Testimony before the Joint Senate and House Democratic Policy Committee

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The Abandoned and Blighted Property Conservatorship Act

Madam Chair and Members of the Committee, I am Joseph Sabino Mistick. I am an Associate Professor of Law at Duquesne University in Pittsburgh. Thank you for this opportunity to testify about the Abandoned and Blighted Property Conservatorship Act.

My comments today include some of the concerns of now retired Allegheny County Judge Donald Walko, who could not be here. Judge Walko sponsored this Act when he was a state legislator from Pittsburgh's Northside. While on the bench, Judge Walko heard these cases.

Let me start by saying that this is a good law with good intentions that has been used successfully in many of our towns and neighborhoods. As with any law, the passage of time reveals its flaws, but that provides an opportunity to make the law even better.

This Act was originally intended to help municipalities and neighbors and community non-profits take control of abandoned and blighted properties and revive them. But that original intent can be frustrated.

In Allegheny County, we have seen private investors form straw non-profits in order to qualify as conservators. Their connection to the community can be as tenuous as an apartment address somewhere in the neighborhood.

Once appointed, they can use a related for-profit construction company to do the rehabilitation at a cost that they set together, leaving no funds for distribution at the end of the project.

And instead of targeting properties where investment is needed most, they often cherry pick properties with minor infractions in the hottest development neighborhoods.

These are predator non-profits that will recklessly file against properties without diligently researching their status. This unjustly shifts the burden to the owners to do the work the petitioners should have done. Then they must defend their own property.

Just last week, a couple struggling to find work during the pandemic discovered that their home was targeted for a conservatorship. The developer merely had to knock on their door to discover that they are living there, but now they must find and hire a lawyer to save the only thing they own.

It is too easy for individual properties to be held hostage by profit-driven petitioners. Once a conservatorship petition and the *lis pendens* are filed without notice to the owner, the title is in doubt and the owner is frozen-out. Bargaining leverage then passes to the petitioner.

In one ongoing case, a predator non-profit targeted just a few parcels in an assemblage of properties that a developer had taken years to acquire for a large-scale project. Those parcels then became valuable bargaining chips for the petitioner.

In a case in which I was directly involved, the petitioner wanted to discuss how much my client would be willing to pay to have them lift the *lis pendens* against his property. This same group publicly advertised workshops promising to show private investors how to get other people's property "for free" under the Conservatorship Act.

The price of admission for these profit-driven petitioners is too low. It is too easy for them to take advantage of a good law that is intended to give good people a chance to save their own communities. And that leads us to an issue that goes to the heart of this law.

Eminent Domain starts with a Declaration of Taking and the Conservatorship Act starts with a *lis pendens*. Both signal to the world that another party now has an interest in the property. But the government must pay "just compensation" for

that property under eminent domain, while petitioners under the Conservatorship Act pay nothing.

This invites a legal challenge on the ability of government to delegate more power than it can wield on its own. But it also provides an opportunity to amend the Act in ways that will make it stronger and more consistent with its original goals.

A requirement that failed petitioners must pay the costs and legal fees of the property owners would be a start. It could be limited to cases in which petitioners did not use due diligence or act in good faith. This would lead to a more careful selection of properties.

At the very least, some due process should be provided to property owners before their property is effectively taken by an *ex parte* filing of a *lis pendens*, without notice and without a hearing.

And, if you are looking for a big fix, some mechanism that establishes fair market value at the time the property is taken—which would be the value of the property in its derelict state—would bring the Act in line with eminent domain law and address the "taking" issue head-on.

These suggestions will tighten the Conservatorship Act generally, protect it from a substantive challenge and also address the practical problems caused by those who principally use it for private gain, which was not the intent of the legislation.