T. MOSLEY, <http://assembly.state.ny.us/mem/Walter-T-Mosley/map/> (last visited Oct. 8, 2013).

¹⁹ The Bedford-Stuyvesant neighborhood of Brooklyn is located in Senate District 25 and the Prospect Heights neighborhood is split between Senate Districts 20 and 25. *See N.Y. State Senate Districts Map*, N.Y. STATE SENATE, <http://www.nysenate.gov/districts/map> (last visited Oct. 1, 2013).

²⁰ The Prospect Heights neighborhood is located in N.Y. Congressional District 9. *Map of N.Y. U.S. Cong. Dist. 9*, GOVTRACK, <http://www.govtrack.us/congress/members/NY/9> (last visited Oct. 1, 2013). The Bedford Stuyvesant neighborhood of Brooklyn is located in District 8. *Map of N.Y. U.S. Cong. Dist. 8*, GOVTRACK, <http://www.govtrack.us/congress/members/NY/8> (last visited Oct. 1, 2013).

²¹ EB-5 Policy Memo, *supra* note 10, at 14.

²² Patrick McGeehan & Kirk Semple, *Rules Stretched as Green Cards Go to Investors*, N.Y. TIMES (Dec. 18, 2011), http://www.nytimes.com/2011/12/19/nyregion/new-york-developers-take-advantage-of-financing-for-visas-program.html?pagewanted=all&_r=0.

²³ *See* Figure 2: Unemployment Data for the Atlantic Yards Targeted Employment Area.

²⁴ Census Tracts 129.01, 129.02, 161, and 163 (*see* Figure 2).

²⁵ Nardone Letter, *supra* note 12.

Figure 2: Unemployment Data for the Atlantic Yards Targeted Employment Area

| <u>Jurisdiction</u> | <u>Unemployment Rates</u> | | | |
|-------------------------------|---------------------------|----------------------------|-------------------------------|--------------------|
| | <u>2000 Census</u> | <u>2005-2009 Est.</u> | <u>05-09 MOE²⁶</u> | <u>2010 Census</u> |
| United States | 4.00% | 7.20% (9.3%) ²⁷ | n/a | 9.60% |
| TEA Min. Unemployment* | 6.00% | 10.80% (13.95%) | n/a | 14.40% |
| New York State | n/a | 7.00% | n/a | n/a |
| Kings County (Brooklyn) | n/a | 8.10% | +/-0.2 | n/a |
| Census Tract 129.01* | 7.40% | 3.60% | +/-2.7 | n/a |
| Census Tract 129.02* | 5.20% | 2.10% | +/-2.1 | n/a |
| Census Tract 161* | 5.00% | 2.00% | +/-1.6 | n/a |
| Census Tract 163* | 3.10% | 10.20% | +/-4.7 | n/a |
| Census Tract 203 | 9.50% | 9.70% | +/-7.0 | n/a |
| Census Tract 223 | 23.40% | 8.10% | +/-5.1 | n/a |
| Census Tract 225 | 19.20% | 14.40% | +/-16.2 | n/a |
| Census Tract 227 | 12.20% | 10.60% | +/-5.3 | n/a |
| Census Tract 229 | 16.60% | 13.50% | +/-7.9 | n/a |
| Census Tract 247 | 21.00% | 17.60% | +/-8.7 | n/a |
| Census Tract 267 | 17.30% | 11.10% | +/-5.9 | n/a |
| Census Tract 269 | 15.30% | 17.30% | +/-9.9 | n/a |
| Census Tract 277 | 20.40% | 9.60% | +/-6.9 | n/a |
| Census Tract 279 | 19.40% | 8.00% | +/-4.3 | n/a |
| Census Tract 281 | 26.90% | 17.70% | +/-6.4 | n/a |
| Census Tract 283 | 29.60% | 18.50% | +/-7.8 | n/a |

Sources: U.S. Census Bureau, American FactFinder 5-Year Estimates, 2005-2009 Amer. Community Survey; N.Y. City Dep't of City Planning Community Profiles²⁸

In addition to the gerrymandered areas of unemployment, NYDOL's use of tract data from the 2000 Census poses other problems. Beginning with the 2010 Census, the federal government no longer collects "long form" information, including household employment data.²⁹ Instead, socioeconomic data is only available at the tract level through the ACS, a random sampling of individuals. This random sampling is used to extrapolate general levels of

²⁶ MOE = Margin of Error.

²⁷ According to the ACS, the expected national unemployment rate during from 2005-2009 was 7.2%. However, when designing the Atlantic Yard's TEA, the New York Department of Labor relied on the U.S. Bureau of Labor Statistics for an "official" 2009 rate of 9.6%. The minimum TEA unemployment rates of 10.8% and 13.95% correspond with these predictions respectively. See Nardone Letter, *supra* note 12.

²⁸ Archived Community District Profiles containing 2000 U.S. Census data can be accessed at *2000 Community District Profiles – Archived*, N.Y. CITY DEP'T OF CITY PLANNING, http://www.nyc.gov/html/dcp/html/lucds/cdstart_2000.shtml (last visited Sept. 20, 2013). Aggregated projections for employment data leading up to the 2010 Census can be accessed through the *American Community Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/acs/www/#> (last visited Sept. 18, 2013).

²⁹ See generally *History: American Community Survey*, U.S. CENSUS BUREAU, http://www.census.gov/history/www/programs/demographic/american_community_survey.html (last visited Sept. 24, 2013).

unemployment, among other statistics.³⁰ While USCIS has endorsed the use of employment data from the ACS,³¹ the margins of error in the survey data can be significant. For example, as evidenced in Figure 2, while the 2005-2009 estimated unemployment for census tract 225 was 14.40%, the margin of error was +/-16.2%.

This potential for significant flaws in employment data did not stop NYDOL from designating the Atlantic Yards TEA. In fact, NYDOL senior economist Joseph Nardone explained that he designed the Atlantic Yards Project's TEA using the federal government's published national unemployment rate for 2009, even though it was used in conjunction with outdated census tract data from 2000.³² NYDOL, it seems, was more interested in making sure that a TEA was designated. As Nardone put it, "I look at the census data and I make it [the TEA] happen."³³

- **Finding:** *FCR and NYCRC, with the cooperation of New York elected officials, misleadingly advertised the Atlantic Yards Project to potential investors by keeping the actual purpose of EB-5 funding ambiguous and exaggerating job creation predictions. Moreover, FCR misled the public by promising that EB-5 would create a substantial number of jobs, despite ESDC predictions to the contrary.*

The New York City Regional Center (NYCRC) is one of the preeminent EB-5 regional centers in New York State. USCIS designated NYCRC with regional center status in October 2008, thereby allowing it to carry out EB-5 investments in all five boroughs of New York City.³⁴ According to one EB-5 expert, NYCRC is one of "the most popular and active regional centers" for Chinese investors.³⁵ It is authorized to make investments in real estate projects such as hotels, restaurants, retail stores, office buildings, warehouses, civic buildings, apartments, and mixed-use facilities.³⁶ NYCRC's projects have assisted over 2,400 EB-5 applicants in obtaining conditional immigrant investor green cards,³⁷ and it has been involved with numerous prominent redevelopment efforts, including the Brooklyn Navy Yard Redevelopment Project.³⁸

³⁰ *Id.*

³¹ EB-5 Policy Memo, *supra* note 10, at 8.

³² Telephone Interview with Joseph Nardone, Senior Economist, N.Y. Dep't of Labor (Sept. 23, 2013). Cause of Action emailed Mr. Nardone to confirm his comments in the telephone interview and received no reply. Email from Cause of Action to Joseph Nardone, Senior Economist, N.Y. Dep't of Labor (Sept. 25, 2013) (on file with Cause of Action).

³³ *Id.*

³⁴ Letter from Barbara Velarde, Chief of Serv. Ctr. Operations, U.S. Citizenship & Immigration Servs., to Paul Levinsohn, Managing Principal, N.Y. City Reg'l Ctr., LLC (Oct. 30, 2008), *available at* http://www.nycrc.com/pdf/NYCRC_USCIS_Approval_Letter-Optimized.pdf (last visited Sept. 20, 2013).

³⁵ Brian Su, *Report from China: The Most Popular EB-5 Regional Centers in Chinese Market in 2011*, EB-5 NEWS BLOG: REG'L CTRS. IN THE USA (Nov. 29, 2011), <http://eb5news.blogspot.com/2011/11/report-from-china-most-popular-eb-5.html>.

³⁶ *Id.*

³⁷ 2,400th CPR Card Issued, N.Y. CITY REG'L CTR., <http://nycrc.com/nycrc-approvals/2200th-cpr-card/> (last visited Sept. 22, 2013).

³⁸ *Previous Projects*, N.Y. CITY REG'L CTR., <http://nycrc.com/previous-projects/> (last visited Sept. 23, 2013).

FCR worked with the NYCRC in implementing its own EB-5 program at the urging of local officials.³⁹ NYCRC's regional center designation was amended to accommodate its commitment to the Atlantic Yards Project on September 23, 2010.⁴⁰ Seeking to obtain 249 foreign investors,⁴¹ each of whom would be expected to contribute upwards of \$538,000,⁴² NYCRC created the "Brooklyn Arena Infrastructure and Transportation Improvement Fund LLC."⁴³ Together, FCR and NYCRC advertised this new commercial enterprise with advertisements containing images of basketball players and the Barclays Center, while NYCRC promised investors that it would be "one of the largest job creation projects in Brooklyn."⁴⁴ At the same time, FCR and NYCRC downplayed the risk of investing and the uncertainty of actually receiving a green card.⁴⁵

FCR enlisted the help of New York politicians in attracting EB-5 investors. Brooklyn Borough President Marty Markowitz helped NYCRC produce a promotional video in which he claimed that "Brooklyn is 1000 percent, 1000 percent behind Atlantic Yards."⁴⁶ Markowitz has been a full-throated supporter of FCR's Atlantic Yards Project and has received millions of dollars from FCR and other companies associated with the project for his network of charities.⁴⁷ From 2003 to 2011, FCR gave at least \$1.7 million to Markowitz's charities, along with \$395,000 from Turner Construction, the builder for Atlantic Yards, and \$310,000 from Barclays who bought the naming rights to the arena.⁴⁸ As Dick Dadey of the government watchdog group Citizens Union told *The New York Post*, "affiliated nonprofits should not be used as pseudo campaign accounts. One could argue that these nonprofits raise the profile of [Markowitz] in a way that certainly aids his possible campaigns."⁴⁹

Mayor Michael Bloomberg lobbied the Director of USCIS, Alejandro Mayorkas,⁵⁰ to "expedite its pre-approval adjudication of the anticipated application" of NYCRC and FCR for

³⁹ Eliot Brown, *Ratner Mulls Visa Financing*, WALL ST. J. (Sept. 21, 2010), <http://online.wsj.com/article/SB10001424052748703989304575504113981363810.html>.

⁴⁰ Regional Center Amendment Approval Letter from Rosemary Langley Melville, Dir., Cal. Serv. Ctr., U.S. Citizenship & Immigration Servs., to George Olsen, N.Y. City Reg'l Ctr. (Sept. 23, 2010) (on file with Cause of Action) [hereinafter 2010 Amendment].

⁴¹ N.Y. City Reg'l Ctr., I-526 Attachment, Pt. 3 for Brooklyn Arena Infrastructure & Transportation Improvement Fund, LLC (Aug. 12, 2010) (on file with Cause of Action).

⁴² N.Y. City Reg'l Ctr., Exemplar I-526 Cover Letter for Brooklyn Arena Infrastructure & Transportation Improvement Fund, LLC (Aug. 12, 2010) (on file with Cause of Action) [hereinafter Exemplar Letter].

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See *infra* note 54 and accompanying text.

⁴⁶ *Marty Markowitz on EB-5*, YOUTUBE, <http://www.youtube.com/watch?v=Qz5YnG80FYw> (last visited Sept. 23, 2013); see also Norman Oder, *Brooklyn BP Markowitz's Atlantic Yards Falsehood (Video)*, HUFFINGTON POST (Mar. 7, 2011), http://www.huffingtonpost.com/norman-oder/markowitz-atlantic-yards_b_832042.html.

⁴⁷ Liz Robbins and Alison Leigh Cowan, *From Brooklyn Office, Mixing Clout and Charity*, N.Y. TIMES (Oct. 24, 2010), http://www.nytimes.com/2011/10/25/nyregion/for-brooklyn-leader-marty-markowitz-mix-of-business-charity-and-power.html?_r=1&.

⁴⁸ *Id.*

⁴⁹ Rich Calder, *Beep Reaping Big As Yards Backer*, N.Y. POST (Oct. 10, 2008), <http://nypost.com/2008/10/10/beep-reaping-big-as-yards-backer/>.

⁵⁰ Director Mayorkas is suspected of having inappropriately interfered with the EB-5 program for other politically connected businesses, and then giving misleading testimony before Congress about his actions. See generally Jeffrey Anderson & Shaun Waterman, *Homeland Security Pick's Remarks Questioned*, WASH. TIMES (Oct. 27, 2013), <http://www.washingtontimes.com/news/2013/oct/27/homeland-security-picks-remarks-questioned/>.

the Atlantic Yards, adding that New York City had already “committed \$155 million of capital” to the project.⁵¹ Other perks that FCR and NYCRC offered to lure potential EB-5 investors included the prospect of meeting basketball stars such as Otis Birdsong and Darryl “Chocolate Thunder” Dawkins or watching the Nets scrimmage the Houston Rockets in Beijing.⁵²



Figure 3: The Atlantic Yards Project, as advertised to Chinese investors⁵³

NYCRC General Manager Gregg Hayden told Chinese audiences that the Atlantic Yards Project effectively provided an opportunity to invest *risk-free*: “The investor on [the Atlantic Yards Project] is not getting paid any interest . . . We have to put them in such a safe, secure position that they’re not earning any interest. If you look at the spectrum of EB-5 projects, interest rates are paid according to risk.”⁵⁴ In short, Hayden touted the Atlantic Yards investment to potential EB-5 investors by suggesting that investors faced no risk since they were not paid interest. Similar efforts by other corporations to downplay the riskiness of EB-5

⁵¹ Letter from Michael Bloomberg, Mayor, N.Y. City, to Alejandro Mayorkas, Dir., U.S. Citizenship & Immigration Servs. (July 28, 2010) (on file with Cause of Action).

⁵² Tom Spender, *Green Card Scheme a Slam Dunk in China*, THE NAT’L (Oct. 27, 2010), <http://www.thenational.ae/business/green-card-scheme-a-slam-dunk-in-china>.

⁵³ The advertisement reads: “U.S. Investment Immigration Annual Presentation! Ticket Hotline: (400) 886-9955 (Limited seats, purchase in advance) Hotlines During the National Day of the People’s Republic: 15810963777, 13811207186, 13911537389, 13521155433, 15110149338, Date: Tuesday, October 12, 2010; Registration at 7:00 PM, Location: Beijing Diaoyutai Hotel Banquet Hall, New York NBA Stadium & Infrastructure Construction Project Conference. Clients that sign-up receive tickets to see the Rockets versus the Nets in Beijing on October 13, and will get a basketball signed by NBA players! The NBA stars have already arrived at the airport!”

⁵⁴ Spender, *supra* note 52.

investments have prompted investigations by the Securities and Exchange Commission,⁵⁵ as USCIS regulations require that EB-5 applicants actually place their investment “at risk.”⁵⁶

Gregg Hayden further claimed that “the Barclays Center . . . [would] generate well in excess of 10,000 jobs for years to come, future job creation, with the support of government, on government property, and the support of one of the largest real estate companies in the United States, Forest City Enterprises.”⁵⁷ This claim was repeated by U.S. Senator Charles Schumer (D-NY), when faced with opposition to the Atlantic Yards Project from Brooklyn residents.⁵⁸ FCR, in one of its own press releases, claimed that the Atlantic Yards Project would “create upwards of 17,000 union construction jobs and up to 8,000 permanent jobs” once the development was operational.⁵⁹

The foregoing job creation estimates for the Atlantic Yards Project, however, are far higher than those calculated by ESDC before FCR even began its efforts to attract EB-5 investors. The Modified General Plan for the Atlantic Yards, which was released by ESDC in June 2009, projected that the development would generate around 1,690 construction jobs, as well as an additional 5,065 new jobs throughout New York State.⁶⁰ An internal ESDC memorandum released only a few months later, however, modified that total to include around 1,933 construction positions and no more than another 4,277 direct, indirect, and induced jobs across the state.⁶¹ Regardless, ESDC officials admitted that any additional EB-5 funding would not create further jobs beyond those that had been predicted based on the \$4.9 billion of funding FCR had already received by the latter half of 2010.⁶²

- **Finding:** *Job statistics for the Atlantic Yards Project are not based on actual numbers but on estimates derived from economic models and “reasonable methodologies.” Nevertheless, due to questionable USCIS rules, Atlantic Yards EB-5 investors received credit for job creation.*

⁵⁵ See, e.g., Tom Hamburger & Ben Pershing, *Car Company with Ties to Terry McAuliffe is under SEC Investigation*, WASH. POST (Aug. 2, 2013), http://articles.washingtonpost.com/2013-08-02/politics/40987370_1_terry-mcauliffe-visa-program-sec-investigation.

⁵⁶ 8 C.F.R. § 204.6(j)(2).

⁵⁷ Norman Oder, *Green Cards for Sale? Atlantic Yards Backers Seek Chinese Investor*, HUFFINGTON POST (Oct. 11, 2010), http://www.huffingtonpost.com/norman-oder/does-the-us-allow-the-sal_b_758331.html.

⁵⁸ Jotham Sederstrom, *Beep’s ‘State of Boro’ Focuses on Nets Plan*, THE BROOKLYN PAPER (Feb. 14, 2004), http://www.brooklynpaper.com/stories/27/6/27_06nets6.html.

⁵⁹ Press Release, Forest City Ratner Co., Ceremonial Groundbreaking for Barclays Center at Atlantic Yards in Brooklyn (Mar. 11, 2010) (on file with Cause of Action) [hereinafter FCR Press Release].

⁶⁰ N.Y. State Urban Dev. Corp., Atlantic Yards Land Use Improvement and Civic Project Modified General Project Plan 33 (June 23, 2009) (on file with Cause of Action) [hereinafter 2009 Modified General Plan]. The projection for construction job creation is found by dividing the number of forecasted job hours by the expected length of the development. According to the Modified General Plan, Phase I (the Barclays Center and upgraded LIRR rail yard) and Phase II (the mixed-use high rise buildings) were both to be completed by 2019. *Id.* at 4. The original general plan was accepted in 2006. *Id.* at 1.

⁶¹ Internal Memorandum from Dennis Mullen, President & CEO, Empire State Dev. Corp., to Dirs. of the Empire State Dev. Corp., 5 (Sept. 17, 2009) (on file with Cause of Action) [hereinafter Internal Memo].

⁶² See Michael O’Keeffe, *State Agency Says Bruce Ratner Used Federal Program to Finance Atlantic Yards Project, Nets Arena*, N.Y. DAILY NEWS (Oct. 6, 2010), <http://www.nydailynews.com/sports/basketball/state-agency-bruce-ratner-federal-program-finance-atlantic-yards-project-nets-arena-article-1.186618#ixzz11ZZWaDsZ>.

Companies are able to make lofty job predictions when enticing foreign investors because of how EB-5 regulations determine job creation. First, to establish that a “new commercial enterprise located within a regional center” has generated a sufficient number of new jobs to meet the program’s job creation requirements, an EB-5 applicant investor does not need to demonstrate the true number of jobs that have resulted from his investment. Instead, EB-5 investors can use “multipliers” and other “reasonable methodologies” to *estimate* job creation and then receive credit towards their visas as if *actual* jobs had been created.⁶³ Second, when an EB-5 applicant contributes capital to an enterprise that includes domestic investors who are not seeking visas, all of the jobs that are created (or expected to be created) are attributed to the EB-5 investors as a rule, regardless of whether non-EB-5 funds were actually responsible for the job creation.⁶⁴ Finally, under the Pilot Program, the definition of “jobs” has multiple meanings. Specifically, EB-5 applicants can calculate job creation in terms of both “direct” and “indirect” jobs.⁶⁵ Yet, USCIS has broadened the definition of indirect jobs to include “induced” jobs, which are created when “direct and indirect employees go out and spend their increased incomes on consumer goods and services.”⁶⁶

FCR and NYCRC have made use of all three of these regulatory oddities. First, job creation for the Atlantic Yards Project is not based on actual numbers but on estimates derived from economic models and so-called “reasonable methodologies.”⁶⁷ Second, by New York government officials’ own admissions, EB-5 funding was not expected to generate further employment.⁶⁸ Thus, it is reasonable to conclude that Atlantic Yards EB-5 investors have received credit for jobs resulting from the capital of non-immigrant investors. Finally, ESDC, NYCRC, and FCR have explicitly included the vague categories of “indirect” and “induced” jobs in estimates for job creation.⁶⁹ Additionally, USCIS has permitted foreign investors to remove conditions on their visas without actually demonstrating job creation, but instead based on “probative evidence” of the necessary job generation given NYCRC’s contracted job creation methodologies.⁷⁰

FCR did not seek EB-5 financing because it was necessary for the completion of the Barclays Center or any other part of the first phase of development for the Atlantic Yards Project, despite the name of NYCRC’s EB-5 Atlantic Yards investment fund, “Brooklyn Arena Infrastructure and Transportation Improvement Fund, L.L.C.” Rather, EB-5 financing was an

⁶³ 8 C.F.R. § 204.6(m)(7)(ii).

⁶⁴ GOV’T ACCOUNTABILITY OFFICE, IMMIGRANT INVESTORS: SMALL NUMBER OF PARTICIPANTS ATTRIBUTED TO PENDING REGULATIONS AND OTHER FACTORS (Report No. GAO-05-256) 19 (Apr. 2005), *available at* <http://www.gao.gov/assets/250/245920.pdf>.

⁶⁵ A “direct job” is understood as “full-time employment” of a minimum of 35 working hours per week. 8 C.F.R. § 204.6(e). “Indirect” jobs are those “held by persons who work for the producers of materials, equipment, and services” that are used by direct employees of an EB-5 project, but who are not directly employed by the EB-5 investor. U.S. CITIZENSHIP & IMMIGRATION SERVS., ADJUDICATOR’S FIELD MANUAL (Redacted Public Version), Ch. 22.4 Employment Creation Entrepreneur Cases (Sept. 12, 2006), *available at* <http://www.uscis.gov/ilink/docView/AFM/HT ML/AFM/0-0-0-1/0-0-0-6330/0-0-0-8263.html>.

⁶⁶ *Id.*

⁶⁷ Exemplar Letter, *supra* note 42; *see also* Evans, Carol & Assocs., Brooklyn Arena Infrastructure & Transportation Improvement Fund LLC Economic Report (Aug. 12, 2010) (on file with Cause of Action).

⁶⁸ O’Keefe, *supra* note 62.

⁶⁹ *See* 2009 Modified General Plan, *supra* note 60, and Internal Memo, *supra* note 61.

⁷⁰ *See* 2010 Amendment, *supra* note 40.

easy way for FCR to save money on a loan. When NYCRC filed an amendment to its regional center designation in order to work with FCR, its lawyer claimed that EB-5 funding was “critical to ensure that the [Atlantic Yards] development is completed on schedule, creating the jobs and tax revenues . . . desperately need[ed] in this deep economic recession.”⁷¹ In an accompanying document, however, NYCRC stated that the funding would instead be used to finance a \$249 million loan to FCR’s development subsidiary, intimating furthermore that those funds would be used to build the Barclays Center.⁷²

Representatives from the New York state government and FCR have provided somewhat contradictory statements when discussing the ultimate use of EB-5 funding. ESDC spokesperson Elizabeth Mitchell said that “[i]f [EB-5] funding [were] not available—or if Forest City Ratner [were] not as successful as we hope in raising funds under this program—then Forest City Ratner will need to raise funds from other sources to facilitate build-out of the entire project.”⁷³ FCR Executive Vice President Mary Anne Gilmartin, however, explained that EB-5 funds would be used to renovate the Atlantic Avenue rail yards of the Long Island Rail Road and to pay off land loans on the project, but not to build the Barclays Center, which was already funded.⁷⁴ Ed Plasco, another FCR spokesperson, suggested it would be used for “a \$1.4 billion infrastructure and arena fund” to pay for the construction of a subway entrance, parking facilities, and water and sewer lines.⁷⁵ At the very least, all of this suggests that EB-5 funding was never a necessary part of FCR’s financing plan for Atlantic Yards. And it was certainly never needed with the urgency advertised by NYCRC and FCR.⁷⁶ Instead, FCR was more interested in access to cheap and easy capital, even if it required attracting potential foreign investors with misleading information.

- ***Finding:*** *The job creation predictions for the Atlantic Yards Project appear to violate federal securities law. Moreover, NYCRC contracted the same immigration lawyer and economist as GreenTech Automotive, another crony corporation currently under investigation by the Securities and Exchange Commission.*

As demonstrated, FCR, NYCRC, and the New York state government have all issued contradictory and improbable job creation predictions for the Atlantic Yards Project. From Gregg Hayden’s estimate of 10,000 jobs,⁷⁷ to FCR’s promise of 17,000 “union construction jobs,”⁷⁸ these unrealistic numbers highlight problems with the EB-5 program, and the lack of

⁷¹ Letter from Nicolai Hinrichsen, Miller Mayer LLP, to Cal. Serv. Ctr., U.S. Citizenship & Immigration Servs. (Aug. 11, 2010) (on file with Cause of Action).

⁷² Letter from George Olsen, Managing Principal, N.Y. City Reg’l Ctr., to Cal. Serv. Ctr., U.S. Citizenship & Immigration Servs. (Aug. 11, 2010) (on file with Cause of Action).

⁷³ Brown, *supra* note 39; *see also* O’Keeffe, *supra* note 62.

⁷⁴ Brown, *supra* note 39.

⁷⁵ Dune Lawrence, *Coming to America Costs \$500,000 With Job Plan Prone to Failures*, BLOOMBERG NEWS (Mar. 23, 2012), <http://www.businessweek.com/news/2012-03-23/coming-to-america-costs-500-000-with-job-plan-prone-to-failures>.

⁷⁶ *See* Letter from Rosmary Langley Melville, Dir., Cal. Serv. Ctr., U.S. Citizenship & Immigration Servs., to Nicolai Hinrichsen, Miller Mayer, LLP (Aug. 30, 2010) (on file with Cause of Action).

⁷⁷ Oder, *supra* note 57.

⁷⁸ FCR Press Release, *supra* note 59.

oversight in its implementation.⁷⁹ As of September 2012, the Atlantic Yards development had created only 2,000 permanent jobs, of which ninety-five percent were considered part-time.⁸⁰ FCR spokesman Joe DePlasco claimed that, during the year prior to September 2012, “an average of 841 workers per day” were on-site but that further construction jobs would be generated once Phase II started.⁸¹ In October 2013, FCR reported 2,060 “active hires”—only a 3% increase over the previous year—most of whom are still “part-time or event driven.”⁸²

Notwithstanding the loss of jobs that the Atlantic Yards Project has caused by displacing small businesses and residents in Brooklyn,⁸³ the development has only created 100 permanent full-time jobs.⁸⁴ Even assuming that an additional 900 construction positions have been created by FCR, Phase I of the Atlantic Yards Project has only generated about 1,000 full-time jobs in total. Since the EB-5 program requires an immigrant investor’s capital contribution to generate a minimum of 10 full-time jobs⁸⁵ and assuming further that EB-5 money was never intended, let alone used, during the Phase I construction of the Barclays Center, as FCR claims, then no more than 100 EB-5 investors could have received a green card. Yet FCR and NYCRC sought 249 investors,⁸⁶ which are far more than the project could have realistically supported.

FCR’s use of exaggerated job statistics and misleading of investors and USCIS about the nature of the Atlantic Yards project appears to violate federal securities laws.⁸⁷ In a case earlier

⁷⁹ See generally Anderson & Waterman, *supra* note 11.

⁸⁰ Liz Robbins, *In Brooklyn, Bracing for Hurricane Barclays*, N.Y. TIMES (Sept. 21, 2012), <http://www.nytimes.com/2012/09/23/nyregion/with-barclays-center-arena-set-to-open-brooklyn-braces-for-the-storm.html?smid=tw-share&pagewanted=all>.

⁸¹ *Id.*

⁸² See Norman Oder, *Do Barclays Center Jobs Really Pay a “Living Wage”? Not Unless Workers Get 40 Hours a Week (and They Don’t)*, ATLANTIC YARDS REPORT (Oct. 22, 2013), <http://atlanticyardsreport.blogspot.com/2013/10/do-barclays-center-jobs-really-pay.html>.

⁸³ See Nicholas Confessore, *Forced to Move, Some Find Greener Grass*, N.Y. TIMES (Apr. 10, 2006), <http://www.nytimes.com/2006/04/10/nyregion/10yards.html?pagewanted=1&ref=atlanticyardsbrooklyn>.

⁸⁴ Of the 1,900 part-time jobs that exist at the Barclays Center, a number of them are “full-time equivalent (FTE).” None of these FTE positions, however, qualify for EB-5 job creation purposes. According to Norman Oder, a prominent blogger and community activist, Bruce Ratner claimed that FTE workers would be employed “up to 30 hours” a week; Oder estimates the number to be closer to around 23-25. See Norman Oder, *Ratner, Bloomberg Provoke Little Skepticism About “2,000 Jobs” Announcement*, ATLANTIC YARDS REPORT (Apr. 27, 2012), <http://atlanticyardsreport.blogspot.com/2012/04/ratner-bloomberg-provoke-little.html>; see also Oder, *supra* note 80.

⁸⁵ 8 C.F.R. § 204.6(f)(1) and (j)(4)(i). A “direct job” is understood as “full time employment” of a minimum of 35 working hours per week. *Id.* § 204.6(e).

⁸⁶ See *supra* note 41 and accompanying text.

⁸⁷ 15 U.S.C. § 77q(a)(2) (“It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading[.]”); see, e.g., Complaint at 18 ¶57, *Sec. Exch. Comm. v. A Chicago Convention Center, LLC* (N.D. Ill. Feb. 2013), available at <http://www.sec.gov/litigation/complaints/2013/comp-pr2013-20.pdf> (“By overestimating costs, the employment projections would also be inflated because of the job estimation methodology used by Defendants to substantiate their job creation claims. These inflated costs, and hence inflated job creation numbers, would be material to prospective investors because the potential for investors to secure a visa hinges on the project creating or saving a minimum of 10 jobs per investor. Inflated numbers may mislead prospective investors by obscuring the fact that it is not feasible for the project to meet that minimum requirement. Overestimated costs and resulting job creation numbers would also be misleading to USCIS.”) [hereinafter SEC Complaint].

this year, the Securities and Exchange Commission (SEC) announced that, for the first time ever, it was bringing an action against a company and its regional center for operating a fraudulent EB-5 program.⁸⁸ The defendants allegedly misrepresented the job creation potential of an EB-5 project in order to sell more than \$145 million in securities and collect \$11 million in administrative fees from 250 Chinese investors while also making additional misrepresentations.⁸⁹ While this particular case exhibits particularly outrageous abuse of the EB-5 program, insofar as the target project was never even built, it still involves abuses similar to those present with the Atlantic Yards, such as fraudulent advertisement, misleading job statistics, and questionable supporting documentation—including economic methodologies and impact reports. The case shows that unscrupulous companies that abuse the EB-5 program are defrauding investors in violation of securities law and that, when they do, the SEC will respond by bringing enforcement actions.

Similarly, the SEC has opened an investigation into GreenTech Automotive (GreenTech), a hybrid car manufacturer,⁹⁰ and its “sister company” and EB-5 regional center, Gulf Coast Funds Management (Gulf Coast), for having guaranteed returns to foreign investors by characterizing their investment as “risk free.”⁹¹ This is just what NYCRC General Manager Gregg Hayden has done with the Atlantic Yards.⁹² As CoA previously uncovered, misrepresentations that foreign investments are “risk free” violates both federal securities law and USCIS regulations.⁹³

In addition to the similar potential violations of securities laws, FCR has also relied on some of the same EB-5 experts as GreenTech to calculate its job creation predictions. One of the more controversial aspects of GreenTech’s foray into EB-5 funding was its “job multiplier,” which is the rate at which indirect and induced jobs will be “created.” In a Private Placement Memorandum that GreenTech gave its EB-5 investors, it advertised a multiplier of 11.86 indirect and induced jobs for each of the 25,000 direct jobs that were expected.⁹⁴ An analyst at the Virginia Economic Development Partnership (VEDP), the state agency that reviewed the multiplier that GreenTech used to calculate its job creation predictions observed, “the most generous economic impact multiplier I have ever seen used for automotive assembly plant projects is a factor of 7.”⁹⁵ GreenTech’s multiplier, however, was nearly 170% higher. The

⁸⁸ Press Release, Sec. Exch. Comm., SEC Halts \$150 Million Investment Scheme to Dupe Foreign Investors and Exploit Immigration Program (Feb. 8, 2013) [hereinafter SEC Press Release], *available at* <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171512748#.Um-7zozD9lZ>; *see also* SEC Complaint, *supra* note 87.

⁸⁹ SEC Press Release, *supra* note 88.

⁹⁰ Tom Hamburger & Ben Pershing, *Car Company with Ties to Terry McAuliffe is under SEC investigation*, WASH. POST (Aug. 2, 2013), http://articles.washingtonpost.com/2013-08-02/politics/40987370_1_terry-mcauliffe-visa-program-sec-investigation.

⁹¹ *Id.*; *see also* CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM 17-18 (Aug. 2013) [hereinafter GreenTech Report], *available at* <http://causeofaction.org/assets/uploads/2013/09/130922-REPORT-Final-GreenTech-Automotive-FINALIZED.pdf>.

⁹² *See supra* note 54 and accompanying text.

⁹³ GreenTech Report, *supra* note 91.

⁹⁴ *Id.* at 22.

⁹⁵ Comment by Mike Lehmkuhler, Vice President of Bus. Attraction, Va. Econ. Dev. P’ship, to Charles Wang, CEO, GreenTech Auto., Inc., and Gary Tang, COO, GreenTech Auto, Inc., on Salesforce CRM (Sept. 24, 2009), *available as* Exhibit 25 *at* <http://causeofaction.org/assets/uploads/2013/09/Exhibits-1-32.pdf>.

same VEDP analyst was “surprised” that USCIS had even accepted such an inflated jobs multiplier.⁹⁶

The expert who devised this extremely high multiplier was Dr. Michael K. Evans, an academic economist who manages his own EB-5 consulting firm.⁹⁷ Evans is also the economist who prepared the economic impact report and job multiplier for FCR’s Atlantic Yards Project.⁹⁸ Evans’s work on securing EB-5 funding for GreenTech was not limited to economic calculations. He also accompanied GreenTech executives and Gulf Coast’s special immigration counsel, Stephen Yale-Loehr⁹⁹—one of the most sought-after immigration lawyers in the country¹⁰⁰—to meet with the same White House “green energy” official who assisted the failed solar panel manufacturer Solyndra to receive over \$500 million in guaranteed green energy loans.¹⁰¹

Like Michael Evans, Stephen Yale-Loehr has helped NYCRC establish its EB-5 investor program. Yale-Loehr was special counsel for NYCRC when USCIS granted it regional center status, allowing it to invest in specific kinds of ventures. He subsequently represented NYCRC when it sought USCIS approval of an amendment to its regional center designation, thereby expanding the kinds of EB-5 investments that NYCRC would be permitted to make.¹⁰² The most recent request for the expansion of potential EB-5 investments that NYCRC can make was filed with USCIS as part of the Atlantic Yards Project. The work was overseen by Nicolai Hinrichsen, a partner in Yale-Loehr’s EB-5 immigration law group at Miller Mayer, LLP.¹⁰³

The connections between GreenTech and FCR demonstrate that the EB-5 program is particularly susceptible to exploitation by those who use questionable methodologies and political connections to attract foreign investors. Michael Evans’s methods, and his generous job multipliers, allow companies like GreenTech and FCR to accept more EB-5 investors than they otherwise would. The failure on the part of USCIS to properly enforce its regulations compounds this problem. In the end, the American taxpayer suffers: FCR gets EB-5 funding, ostensibly to pay off debts owed to the people, while never delivering on its promises of job

⁹⁶ *Id.*

⁹⁷ See Gulf Coast Funds Mgmt., LLC Amendment Application to U.S. Citizenship & Immigration Servs. 5 (on file with author); see also Resume, Dr. Michael K. Evans (on file with Cause of Action).

⁹⁸ Exemplar Letter, *supra* note 42.

⁹⁹ *Our Management Team*, GULF COAST FUNDS MGMT. LLC (Archived Version, Dec. 11, 2010), available at <http://web.archive.org/web/20101211152113/http://www.gulfcoastfunds.com/managementteam/index.html>.

¹⁰⁰ See Michael Patrick Leahy, *McAuliffe Took EB-5 Immigration Law Expert to 2010 White House Meeting*, BREITBART (Aug. 13, 2013), <http://www.breitbart.com/Big-Government/2013/08/12/McAuliffe-Took-EB-5-Immigration-Law-Expert-to-2010-White-House-Meeting>.

¹⁰¹ Brendan Bordelon, *McAuliffe Lobbied Obama Aide in Charge of Solyndra*, DAILY CALLER (Aug. 8, 2013), <http://dailycaller.com/2013/08/08/mcauliffe-lobbied-obama-aide-in-charge-of-solyndra/>.

¹⁰² See, e.g., Reg. Ctr. Approval Letter from Christina Poulos, Dir., Cal. Serv. Ctr., U.S. Citizenship & Immigration Servs., to Paul Levinsohn, N.Y. City Reg. Ctr. (Aug. 27, 2009) (cc’ing Stephen Yale-Loehr, Esq.) (on file with Cause of Action); see also Notice of Entry of Appearance as Att’y or Representative, USCIS Form G-28 (Mar. 26, 2009) (on file with Cause of Action).

¹⁰³ See, e.g., Notice of Entry of Appearance as Att’y or Accredited Representative, USCIS Form G-28 (Aug. 10, 2010) (on file with Cause of Action); see also *EB-5 Investors*, MILLER MAYER, <http://www.millermayer.com/e-b5-investors.html> (last visited Nov. 18, 2013).

creation and economic revitalization, and politicians create a new class of potential campaign donors.¹⁰⁴

IV. Anatomy of a Bribe: Forest City Ratner and the Ridge Hill Development

From 2005 to 2006, FCR lobbied the Yonkers City Council to approve a zoning change that would allow FCR to build a project called Ridge Hill Village in Yonkers, New York.¹⁰⁵ This project cost \$600 million¹⁰⁶ and it encompassed 80 acres of land with a shopping center¹⁰⁷ that included “1.3 million square feet of retail, restaurant, and entertainment use; 800 rental apartments, 150,000 square feet of office and research space, a 350-room hotel, a 40,000 square foot conference center, and 7,000 parking spaces”¹⁰⁸ The linchpin for the project’s approval was getting Yonkers City Council Member Sandy Annabi to switch her vote from opposing the project to approving it.

At first, the Westchester County Planning Board had refused to approve the project because of “inadequate traffic measures, conflicts with the County’s policy concerning large-scale retail developments, and general unsuitability of the Ridge Hill Village to accommodate the anticipated project.”¹⁰⁹ However, the seven-member Yonkers City Council had the authority to override the County Planning Board’s decision with a supermajority vote approving the project. Previously, City Council Member Sandy Annabi had been so opposed to the Ratner project that she and two other city council members sued their own city council—and won—to preserve the Yonkers city ordinance that required a supermajority vote by City Council to override the County Planning Board’s decision refusal to approve the project.¹¹⁰ She had also declared that FCR was “probably richer than God,” and was “robbing the city blind.”¹¹¹ Then, just over a month after that legal victory, Annabi voted to approve the project.

Annabi’s sudden switch is explained in the indictments and transcripts from the federal trial that followed in 2012, when she was prosecuted for public corruption. The evidence presented showed that Sandy Annabi changed her vote because FCR government relations executives Bruce Bender and Scott Cantone bribed her.¹¹² In exchange for her vote, FCR gave a \$60,000 consulting contract to Annabi’s cousin and political confidante, Yonkers Republican Party Chairman Zehy Jereis, who had been buying Annabi gifts and paying her bills for years.¹¹³ The government successfully argued that Jereis’s influence on, and relationship with, Annabi

¹⁰⁴ See Letter from Cause of Action to Hon. Darrell Issa, U.S. House of Representatives (Sept. 24, 2013), *available at* <http://causeofaction.org/wp-content/uploads/2013/09/2013-9-24-Letter-to-Issa-w-Enclosures.pdf>.

¹⁰⁵ *Annabi v. City Council*, 2006 N.Y. Misc. LEXIS 4094 (N.Y. Sup. Ct. 2006), *aff’d*, 850 N.Y.S.2d 625 (N.Y. App. Div. 2d 2008).

¹⁰⁶ Transcript of Record at 1216, *United States v. Annabi* (S.D.N.Y. Feb. 23, 2012) (No. 10-CR-007).

¹⁰⁷ *United States v. Annabi*, No. S1-10-CR-7 (CM), 2012 U.S. Dist. LEXIS 161372 (S.D.N.Y. 2012).

¹⁰⁸ *Annabi v. City Council*, *supra* note 105, at *2.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at *18.

¹¹¹ Alison Leigh Cowan, *U.S. Investigates Yonkers Development After Official’s Surprising ‘Yes’ Vote*, N.Y. TIMES (May 5, 2008) *available at* http://www.nytimes.com/2008/05/05/nyregion/05yonkers.html?pagewanted=print&_r=0.

¹¹² See *United States v. Annabi*, 2012 U.S. Dist. LEXIS 161372, at *6.

¹¹³ *Id.* at *7.

meant that payments by FCR to Jereis were in fact corrupt payments to Annabi.¹¹⁴ FCR executives gave Jereis a consulting contract (for which he did little or no work) because he set up two lunch meetings with them and Annabi in June 2006, after which she agreed to support the Ridge Hill project's zoning change.¹¹⁵ At the conclusion of the trial, both Jereis and Annabi were found guilty of bribery, conspiracy, and other offenses, then sentenced to four years and six years in prison, respectively, and ordered to pay restitution.¹¹⁶ However, none of the FCR executives were ever charged or prosecuted. The case illustrates the tactics that FCR uses to get its developments approved when it faces strong local opposition.

- ***Finding:*** *The Department of Justice (DOJ) failed to prosecute FCR executives who bribed Yonkers City Council Member Sandy Annabi. FCR executives covered up payments to Yonkers Republican Party Chairman Zehy Jereis under the guise of a consulting contract for “retail hunting” in order to protect themselves from federal criminal liability when, in fact, Jereis’s consulting contract was in exchange for Annabi’s vote approving FCR’s Ridge Hill project. FCR executives made false promises and used political pressure to influence Annabi.*

1. The Bribery Scheme

For most of the time that FCR was pursuing the approval of the Ridge Hill development, Annabi adamantly opposed the project.¹¹⁷ In fact, until Zehy Jereis asked her to do so, Annabi refused to meet with any of the FCR’s lobbyists or government affairs executives who were working to persuade public officials in Yonkers to approve the project.¹¹⁸ FCR Assistant Vice President for Government Relations Scott Cantone testified that FCR approached Jereis to setup a meeting after hearing that “all roads to Sandy lead through Zehy Jereis.”¹¹⁹ Then, immediately following their first meeting with Annabi on June 9, 2006, Jereis asked Cantone for a consulting position with FCR.¹²⁰ Instead of refusing, Cantone replied that he “could not give an answer at that time [but that] this was certainly something we could consider.”¹²¹ So Jereis persisted. He sent Cantone his resume “within 24 hours” after Annabi announced her support for the project on June 14, and thereafter asked FCR for a job about “half a dozen times.”¹²² Cantone testified that FCR delayed giving Jereis a consulting contract so soon after Annabi switched her position because “optically it would look bad . . . if we were to give him a consulting contract at this

¹¹⁴ *Id.*

¹¹⁵ The meetings occurred on June 9 and June 14 in Yonkers, the former at Jake’s Steakhouse, the latter at Madison’s Restaurant. Transcript of Record, *supra* note 106, at 956; *see also* Indictment at 13, ¶¶ 36-37, United States v. Sandy Annabi & Zehy Jereis (S.D.N.Y. May 17, 2011) (No. 10 CR 007) [hereinafter Indictment].

¹¹⁶ Press Release, U.S. Atty’s Office, S. Dist. of N.Y., Former Yonkers City Councilwoman Sandy Annabi & Former Republican Chairman Zehy Jereis Sentenced to Six and Four Years in Prison for Corruption Crimes (Nov. 19, 2012) [hereinafter Press Release, USAO, SDNY], *available at* <http://www.justice.gov/usao/nys/pressreleases/November12/annabijereissentencing.php> (last visited Oct. 2, 2013).

¹¹⁷ *See supra* note 110 and accompanying text.

¹¹⁸ Transcript of Record, *supra* note 106, at 995.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 1024.

¹²¹ *Id.* at 959.

¹²² *Id.* at 967.

time.”¹²³ So, FCR executives waited until several months after the vote to finalize their arrangement with Jereis.

Federal law prohibits giving “anything of value to any person, with the intent to influence or reward” a member of “local . . . government . . .”¹²⁴ According to the indictment of Jereis and Annabi: “By on or about June 26, 2006, JEREIS and representatives of Developer No. 2 reached an agreement in principle in which Developer No. 2 agreed to give JEREIS a job sometime after ANNABI formally voted in favor of the Ridge Hill project.”¹²⁵ After the trial, the United States Attorney’s Office for the Southern District of New York announced the defendants’ sentences in a press release that identified FCR as “Developer No. 2,” the other party that had participated in the bribery scheme.¹²⁶ During the trial, FCR Executive Vice President Bruce Bender, the FCR executive in charge of lobbying local officials for the Ridge Hill development, admitted that FCR paid Zehy Jereis for Sandy Annabi’s vote:

Q. After Sandy Annabi voted to support the project, did Forest City Ratner hire Zehy Jereis as a consultant?

A. Yes.

Q. Do you recall what he was hired to do?

A. He was supposed to do some retail hunting, which means to find sites for the company and, I believe, to advise Mr. Cantone and myself on the politics and the goings-on from a political perspective of what was going on in Yonkers.

Q. Other than producing Sandy Annabi’s vote, are you aware of any value Zehy Jereis added to Forest City Ratner?

A. No.¹²⁷

The other FCR executive handling the Ridge Hill development’s lobbying efforts was Scott Cantone. Cantone also testified that FCR hired Jereis and paid him in order to get Annabi to change her vote:

Q. Approximately, how much was Mr. Jereis paid on the \$60,000 contract before the investigation began?

¹²³ *Id.* at 972.

¹²⁴ 18 U.S.C. § 666(a)(2) (“Whoever corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more; shall be fined under this title, imprisoned not more than 10 years, or both”).

¹²⁵ Indictment, *supra* note 115, ¶ 39.

¹²⁶ Press Release, USAO, SDNY, *supra* note 116 (“Shortly after ANNABI changed her vote on the Ridge Hill Project, JEREIS received the promised consulting contract from Forest City Ratner worth \$60,000 over one year.”).

¹²⁷ Transcript of Record, *supra* note 106, at 1116.

- A. It is my understanding we paid him for three months for a total of \$15,000. [. . .]
- Q. Mr. Cantone, if Zehy Jereis had not produced Sandy Annabi's vote would he have been hired by Forest City Ratner?
- A. It's hard to say but, probably, not.¹²⁸

On September 19, 2006, over two months after the Yonkers City Council voted to approve the Ridge Hill project, FCR executives gave Jereis a consulting contract for "retail hunting" work that was later finalized on October 10, but backdated to August 1, 2006.¹²⁹ The statute that prohibits making corrupt payments in order to influence or reward state and local officials does not apply to "bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business."¹³⁰ Thus, by giving Jereis a retail hunting contract, and not a political consulting contract, FCR's payments to Jereis after the vote-switch could appear to be legitimate compensation for work that was unrelated to Jereis's role in switching Annabi's vote.¹³¹

Despite this façade of legitimacy, the record reveals that FCR's payments to Jereis were not bona fide compensation in the usual course of business. At the trial, Cantone described how the terms of the "retail hunting" contract required Jereis to report directly to him and Bruce Bender, FCR's Government Affairs team, as well as FCR's Executive Vice President and Director of the Retail Development Group Richard Pesin, who was head of Ridge Hill development project.

- Q. And was the format of this agreement unusual for Forest City Ratner?
- A. Yes. It was unusual because it includes services to both the retail division and government of public affairs of division.
- Q. Let's review the agreement. First of all, who from your company was Mr. Jereis supposed to report to?
- A. According to the agreement, he was supposed to report directly to Bruce Bender, Richard Pesin and Scott Cantone.
- Q. Can you just explain, generally, what is it that Mr. Jereis was supposed to be doing in connection with this consulting contract?

¹²⁸ *Id.* at 987-88.

¹²⁹ *Id.* at 975, 1174.

¹³⁰ 18 U.S.C. § 666(c) ("This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.").

¹³¹ Section 666 applies to bribes and after-the-fact payments known as gratuities. *United States v. Bahel*, 662 F.3d 610 (2d Cir. 2011) ("Section 666 extends to both bribes—where the thing of value is part of a quid pro quo, and gratuities—where the thing of value is a "reward" rather than a bargained-for exchange.")

- A. He was supposed to be providing government relations services to the government affairs division of Co-op City, as well as retail hunting, in other words, looking for potential development sites, the retail division for the retail division.¹³²

Although Cantone testified that the consulting contract required Jereis to provide “service” to two FCR divisions—the retail division and the government affairs division—Jereis testified that he was *only* hired to do government relations work.

- A. They told me that they would like me to come on board for government affairs, and they believe I have the credentials and the merits with my experience in government to be part of their government affairs team. [. . .]
- Q. Now, prior to the written contract, what was your understanding as to what the scope of your work with Forest City Ratner was going to be?
- A. It was going to be government affairs.¹³³

Once the contract was entered, Cantone testified Jereis never provided any consulting reports to either the political affairs division or the retail division of FCR.

- Q. Approximately, when did you learn of the investigation?
- A. Approximately, March of 2007.
- Q. Did Mr. Jereis provide any reports between August 1, 2006 and March 1st of 2007 describing the work that he allegedly did for Forest City Ratner?
- A. No, he did not.
- Q. Did he provide you with any reports at all before the investigation became public?
- A. No.¹³⁴

Likewise, Bruce Bender testified that Jereis never produced any consulting reports, never came to his office, and that he and Jereis spoke “maybe once or twice.”¹³⁵ In fact, Jereis testified that no one at FCR requested any consulting reports from him until March 2007—after they learned that the federal investigation into Annabi’s vote-switch began.¹³⁶ Even more telling is

¹³² Transcript of Record, *supra* note 106, at 977.

¹³³ *Id.* at 2972-73.

¹³⁴ *Id.* at 979.

¹³⁵ *Id.* at 1117-18.

¹³⁶ *Id.* at 2975.

that FCR also stopped paying Jereis once the federal investigation of Annabi's vote-switch became public.¹³⁷

In March 2007, Jereis did conduct some of the retailing hunting he had been contracted to perform. Once Jereis produced the retail hunting reports, FCR's Project Manager for the Ridge Hill development, John Swagerty, visited the properties in Westchester County that Jereis identified as potential investment sites for FCR in order to assess their value. Swagerty found that none of these properties were suitable development sites for FCR. Instead, they were very small properties, usually about one acre, such as empty gas stations and former fast food restaurants.¹³⁸ Scott Cantone admitted that the actual retail investment recommendations Jereis provided were worthless.

Q. Mr. Cantone, between June 2nd and the present what, if any, value did Zehy Jereis provide to Forest City Ratner?

A. Besides providing access to Councilwoman Annabi, nothing at all.

Q. Did he add any value as a retail hunter?

A. Not that I am aware of, no.

Q. Even assuming he did any of the things described in these reports, did these things add any value to Forest City Ratner?

A. No.¹³⁹

2. The Cover-Up of FCR's Payments to Jereis

In their testimony, FCR executives Scott Cantone and Bruce Bender emphasized they went to great lengths to conceal their payments to Zehy Jereis in FCR's business records. According to the government, FCR hired Jereis to reward Sandy Annabi for switching her vote to approve the Ridge Hill project. To conceal this arrangement, FCR executives removed the records of the payments to Jereis from the company's budget for the Ridge Hill project. In fact, it was the FCR executive in charge of the Ridge Hill development, Executive Vice President and Director of Retail Development Richard Pesin, who added "retail hunting" to Jereis's consulting contract in order to remove the payments to Jereis.¹⁴⁰ Scott Cantone testified that this entailed re-categorizing expenses in the project's budget:

Q. And in fact, the difference between Ridge Hill and governmental affairs and retail hunting at Forest City

¹³⁷ *Id.* at 986.

¹³⁸ *Id.* at 1228.

¹³⁹ *Id.* at 983-84.

¹⁴⁰ Transcript of Record, *supra* note 106, at 1063.

Ratner in 2006 was in fact partially budgetary, isn't that right?

A. I'm sorry? I don't understand the question.

Q. Well, if Mr. Jereis's consultancy was put under governmental affairs, then the governmental affairs expenditures for the year would be increased, isn't that right?

A. I guess that is fair to say.

Q. And if it was put under Ridge Hill, Ridge Hill's expenses would be increased?

A. Yes. But to clarify, sir, even if he is working in Westchester or the Ridge Hill project, he still would be budgeted under a particular project.

Q. Absolutely.

A. Even if he was working for governmental affairs, because our budget is basically broken up into projects.

Q. That is exactly the point I am trying to make, Mr. Cantone, and I appreciate that.

Q. Retail hunting, Mr. Pesin was interested in moving him into retail hunting and that would get him out from the Ridge Hill budget?

A. Yes.¹⁴¹

In addition to removing the payments to Jereis from the Ridge Hill project's budget, FCR executives ensured that Jereis's contract was not with FCR, FCE, or any of its many, existing subsidiaries. Instead, FCR created a new subsidiary entity called FC Acquisitions, which was totally unknown to the Ridge Hill project manager. Then, Cantone instructed the Ridge Hill project manager to categorize expenditures involving FC Acquisitions as "retail hunting" in the project's budget. Project Manager John Swagerty testified:

Q. You remember, you went looking for something called FC Acquisition Associates, LLC, didn't you?

A. Yeah, I did.

¹⁴¹ *Id.* at 1070.

- Q. Because you are the man who put the money in the boxes, isn't that right?
- A. Yeah.
- Q. And you found that there was no such entity at Forest City Ratner?
- A. Yeah. I was confused because I had never heard of it before.
- Q. And you went looking for it and it wasn't there?
- A. Correct.
- Q. You told Mr. Cantone that, didn't you?
- A. Yeah.
- Q. You did. You expressly told him that, is that right?
- A. Yes.
- Q. And his response was put, it in retail hunting, isn't that right?
- A. Yes.¹⁴²

Not only did FCR executives purposefully remove Jereis's contract from the Ridge Hill budget and categorize it as "retail hunting," but Scott Cantone testified that Jereis's invoices also omitted the details of his duties under the "retail hunting" contract.

- Q. Can you read the description of the services?
- A. There is no description of services.
- Q. And what did Mr. Jereis say in the invoice?
- A. Invoice, the number, August consulting fee, five thousand dollars per contract; another invoice number, September consulting fee, five thousand dollars per contract; total \$10,000.¹⁴³

In fact, the details of what Jereis did in order to receive his consulting fees were so vague that John Swagerty did not approve them for payment. As he explained at trial, "Actually,

¹⁴² *Id.* at 1237-38.

¹⁴³ *Id.* at 988.

I kicked it back to Scott Cantone and told him that I needed more information on it before I could approve it.”¹⁴⁴

3. FCR Knew Paying Jereis Would Influence Annabi

The first and most highly paid lobbyist FCR hired for the Ridge Hill project was Albert J. Pirro, Jr.¹⁴⁵ According to former Yonkers City Council Member Dennis Robertson, Pirro was “a power broker” and “prominent businessmen in Westchester County.”¹⁴⁶ Pirro had been married to the Westchester County District Attorney and served 17 months in federal prison for numerous felonies, including tax evasion.¹⁴⁷ After his release in 2002, Pirro returned to lobbying as President and CEO of The Pirro Group.¹⁴⁸ In March 2005, Robertson met with Pirro because Robertson was considering running for City Council President in 2005. At that meeting, which occurred more than a year before the final Ridge Hill vote, Pirro told Robertson that FCR already knew how it could buy Sandy Annabi’s support. As Robertson testified, Pirro “said he is not worried about Sandy Annabi, alls [sic] he has to do is give Zehy Jereis a consulting contract and we [FCR] can get her vote.”¹⁴⁹ Therefore, if FCR knew that paying Jereis could buy Annabi’s vote when Jereis first approached Cantone and asked for a job, then they likely had “the intent to influence or reward”¹⁵⁰ Annabi when they subsequently gave a consulting contract to Jereis.

4. Political Pressure and False Promises

Before Jereis set up the meetings with Annabi, FCR executives used other New York politicians to push her to switch her vote. Bruce Bender testified that FCR was able to wield the influence of New York State Senator Nick Spano (who also was later convicted of tax fraud¹⁵¹) by hiring his brother, Mike Spano, a lobbyist who was elected mayor of Yonkers in 2011.¹⁵²

Q. Directing your attention to the portion of the email after the word “tomorrow,” you are telling Mr. Spano, Mike Spano, “no fucking around. Get Sandy on board. Tell your brother we need help now. I have to close this and take care of my family.” That was an email that you sent to Mike Spano in response to his email that we discussed just a few moments ago, correct? [. . .]

A. I would gather, yes.

¹⁴⁴ *Id.* at 1224.

¹⁴⁵ *Id.* at 952, 1125.

¹⁴⁶ *Id.*

¹⁴⁷ Brad Hamilton & Bob Fredericks, *Ex-DA’s Hubby Al Pirro Threatens Workers in ‘Restaurant Rage,’* N.Y. POST (Mar. 26, 2012), http://www.nypost.com/p/news/local/al_pirro_explodes_2FIRstPSgVpDb1oWvi76YK (last visited July 9, 2013).

¹⁴⁸ *Our Management Team, THE PIRRO GROUP*, <http://www.pirrogroup.com/team.cfm> (last visited July 9, 2013).

¹⁴⁹ Transcript of Record, *supra* note 106, at 800.

¹⁵⁰ 18 U.S.C. § 666(a)(2).

¹⁵¹ Press Release, U.S. Atty’s Office, S. Dist. of N.Y., Former New York State Senator Nicolas Spano Pleads Guilty in White Plains Federal Court to Filing Fraudulent Tax Returns (Feb. 10, 2012), *available at* <http://www.justice.gov/usao/nys/pressreleases/February12/spanonicholaspleapr.pdf> (last visited Nov. 21, 2013).

¹⁵² *Id.* at 878.

Q. I'm sorry?

A. Yes.

Q. When you say, tell your brother we need help now, you are referring to Senator Nick Spano, correct?

A. Yes.

Q. So you wanted Senator Nick Spano to exert whatever political influence or whatever political pressure he had to get Sandy Annabi to vote for this project, isn't that so?

A. Yes, that's correct.¹⁵³

Finally, when Sandy Annabi did meet with FCR executives Richard Pesin, Bruce Bender, and Scott Cantone at a lunch meeting arranged by Jereis, the offer they made to get her to vote in favor of the project was a promise to pay the City of Yonkers \$10 million over three years for an education fund for the city's public schools.¹⁵⁴ However, this was not a significant concession to the City of Yonkers according to Dennis Robertson. As he testified, "in the grand scheme of things, it was kind of peanuts, particularly over 3 years."¹⁵⁵ After the project was approved, FCR never paid this money.¹⁵⁶ Instead, they gave Jereis a \$60,000 consulting contract, of which they paid \$15,000, until they learned of the federal investigation into Annabi's vote-change.

- **Finding:** *Evidence at trial showed that Bruce Ratner appears to have participated in the bribery scheme because he gave Jereis the consulting job.*

In his testimony, Bender made it clear that that he answered to FCR's then-Chief Executive Officer, Bruce Ratner.¹⁵⁷ Moreover, Bender testified that Bruce Ratner approved the hiring of Jereis and that his subordinates executed the consulting contract:

Q. Are you the one that offered Mr. Jereis the job?

A. I don't believe so.

Q. Do you know who did?

A. The company did. [. . .]

Q. Fine. Is there some individual who you can identify to us who is the person who offered Mr. Jereis the consultancy?

¹⁵³ *Id.* at 1133-34.

¹⁵⁴ Transcript of Record, *supra* note 106, at 794, 958.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 1111.

¹⁵⁷ *Id.* at 1095.

A. Ultimately, you know, it is based on the approval of Mr. Ratner.

Q. Ultimately, it is Mr. Ratner that offered Mr. Jereis the job. Now, was there a piece of paper evincing this job that ultimately Mr. Ratner offered Mr. Jereis before the middle of October, to your knowledge? He got a contract in mid October?

A. Correct.¹⁵⁸

- **Finding:** *In 2010, two Members of Congress wrote to U.S. Attorney Preet Bharara about concerns that political favoritism affected DOJ's decision not to prosecute FCR. CoA's investigation reveals that FCE and members of the Ratner family have connections with noteworthy political appointees in the Obama Administration's Department of Justice, including the U.S. Attorney General. They made substantial campaign contributions to the Democratic Party and Democratic candidates in New York.*

FCE and the Ratners have been generous supporters of the Democratic Party in New York and elsewhere and have personal relationships with the U.S. Department of Justice (DOJ). In 2009, the chief counsel to U.S. Senator Charles Schumer (D-NY), Preet Bharara, was confirmed as U.S. Attorney for the Southern District of New York.¹⁵⁹ The following year, in 2010, Senator Schumer received \$5,000 of the \$53,300 that FCE's Political Action Committee contributed to U.S. Senate Democrats.¹⁶⁰ When the U.S. Attorney's Office released indictments of Annabi and Jereis, but not FCR executives, Congressmen Darrell Issa and Lamar Smith wrote Bharara requesting additional information about the case out of concern that "political favoritism guided [his] decision not to pursue legal charges against FCR and its employees."¹⁶¹ In 2013, Bruce Ratner contributed another \$32,400 to the Democratic Senatorial Campaign Committee and \$30,800 to the Democratic Congressional Campaign Committee. Bruce Ratner's sister, Deborah Ratner Salzberg, who serves as the President of FCE's Washington, D.C. subsidiary, Forest City Washington, Inc., served on the Board of Directors of the Meyer Foundation with Eric Holder, the current U.S. Attorney General.¹⁶² Bruce Ratner's nephew, Matthew Ratner, formerly held a political appointment in the National Security Division of DOJ.¹⁶³

¹⁵⁸ *Id.* at 1174.

¹⁵⁹ Benjamin Weiser, *Schumer Aide Is Confirmed as United States Attorney*, N.Y. TIMES (Aug. 8, 2009), <http://www.nytimes.com/2009/08/08/nyregion/08bharara.html>.

¹⁶⁰ *Forest City Enterprises Contributions to Federal Candidates*, OPEN SECRETS, <http://www.opensecrets.org/pacs/pacgot.php?cmte=C00123513&cycle=2010> (last visited Sept. 18, 2013).

¹⁶¹ Letter from Hon. Lamar Smith & Hon. Darrell Issa, U.S. House of Representatives, to Hon. Preet Bharara, U.S. Att'y, S.D.N.Y. (May 20, 2010).

¹⁶² *Board of Directors*, MEYER FOUND., archived at http://web.archive.org/web/20071013141432/http://www.meyerfoundation.org/about_meyer/board_of_directors/ (last visited Nov. 24, 2013).

¹⁶³ John M. O'Hara, *Ratner Family Ties: ACORN and Justice Department Plot Thickens*, BREITBART (Nov. 12, 2009), <http://www.breitbart.com/Big-Government/2009/11/12/Ratner-Family-Ties--ACORN-and-Justice-Department-Plot-Thickens>.

V. Forest City Ratner, Atlantic Yards, and Eminent Domain

- **Finding:** *FCE defended and benefited from eminent domain seizures for private development in California and New York. FCR benefited from eminent domain seizures for its Atlantic Yards Project and New York Times Building. FCE’s California subsidiary, Forest City Residential West (FCRW), benefited from eminent domain seizures for The Uptown project in Oakland. FCRW spent a combined \$350,000 on California ballot initiatives in 2006 and 2008 to protect broad eminent domain powers that benefit private developers.*

FCE’s exploitation of the legal system in pursuit of its developments includes far more than using the EB-5 program to get foreign investment money. For the Atlantic Yards Project to be built in its chosen location, ESDC exercised its power of eminent domain to seize twenty-two acres of private property, displacing 146 people in order to “alleviat[e] relatively mild conditions of urban blight.”¹⁶⁴ As FCE was pursuing this controversial use of eminent domain in Brooklyn,¹⁶⁵ it was also supporting the winning side in a major eminent domain case before the U.S. Supreme Court, *Kelo v. City of New London*, by providing funding to a non-profit that submitted a brief arguing in favor of public condemnations for private redevelopment projects.¹⁶⁶

In *Kelo*, the city of New London, Connecticut, as part of its “comprehensive” plan “to revitalize an economically distressed city,” condemned the homes of private property owners and gave the land to a pharmaceutical company so it could build a research facility.¹⁶⁷ Although the U.S. Constitution requires that government takings of private property be limited to “public use,”¹⁶⁸ the Supreme Court upheld the city’s condemnations in a 5-4 decision, ruling that the real estate development constituted a permissible “public use” because it was done for the “public purpose” of eliminating blight and fostering economic development.¹⁶⁹ As a result, the power of state and local governments to cooperate with private developers in seizing the property of private citizens gained constitutional protection.

While *Kelo* was pending, a non-profit group that FCR provided with office space,¹⁷⁰ Brooklyn United for Innovative Local Development (BUILD), submitted an *amicus curiae* brief, arguing in favor of the city of New London’s use of eminent domain for private development. BUILD’s stated reason for submitting the brief was that it was “strongly supportive” of the

¹⁶⁴ *In re Goldstein v. N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 175 (N.Y. 2009).

¹⁶⁵ A number of property owners in Brooklyn were so opposed to the eminent domain condemnations that they filed suit in federal court in an attempt to stop it. *See Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. 2008) (“At the end of the day, we are left with the distinct impression that the lawsuit is animated by concerns about the wisdom of the Atlantic Yards Project and its effect on the community.”).

¹⁶⁶ 545 U.S. 469 (2005).

¹⁶⁷ *Id.* at 472.

¹⁶⁸ U.S. CONST. amend. V (“[N]or shall private property be taken for public use without just compensation.”).

¹⁶⁹ *Kelo*, 545 U.S. at 484.

¹⁷⁰ Amended Complaint (and Demand for Jury Trial), *Apple v. Atlantic Yards Dev. Co., LLC*, (E.D.N.Y. Apr. 11, 2013) No. 11 Civ. 5550(JG)(JA). This allegation is admitted in Forest City Ratner’s Answer to Amended Complaint, ¶51, *Apple v. Atlantic Yards Dev. Co., LLC*, (E.D.N.Y. Apr. 24, 2013) No. 11 Civ. 5550(JG)(JA).

Atlantic Yards Project.¹⁷¹ Shortly after the case was decided, FCR gave BUILD \$100,000 in donations.¹⁷² In fact, four days after the *Kelo* decision was announced in June 2005, BUILD entered into a Community Benefits Agreement with FCR in which BUILD promised to help provide public programs to help address minority unemployment in Brooklyn as part of FCR’s outreach to the local community.¹⁷³

The year after *Kelo* was decided, FCR acquired the land for Atlantic Yards once the ESDC declared the property “blighted” and used eminent domain to seize it.¹⁷⁴ Those who sold their property had to sign “gag orders” that prohibited them from publicly speaking out against the project. In fact, the terms of the buyout deals required the sellers to “testify in favor of the project at hearings . . . with statements to the effect that everyone ha[d] been treated fairly, honorably, and decently.”¹⁷⁵ Furthermore, FCE paid a total of \$400,000 in 2006 and 2007 to former U.S. Senator Alphonse D’Amato to lobby against any restrictions on federal funding for developers whose projects used eminent domain.¹⁷⁶

While the Atlantic Yards project was underway in Brooklyn, FCE also partnered with *The New York Times* to build its new building in Times Square. As with Atlantic Yards, FCR built *The New York Times* building on property that was seized by eminent domain. Here the City of New York similarly ousted the current property owners because it deemed their property “blighted.”¹⁷⁷ Scott Cohen, a small business owner who had his property seized by eminent domain for *The New York Times* building said, “You just don’t think things like that can happen in this country . . . You work hard to build something up, and then someone who is bigger than you can take it away.”¹⁷⁸

Government entities have used eminent domain condemnations for FCE’s developments on the West Coast, too. For example, the city of Oakland, California used eminent domain to condemn the property of low-income residents and businesses so that Forest City Residential West (FCRW) could build the luxury Uptown Apartments, which opened in 2008. Mayor Jerry Brown and the city of Oakland first approached FCRW in 1998, which then secured an “exclusive negotiating agreement” in early 1999.¹⁷⁹ Brown also successfully lobbied the state to

¹⁷¹ Brief for Brooklyn United for Innovative Local Dev. (BUILD) as *Amici Curiae* Supporting Respondents, *Kelo v. City of New London & New London Dev. Corp.*, 545 U.S. 469 (2005) (No. 04-108), available at http://supreme.lp.findlaw.com/supreme_court/briefs/04-108/04-108.mer.ami.build.pdf (last visited Sept. 29, 2013) (“Amici are strongly supportive of the Atlantic Yards project, a proposal to replace a blighted site . . . with mixed use development”).

¹⁷² *Id.*

¹⁷³ Community Benefits Agreement 1-51 (June 27, 2005), available at <http://www.beegreennow.org/images/Community%20Benefits%20Agreement.pdf> [hereinafter Community Benefits Agreement].

¹⁷⁴ See *Goldstein*, 921 N.E.2d at 164; see also *Goldstein*, 516 F.3d at 53.

¹⁷⁵ Patrick Gallahue, *Tout of Bounds*, N.Y. POST, <http://ddeb.net/documents/gag/gag.gif> (last visited Nov. 18, 2013).

¹⁷⁶ Eliot Brown, *Ratner Pays D’Amato \$400K for Eminent Domain Lobbying*, N.Y. OBSERVER (Feb. 26, 2008), <http://observer.com/2008/02/ratner-pays-damato-400k-for-eminent-domain-lobbying/>.

¹⁷⁷ Paul Moses, *The Paper of Wreckage*, THE VILLAGE VOICE (June 18, 2002), <http://www.villagevoice.com/2002-06-18/news/the-paper-of-wreckage/>.

¹⁷⁸ *Id.*

¹⁷⁹ CHRISTOPHER ANDREWS, CTR. FOR COMMUNITY INNOVATION, THE UPTOWN, OAKLAND, TOD DEVELOPMENT CASE STUDY 1, 3-4 (Jan. 2013), available at <http://www.greatcommunities.org/storage/The%20Uptown%20TOD%20Case%20Study%20Jan%202013.pdf>.

help exempt FCRW and other projects in Oakland from laws requiring a lengthy environmental review process.¹⁸⁰ Two years after the project broke ground, Mayor Brown received \$10,000 in donations from FCRW employees for his run for governor.¹⁸¹

FCE also spent a substantial amount of money in California to protect eminent domain seizures for private development, and not just indirectly in the form of campaign contributions to friendly politicians. FCRW spent \$250,000 in 2006,¹⁸² the year after *Kelo* was decided, to defeat Proposition 90, an amendment to the California constitution that would have prohibited the use of eminent domain for transferring property to private entities and businesses. Proposition 90 was defeated, with opponents winning by a margin of 4.8% of the vote.¹⁸³ Two years later, in 2008, FCRW spent \$100,000¹⁸⁴ in support of Proposition 99, an amendment to California's constitution that prohibited state and local governments from condemning "an owner occupied residence for the purpose of conveying it to a private person."¹⁸⁵ However, Proposition 99 contained a key exception differentiating it from Proposition 90. Proposition 99 allowed state and local governments to seize private property "for a public work or improvement," with an exception that defined public works to include "private uses incidental to, or necessary for, the public work or improvement," suggesting FCRW would not be negatively impacted.¹⁸⁶ This proposition passed with 62% of the vote.¹⁸⁷

Despite the legal validity of these kinds of eminent domain condemnations, research shows that public seizures for private development may not be good public policy because it does not facilitate successful developments.¹⁸⁸ For example, the year after the *Kelo* decision, the Institute for Justice identified 20 failed projects where eminent domain had been employed.¹⁸⁹ Ironically, the list of abandoned projects included the proposed pharmaceutical research facility in New Haven, the very project at issue in *Kelo*. In *The Truth About Times Square*, William Stern, the former chief executive of New York State's Urban Development Corporation (now the ESDC), describes how eminent domain for private use distorts real estate markets in favor of partisan politics. Stern says:

¹⁸⁰ Zusha Elinson, *As Mayor, Brown Remade Oakland's Downtown Himself*, N.Y. TIMES (Sept. 2, 2010), <http://www.nytimes.com/2010/09/03/us/politics/03bcbrown.html?pagewanted=all>.

¹⁸¹ *Campaign Finance: Forest City Residential West, Inc., 2009-2010*, CAL. SEC'Y OF STATE, <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1011615&view=contributions&session=2009>.

¹⁸² *California Proposition 90, Limits on Government's Power of Eminent Domain (2006)*, BALLOTPEdia, [http://ballotpedia.org/wiki/index.php/California_Proposition_90,_Limits_on_Government%27s_Power_of_Eminent_Domain_\(2006\)](http://ballotpedia.org/wiki/index.php/California_Proposition_90,_Limits_on_Government%27s_Power_of_Eminent_Domain_(2006)) (last visited Oct. 4, 2013).

¹⁸³ *Id.*

¹⁸⁴ *California Proposition 99, Limits on Government's Power of Eminent Domain (2008)*, BALLOTPEdia, [http://ballotpedia.org/wiki/index.php/California_Proposition_99,_Rules_Governing_Eminent_Domain_\(June_2008\)](http://ballotpedia.org/wiki/index.php/California_Proposition_99,_Rules_Governing_Eminent_Domain_(June_2008)) (last visited Nov. 18, 2013).

¹⁸⁵ CAL. CONST., Art. I § 19.

¹⁸⁶ *Id.* at Art. I § 19(e)(5).

¹⁸⁷ 2008 Ballotpedia, *supra*, note 184.

¹⁸⁸ DICK M. CARPENTER II, PH.D. & JOHN K. ROSS, VICTIMIZING THE VULNERABLE: THE DEMOGRAPHICS OF EMINENT DOMAIN ABUSE (June 2007), *available at* http://www.ij.org/images/pdf_folder/other_pubs/Victimizing_the_Vulnerable.pdf (last visited Nov. 18, 2013).

¹⁸⁹ INST. FOR JUSTICE, REDEVELOPMENT WRECKS: 20 FAILED PROJECTS INVOLVING EMINENT DOMAIN ABUSE 1, 1-15 (June 2006), *available at* <http://www.castlecoalition.org/pdf/publications/Redevelopment%20Wrecks.pdf>.

When government is given the power to take property from one private owner and give it to another, an inevitable and very ugly political process begins. Instead of competing in a marketplace where outcomes are determined by who has the best innovative ideas, strong financing, creative marketing, and capable management, developers compete for political influence. In order to be anointed by government or protect their property from being taken, they hire anyone who has political influence or is remotely perceived to have influence: law firms, public relations firms, lobbyists, political consultants, etc. They attempt to cultivate the media, knowing that the media influences politicians. The use of condemnation on 42nd Street provided a commercial opportunity of enormous proportions for political insiders.¹⁹⁰

Stern's analysis can easily be observed in FCE's practices, which has included hiring anyone with political influence, such as Zehy Jereis and Al Pirro, and considerable spending on political parties, local, state and federal candidates, and ballot initiatives.

VI. Conclusion

The Annabi-Jereis federal corruption trial, the use of foreign investors with the EB-5 program, and the eminent domain condemnations on both coasts all demonstrate that FCE has been involved in a diverse set of legal abuses involving state and federal law. These actions, together with its political spending on campaigns and ballot initiatives, show that FCE maintains its influence and its financial success using political connections and legal loopholes in a diverse set of areas, all of which have led to numerous instances of unfair treatment: Wealthy foreign investors get visas, while homeowners and small businesses in New York, Brooklyn, and Oakland lose their property; local politicians who take bribes go to jail, while public affairs executives who pay those bribes remain free.

FCE's business practices signal the need for policymakers and the public-at-large to rethink the role of government in benefitting private businesses. First, private development to address urban blight should not be considered a "public purpose" that justifies eminent domain condemnations. Private property owners, especially small land owners and those in poorer areas, have the most to gain from eminent domain reforms. This means that states such as New York and California should protect private property rights by outlawing the use of eminent domain for private use, just as 42 other states have already done. At the federal level, Congress should prohibit federal funding for projects where eminent domain is used for private development. For the EB-5 visa program, Congress should investigate USCIS's administration of the EB-5 program. It should eliminate the legal provisions that allow regional centers and investors to rely on indirect and induced job creation under the Pilot Program. Finally, in order to deter bribery schemes, prosecutors should pursue not only public officials who deprive the public of honest services, but also the individuals and companies that benefit from public corruption.

¹⁹⁰ William J Stern, *The Truth About Times Square*, INST. FOR JUSTICE (Apr. 2009), <http://www.ij.org/stern-perspective>.



Advocates for Government Accountability

For press inquiries and information regarding this report:

Mary Beth Hutchins, Communications Director
(202) 400-2721

For general inquiries or to report waste, fraud or abuse:

Phone: (202) 499-4232
<http://www.causeofaction.org>
1919 Pennsylvania Ave Suite 650
Washington, DC 20006