IMPACT OF THE ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ACT (ACT 135) ON VULNERABLE HOMEOWNERS IN PHILADELPHIA

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I. INTRODUCTION

Who We Are

The Advocacy for Racial and Civil (ARC) Justice Clinic provides legal support to community members in the Philadelphia region. The mission of the ARC Justice Clinic is to use legal tools to support a grassroots movement for racial justice. Our legal clinic became aware of the Abandoned and Blighted Property Act (Act 135) when a community member contacted us regarding their experience as the respondent to an Act 135 petition in Philadelphia. The case ultimately resulted in the loss of their property for which the individual received no monetary compensation. In response to this outreach, the ARC Justice Clinic has engaged in a preliminary investigation into the use of Act 135 in Philadelphia and its impact on vulnerable homeowners. If you or a loved one has been impacted by Act 135, please consider filling out this form if you would be willing to speak with us: https://upenn.co1.qualtrics.com/jfe/form/SV_4HCGnyMk4yoXRkO.

Background on Act 135

In 2008, the Pennsylvania legislature passed Act 135, which established property conservatorship as a remedy to address blight throughout the commonwealth. By its own terms, Act 135 created a mechanism for communities to “transform abandoned and blighted buildings into productive reuse” in order “to modernize, revitalize and grow, and to improve the quality of life for neighbors who are already there.” In passing the Act, the Pennsylvania legislature found that blighted or abandoned properties pose several issues to residents of communities where those properties are located, including: the diminishment of property values and increased cost to taxpayers and municipalities to secure and demolish those properties. The architects of Act 135 intended for conservatorship to grant community members standing to petition a court for the right to rehabilitate and, possibly, take ownership of abandoned properties whose blighted conditions adversely affected other community members. Under the law, to establish a conservatorship, a petitioner must show that:

1. the building has not been legally occupied for the previous 12 months;
2. the owner has failed to present compelling evidence that they have actively marketed the property during the preceding 60-day period;
3. the property must not be subject to pending foreclosure action by an individual or nongovernmental entity; and
4. the owner has failed to present sufficient evidence that he has acquired the property within the preceding 6 months.

Additionally, a court must find that the building or physical structure meets three of nine physical conditions justifying conservatorship. A property that meets three of these conditions is deemed blighted.

During the first five years after Act 135’s enactment, there were few Act 135 cases filed in Philadelphia. Ninety Act 135 petitions were filed in Philadelphia from October 2009 through December 2014. However, in October 2014, Pennsylvania legislators amended Act 135 in several important ways. Representative John Taylor, who introduced the amendments, argued that they would make conservatorship a more attractive tool for private developers who “liked the concept of the law . . . but . . . also express fear about the risks they are taking once they petition the court and obtain conservatorships.”

2 Id. § 1102 (5).
3 Id. § 1102; see also Hearing on H.B. 2188 Before the House Urban Affairs Committee, 2007-2008 Regular Session (2008) (“Blighted and abandoned buildings . . . significantly reduce the average value of properties adjacent to them and cost the municipalities where they are located millions of dollars annually in demolition costs and loss of tax revenue.”)
5 Id. § 1105 (d).
6 These nine physical conditions are: (i) The building or physical structure is a public nuisance. (ii) The building is in need of substantial rehabilitation and no rehabilitation has taken place during the previous 12 months. (iii) The building is unfit for human habitation, occupancy or use. (iv) The condition and vacancy of the building materially increase the risk of fire to the building and to adjacent properties. (v) The building is subject to unauthorized entry leading to potential health and safety hazards and one of the following applies: (A) The owner has failed to take reasonable and necessary measures to secure the building; (B) The municipality has secured the building in order to prevent such hazards after the owner has failed to do so. (vi) The property is an attractive nuisance to children, including, but not limited to, the presence of abandoned wells, shafts, basements, excavations and unsafe structures. (vii) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds has created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards. (viii) The dilapidated appearance or other condition of the building negatively affects the economic well-being of residents and businesses in close proximity to the building, including decreases in property value and loss of business, and the owner has failed to take reasonable and necessary measures to remedy appearance or the condition. (ix) The property is an attractive nuisance for illicit purposes, including prostitution, drug use and vagrancy.” Id. at § 1105 (d)(5).
8 Memorandum from Representative John Taylor to the Pennsylvania House of Representatives (Apr. 29, 2013), https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20130&cosponId=12643.
could be incentivized to use conservatorship by encouraging the payment of costs and developer fees, shortening the timeframe for the court to hold initial hearings, and bundling properties into one petition. Additionally, the amendments expanded the definition of who qualifies as a “party in interest” to file a petition. A party in interest now includes a resident or business owner located within 2000 feet of the blighted property, which is an increase from 500 feet, and a nonprofit corporation in Philadelphia that “has participated in a project within a five-mile radius of the location of the building,” which is an increase from a one-mile radius. Finally, the amendments also allow for petitioners to target vacant lots where a building has been demolished and allow for petitions to include two adjacent properties if they are owned by the same owner and used for a related purpose.

The current iteration of the law also entitles conservators to significant monetary compensation. A conservator’s fee is equal to the greater of these options: $2,500; a 20% markup of the costs and expenses for construction, stabilization, rehabilitation, maintenance and operation or demolition; or 20% of the sale proceeds. Additionally, conservators are entitled to “Costs of Rehabilitation” which include: “Costs and expenses for construction, stabilization, rehabilitation, maintenance and operation or demolition, including reasonable nonconstruction costs associated with the project, including, but not limited to, environmental remediation, architectural, engineering and legal fees and costs, permits, financing fees and a conservator’s or developer’s fee.” These fees can combine to equal tens or hundreds of thousands of dollars. The fee structure can result in cases in which fees fully equaled, or exceeded, the final sale price of a property, leaving the owner without real property or a monetary benefit. Importantly, under the fee structure, the petitioner is ensured a profit once the court determines that a property qualifies for conservatorship.

Respondents whose property meets the conditions for conservatorship, but who convince the court that they can remedy the conditions themselves, also must pay substantial fees to the petitioner. Under these circumstances, respondents may be granted “conditional relief” by the court, wherein respondents must remedy the conditions or sell the property by a set date. Even if a respondent successfully meets the deadlines and conditions imposed by the court and remedies or sells their property, “the owner shall reimburse the petitioner for all costs incurred by the petitioner in preparing and filing the petition in accordance with the requirements of section 4 and the conservator’s or developer’s fee.”

Thus, although conditional relief provides an opportunity for respondents to maintain ownership of their property, they may still owe petitioners significant fees even when property owners invest in the renovations themselves.

After the implementation of the 2014 Amendments, 487 Act 135 petitions were filed in Philadelphia between January 2015 and December 2022.

**Summary of Key Preliminary Findings**

* The data suggest that Act 135 petitions are disproportionately filed in communities vulnerable to gentrification as measured by the Reinvestment Fund’s displacement risk ratio. Approximately 26.6% of addresses subjected to an Act 135 petition came from a census block group the Reinvestment Fund denotes as “at elevated risk” for displacement and 32.8% came from a census block group the Reinvestment Fund denotes as “at risk” for displacement. These trends are exacerbated by rapid home value appreciation throughout Philadelphia. Additionally, large investors are increasingly purchasing single-family homes in Philadelphia to convert into apartments, threatening both the ability of residents to build intergenerational wealth and homeownership rates.

* The data also suggest that Act 135 petitions are disproportionately filed against Asian-American respondents and to a lesser degree Black respondents.

* The data reveal that just two organizations are primarily using Act 135 petitions. 255 of the 577 petitions reviewed were filed by one of two nonprofit corporations.

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9 Id.
10 The Act defines nonprofit corporations as those which have “as one of its purposes, remediation of blight, community development activities, including economic development, historic preservation or the promotion or enhancement of affordable housing.” 68 Pa. Stat. Ann. § 1103.
11 Id. § 1103.
12 Id. § 1103–1104.
13 Id. § 1103.
14 Id.
15 Id. § 1105 (f)(1)–(4).
16 Id.
II. METHOD

We reviewed the public docket information for all 577 Act 135 petitions filed in Philadelphia from October 2009 to December 2022.18 These petitions targeted 522 unique addresses. We next paired the unique addresses to the corresponding census tracts and the respective census tract level demographic data for those addresses.19

We then calculated the average census tract level demographic data for the 522 unique addresses subjected to Act 135 petitions by first multiplying census tract demographic figures by the number of Act 135 properties located in that tract, then adding the products from each tract, and then dividing the final sum by 522. Using name and address data, we were able to estimate the race/ethnicity of respondents using Bayesian Improved Surname Geocoding. We relied on Rethnicity,20 an ethnicity prediction algorithm built on recurrent neural network architecture commonly used for natural language processing, to predict race based on the full names of respondents named in Act 135 petitions after removing suffixes and abbreviated middle names. We also computed a simple odds ratio analysis by comparing the number of majority white versus majority nonwhite and majority Black block groups that appeared in the Act 135 data and general Philadelphia County data. We used this analysis to determine if Act 135 petitions were filed at different rates in areas where the majority of residents are white as compared to areas where the majority of residents are Black or people of color.

To assess whether the use of Act 135 has had any impact on vulnerable communities, we relied on the Reinvestment Fund’s21 “Displacement Risk Ratio,” a tool that measures how housing prices are appreciating in relation to the incomes of longtime residents across Philadelphia at the census block group level (the smallest publicly available geographical unit available to Census data users). This tool provides one measure of a neighborhood’s risk for displacement of current residents.22

III. FINDINGS

The data suggest that Act 135 petitions are disproportionately filed in communities vulnerable to, or actively experiencing, gentrification. Of the properties subjected to Act 135 petitions, 26.6% came from census block groups identified as “at elevated risk” for displacement by the Displacement Risk Ratio and 32.8% came from census block groups identified as “at risk” for displacement. Conversely, only 4.4% of census block groups citywide are identified as “at elevated risk” for displacement and 15.6% of census block groups citywide are identified as “at risk” for displacement.

The data also reveal that Act 135 respondents are disproportionately Asian-American and Black compared to the city’s homeowner population overall. Table 1, below, presents the racial makeup of respondents in Act 135 Petitions by total numbers and by percentages, the racial makeup of Philadelphia generally, and the racial makeup of Philadelphia homeowners. Although Asian-American residents in Philadelphia own 7.2% of homes in Philadelphia County, Asian-American homeowners are 11.8% percent of respondents. Black residents own 35.6% of the homes in Philadelphia County and account for 42.7% of respondents.24

In addition to a quantitative analysis, we interviewed attorneys who have litigated Act 135 cases and housing experts familiar with Act 135’s history to gain a better understanding of how Act 135 is actually implemented.23 We also researched the practices of frequent petitioners and interviewed respondents.

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18 This information was provided by Jonathan Pyle at Philadelphia Legal Assistance.
19 We worked with Professor Rory Kramer at Villanova University to pair addresses with census tract data. Noah Budnitz then conducted the statistical analysis. Professor David Abrams at Penn Carey Law provided advice and guidance.
20 See Rethnicity: An R package for predicting ethnicity from names SoftwareX, 17 (2022), https://www.sciencedirect.com/science/article/pii/S2352711021001874. The model has a reported precision of 86% for correctly identifying Asian names and 70% for Black names, respectively.
23 The ARC Justice Clinic is grateful for the time and expertise offered to us throughout our investigation, including Judy Berkman, Winnie Branton, Michael Froehlich, Ira Goldstein, Andrew Goodman, Michael LiPuma, Dina Schlossberg, and Katherine Wakefield.
24 We estimated race and ethnicity based on human, rather than corporate (for- or non-profit), respondents. Some petitions were filed multiple times based on one Office of Property Assessment (“OPA”) number—a unique identifier for parcels in Philadelphia—where the petitioner refiled naming the estate or another family member as the respondent. For this analysis, we filtered out repeat OPA numbers, selecting only one human respondent per parcel. The data in this table reflect this filtering.
Table 1

<table>
<thead>
<tr>
<th></th>
<th>Asian 25</th>
<th>Black</th>
<th>Hispanic</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Respondents</td>
<td>43</td>
<td>156</td>
<td>23</td>
<td>143</td>
</tr>
<tr>
<td>Percentage of Respondents</td>
<td>11.8%</td>
<td>42.7%</td>
<td>6.3%</td>
<td>39.2%</td>
</tr>
<tr>
<td>Philadelphia Demographics 26</td>
<td>-5%</td>
<td>40.8%</td>
<td>15.4%</td>
<td>38.5%</td>
</tr>
<tr>
<td>Philadelphia Homeownership Demographics</td>
<td>7.2%</td>
<td>35.6%</td>
<td>10%</td>
<td>44.1%</td>
</tr>
</tbody>
</table>

Act 135 petitions were also filed more often in Census block groups that were majority Black or majority nonwhite compared to Census block groups that were majority white. The table below shows that 39.39% of block groups in the city are majority Black, but 42.83% of Act 135 petitions were filed in these block groups. In addition, 64.5% of block groups in the city are majority nonwhite, but 69.12% of Act 135 petitions were filed in these block groups. In contrast, 35.5% of Philadelphia census block groups are majority white, but 30.88% of Act 135 petitions were filed in majority-white block groups.

Table 2

<table>
<thead>
<tr>
<th></th>
<th>Majority Black</th>
<th>Majority Nonwhite</th>
<th>Majority White</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block Group Composition of Act 135 Petitions</td>
<td>42.83%</td>
<td>69.12%</td>
<td>30.88%</td>
</tr>
<tr>
<td>Block Group Composition in Philadelphia</td>
<td>39.39%</td>
<td>64.5%</td>
<td>35.5%</td>
</tr>
</tbody>
</table>

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25 Asia is the Census Bureau’s broad term for areas extending from Japan to Turkey and including the Middle East. We use the Census Bureau’s terminology as does Rethnicity.

26 We used data from the 2021 5-Year American Community Survey data on the Census Tract level.
IV. MAPS

The following maps show the geographical locations where Act 135 petitions have been filed by neighborhood, by displacement risk ratio, and by the percentage of nonwhite residents. Please find a link to the interactive map, with details for each petition and labeled neighborhoods, at https://eshackney.shinyapps.io/Act_135_Philly/.

Figure 1 displays where Act 135 properties are located in Philadelphia. There is a concentration of properties in Point Breeze and in the Sharswood and Brewerytown neighborhoods.
Figure 2 illustrates where Act 135 properties are located, overlaid on Census data for the percent of the population that does not identify as white, non-Hispanic by block groups. These numbers thus include respondents who identify as Black, Asian, American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, two or more races, some other race, and/or Hispanic or Latino. Notably, points tend to cluster in areas where the population shifts from majority nonwhite to majority white.
Figure 3 illustrates where Act 135 properties are located, overlaid on the Displacement Risk Ratio for each Census block group in Philadelphia County.
Figure 4 illustrates the location of each Act 135 property and the predicted race or ethnicity of the first name listed as a respondent in the petition filing.

*Figure 4*
V. CONCLUSION

Based on our analysis of the data, the examination of hundreds of Act 135 dockets and their corresponding public court filings, and anecdotal evidence, we are concerned that use of conservatorship, incentivized by the current statutory fee structure, may be disproportionately impacting homeowners in areas that are at greater risk of displacement due to gentrification. In addition, we are concerned that Asian-American and Black property owners in Philadelphia are disproportionately impacted by Act 135 petitions and that petitions are more likely to be filed in areas where the population is shifting from majority nonwhite to majority white. We are also concerned that although Act 135 was intended for community-led development and does serve that purpose in some cases, the current iteration of the law may provide excessive monetary incentives for repeat petitioners to file Act 135 petitions and may include too broad a definition of “nonprofit corporations” that qualify as a “party in interest.” Importantly, 255 of the 577 petitions reviewed by the ARC Justice Clinic were filed by two nonprofit corporations. These outcomes are all inconsistent with the law’s stated purpose of providing “an opportunity for communities to modernize, revitalize and grow, and to improve the quality of life for neighbors who are already there.”

By sharing this report, we hope to both raise awareness about the impact and the use of Act 135 and to encourage housing advocates and policymakers to further investigate the use of Act 135 in Philadelphia. Further research could assess how the terms of conditional relief, under which a property owner is liable to pay a petitioner a conservator fee and reimburse filing fees and legal fees, may impact vulnerable property owners’ ability to renovate their homes and affordably maintain ownership. Further research could also focus on better understanding the impact on Asian-American homeowners, in particular. As previously discussed, Asia is the Census Bureau’s broad term that includes the Middle East. Additional research could disaggregate data related to Asian-American respondents and more deeply assess the impact on respondents who identify as Middle Eastern or who identify as Muslim in Philadelphia.

We urge law and policymakers to consider strategies and tools to ensure that Act 135 respondents who are vulnerable homeowners have access to pro bono legal representation and to resources to repair, restore and renew their property when they seek to maintain ownership. We commend Judge Ann Butchart of the Philadelphia Court of Common Pleas for her work to make information about potential resources available to Act 135 Petition respondents. With greater outreach and public education, state and municipal initiatives, like the Pennsylvania Department of Community & Economic Development’s Whole-Home Repairs Program, could offer vulnerable homeowners who desire to maintain ownership of their property needed support prior to facing an Act 135 Petition.

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28 See supra, page 4, note 25.