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The Fight for NYCHA: RAD and the Erosion of Public Housing in New York

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**THE FIGHT FOR NYCHA:
RAD AND THE EROSION OF PUBLIC HOUSING IN
NEW YORK**

Kyle Giller†

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† CUNY Law Graduate 2020 and current staff attorney at Bronx Legal Services. Thanks to Professors John Whitlow and Andrea McCardle, as well as fellow students Alex Berger and James Tenenbaum, for their careful readings and constructive critiques of drafts of this paper. And special thanks to Justice For All, as well as other tenant groups fighting for the rights of public housing residents throughout the city.

INTRODUCTION

Traditional public housing in the United States is currently undergoing conversion to a program called the Rental Assistance Demonstration (“RAD”).¹ Created by Julián Castro’s Housing and Urban Development (“HUD”) administration during President Obama’s tenure,² RAD has already been adopted by Public Housing Authorities (“PHA”) from San Francisco to Baltimore.³ In 2017, RAD came to New York City, where Mayor Bill de Blasio and the New York City Housing Authority, colloquially known as NYCHA, have aggressively embraced the program.⁴ NYCHA is by far the largest PHA in the country, housing more individuals than many mid-size American cities.⁵ Through the rise and fall of New York City’s fortunes, NYCHA has been one of the stalwarts of affordable housing in the city since the first NYCHA buildings were constructed in the 1930s.⁶ In New York, which has some of the most catastrophically high rents in the country—if not the world—and where hyper-gentrification has decimated long-standing working-class communities of color,⁷ NYCHA is the last large-scale bastion of deeply affordable housing throughout the five boroughs. More than that, public housing, beginning with NYCHA, was one of the great public works projects of the 20th century, and supporters of the first public housing developments advocated for housing as a “‘public enterprise’ in the same category as transportation and education.”⁸

While NYCHA has endured, it is not without serious problems. Beginning in the 1970s, public housing was maligned as part of the welfare state and fell out of favor as the public embraced a burgeoning neoliberal economic ideology.⁹ As public housing became more unpopular in the

¹ Shamus Roller & Jessica Cassella, *The Promise and Peril of HUD’s RAD Program*, SHELTERFORCE (July 30, 2018), <https://perma.cc/4USE-Z6HA>.

² Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112-55, § 4, 125 Stat. 552, 673.

³ Roller & Casella, *supra* note 1.

⁴ Amir Khafagy, *NYCHA’s Embrace of RAD Program Brings a Mix of Praise and Worry*, SHELTERFORCE (Oct. 9, 2018), <https://perma.cc/NMT4-Y3MR>.

⁵ N.Y.C. HOUS. AUTH., NYCHA 2019 FACT SHEET 1 (2019), <https://perma.cc/BW53-J8HP>.

⁶ *Id.*

⁷ SAMUEL STEIN, CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE 3-4 (2019); *see also* JEREMIAH MOSS, VANISHING NEW YORK: HOW A GREAT CITY LOST ITS SOUL *passim* (2017).

⁸ *Public Housing Asked by Workers*, N.Y. TIMES, June 29, 1934, at L18, <https://timesmachine.nytimes.com/timesmachine/1934/06/29/93762064.pdf>.

⁹ David Erickson, *The Housing Policy Revolution*, COMMUNITY INV., Winter 2009/2010, at 24, 25-27, <https://perma.cc/B2VE-BHCC>; *see* Ganesh Sitaraman, *The Collapse of Neoliberalism*, NEW REPUBLIC (Dec. 23, 2019), <https://perma.cc/GT3Z-UFWN>.

public consciousness, the federal government responded with a series of budget cuts over the ensuing decades.¹⁰ Budget shortfalls coupled with an aging housing stock have led to serious deficiencies in the infrastructure of the buildings, and some estimates to repair NYCHA properties total as much as \$32 billion.¹¹

In an effort to close the funding deficit hampering the nation's PHAs,¹² HUD created the RAD program, which proposes new regulatory agreements to convert PHAs to project-based Section 8 vouchers.¹³ After the agreements are made, private landlords offer bids to act as a management company by maintaining the property and overseeing day-to-day operations while collecting rent.¹⁴ So far, public housing advocates in New York have generally supported the RAD program because it has been proffered as the only feasible option to get the funding NYCHA needs to make necessary repairs.¹⁵ Advocates and city government officials believe that it is more advisable to accept private capital in the short term than to hold out for federal funding that likely will never arrive.¹⁶

One of the things that most concerns tenants and some advocates is whether RAD amounts to a privatization of NYCHA. NYCHA itself, in conjunction with the city and HUD, has repeatedly emphasized that RAD is not a program of privatization: a brochure about RAD published by NYCHA states that “this is a public-private partnership . . . NYCHA will enter into long-term lease agreements with development partners that will repair and manage the properties.”¹⁷ The same brochure attempts to dispel fears of total loss of public control by declaring that “NYCHA will

¹⁰ VICTOR BACH, CMTY. SERV. SOC'Y, PUBLIC HOUSING: NEW YORK'S THIRD CITY 3 (2017), <https://perma.cc/3DFY-JP7S>.

¹¹ Katie Honan, *Repair Costs for NYCHA Properties Skyrocket to \$31.8 Billion*, WALL ST. J. (July 2, 2018, 8:40 PM), <https://perma.cc/39A4-RNEB>.

¹² See Pam Fessler, *Trump Administration Wants to Cut Funding for Public Housing Repairs*, NAT'L PUB. RADIO (May 16, 2019, 11:39 AM), <https://perma.cc/5Y9B-8PLK>.

¹³ *Rental Assistance Demonstration (RAD)*, U.S. DEP'T OF HOUS. & URBAN DEV., <https://perma.cc/PHJ8-CXPS> (last visited May 7, 2020) (“RAD was created in order to give public housing authorities (PHAs) a powerful tool to preserve and improve public housing properties and address the \$26 billion dollar nationwide backlog of deferred maintenance.”); see Emma Whitford, *NYCHA Residents and Advocates Fear City's Revised Privatization Plan Will Put Tenant Rights at Risk*, GOTHAMIST (Apr. 23, 2019, 11:39 AM), <https://perma.cc/555Z-9Y8E>.

¹⁴ NAT'L HOUS. LAW PROJECT, AN ADVOCATE'S GUIDE TO PUBLIC HOUSING CONVERSIONS UNDER COMPONENT 1 OF THE RENTAL ASSISTANCE DEMONSTRATION 6-7 (2016), <https://perma.cc/6PQJ-5S94>; Roller & Casella, *supra* note 1.

¹⁵ See Alicia Glen, *Why We Can't Fix Affordable Housing: It Isn't from Lack of Trying*, CITYLAB (Oct. 15, 2019), <https://perma.cc/B8ME-PYWC>.

¹⁶ *Id.*; see also Nicholas Dagen Bloom, *Make NYCHA Great Again: A Progressive Mayor's Obligation*, N.Y. DAILY NEWS (Mar. 14, 2018, 5:00 AM), <https://perma.cc/F6LJ-FUQS>.

¹⁷ N.Y.C. HOUS. AUTH., CREATING A PERMANENT AFFORDABILITY COMMITMENT TOGETHER: FREQUENTLY ASKED QUESTIONS (2019), <https://perma.cc/KTT3-QB76>.

continue to own the land and buildings.”¹⁸ In this sense, RAD does not meet a strict definition of privatization, where ownership is transferred from municipal control to the private sector.¹⁹ However, many residents are skeptical of NYCHA’s claims, and there are sufficient indications that RAD is merely the initial step towards dismantling public housing entirely.²⁰

How did NYCHA, one of the great public works programs of the 20th century, find itself in this position? In this Note, I argue that NYCHA and PHAs across the country have been subject to a quasi “shock doctrine,” a term coined by Naomi Klein to describe a form of neoliberalism that exploits a disaster in order to privatize public goods.²¹ The fiscal disaster facing PHAs that allowed for the private market to step in has developed over decades of budget cuts beginning with the austerity and deregulation of the 1970s neoliberal agenda.²² Simultaneous with the rise of neoliberal economics was the integration of public housing. As public housing became racially diverse after enforcement of the Civil Rights Act, largely white public housing residents were forced to integrate with communities of color, and politicians began to criticize and defund public housing.²³ By the 1990s, the reality of the public housing projects in New York City matched the discriminatory rhetoric peddled by politicians.²⁴ People took for granted that public housing could not sustain itself and that it would require outside assistance to be rescued. This in turn set the stage for legislation that would allow private players to get involved in the management of NYCHA buildings and ultimately profit through a complex system of tax abatements and city contracts.

The goal of this paper is twofold: first, to show that PHAs, and more specifically NYCHA, did not reach this point through mismanagement,²⁵

¹⁸ *Id.*

¹⁹ For a strict definition of privatization, see Mary M. Shirley, *The What, Why, and How of Privatization: A World Bank Perspective*, 60 *FORDHAM L. REV.* S23, S24 (1992).

²⁰ For a discussion of the uncertainties of permanent affordability under RAD, see *infra* Section III.C.

²¹ NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 7 (2010).

²² See *infra* Sections I.B and C for a discussion of the rise of the ideology of austerity and subsequent budget cuts to public housing.

²³ LAWRENCE J. VALE, *PURGING THE POOREST: PUBLIC HOUSING AND THE DESIGN POLITICS OF TWICE-CLEARED COMMUNITIES* 16-18 (2013); Luis Ferré-Sadurní, *The Rise and Fall of New York Public Housing*, *N.Y. TIMES* (July 9, 2018), <https://perma.cc/E5UB-ADKU>.

²⁴ Jarrett Murphy, *Chapter 2: The Life and Times of Public Housing*, *CITY LIMITS* (Jan. 10, 2009), <https://perma.cc/Y7V5-JCZT>; Richard Rothstein, *Race and Public Housing: Revisiting the Federal Role*, *POVERTY & RACE*, Nov./Dec. 2012, at 1, 2, 15-16, <https://perma.cc/EGX4-CAT8>.

²⁵ While mismanagement was certainly an issue in some PHAs, it is not the focus of this paper and, I believe, not nearly as important a factor as severe funding cuts over a prolonged period.

nor through the failures of the public housing residents themselves. After decades of funding the construction of hundreds of thousands of units across the country,²⁶ public housing was subject to an intentional defunding scheme beginning in the 1970s, a time of both racial integration and a burgeoning economic ideology of neoliberalism that led to massive budget cuts, leaving PHAs without the funding they needed to survive.²⁷ The first section discusses the history of public housing—demonstrating how NYCHA has always been carefully controlled by the philanthropic goals of the wealthy and backed by federal funding—and how it was subsequently abandoned once it became more racially diverse and public housing as a philanthropic goal fell out of favor.

The second goal of the paper is to show that the current RAD scheme is a bold step toward privatizing public housing. Unlike the wealthy New York elites who were interested in housing the poor at the turn of the 20th century, current wealthy elites are mainly capital investors who realize that NYCHA buildings are on extremely valuable land, owing to the resurgence of New York in the 1980s and 1990s.²⁸ This realization has created a new partnership between HUD and private investors in the form of RAD. Although the regulatory agreements to convert public housing through RAD contain protections for residents to maintain their current levels of affordability, there are good reasons to believe that this is the beginning of a chain of events that will lead to transfer of ownership to the private market, as that will yield the largest profits for the private investors. Indeed, as we have seen in other privatization schemes, including charter schools, private prisons, and medical services, private actors do not always provide a superior service but rather are looking for exploitable loopholes to maximize their profits.²⁹ Because of public housing's history as a tool for elite interests, coupled with some suspicious loopholes in the RAD regulatory agreements, I argue that RAD is a calculated,

²⁶ The Housing Act of 1949 authorized the construction of 810,000 units nationwide. U.S. DEP'T OF HOUS. & URBAN DEV., MAJOR LEGISLATION ON HOUSING AND URBAN DEVELOPMENT ENACTED SINCE 1932 (2014), <https://perma.cc/8SM3-RFQE>; see NICHOLAS DAGEN BLOOM, PUBLIC HOUSING THAT WORKED: NEW YORK IN THE TWENTIETH CENTURY 117 (2008).

²⁷ Justin R. La Mort, *Public Housing and Public Health: The Separate and Unequal Protection of Private and Public Housing Tenants' Health in New York City*, 27 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 385, 395 (2018); Rothstein, *supra* note 24, at 1-2, 15-16.

²⁸ Peter Dreier, *Philanthropy and the Housing Crisis: The Dilemmas of Private Charity and Public Policy*, 8 HOUSING POL'Y DEBATE 235, 238-39 (1997); see also Sean Campion, *NYCHA's Untapped Assets*, CITIZENS BUDGET COMM'N (Oct. 2, 2018), <https://perma.cc/9775-AYTA>.

²⁹ For more information on the perils of various privatization schemes, see IN THE PUBLIC INTEREST, <https://www.inthepublicinterest.org/> (last visited May 7, 2020). In the Public Interest (ITPI) is a comprehensive research and policy center focused on privatization and responsible contracting.

logical, and predictable step toward privatization after a decades-long defunding agenda, fueled by racist rhetoric and neoliberal economics, that began in the 1970s.

I. THE HISTORY OF NYCHA

A. *Origins of NYCHA: The Movement for Public Housing in 19th Century New York and London*

To understand how privatization became a viable option for public housing in New York, it is important to understand the rise and fall of NYCHA through the 20th century: the original promise of stable urban dwellings for the working class; the subsequent experiments and improvements; and ultimately the neglect, decline, and stagnation that laid the groundwork for RAD's implementation in the early 2010s.³⁰ The history of NYCHA closely tracks the shifts in political ideology that took place over the course of the 20th century in America, from the creation of large public works projects during and after the Great Depression to the economic doctrine of deregulation and neoliberalism in the 1970s and 1980s.³¹ Support for public housing has always been closely tied to the interests of wealthy elites who lobby the government:³² in the early 20th century, it was a popular idea eagerly embraced by many;³³ by the 1970s, it was considered a failure and defunded;³⁴ and today, elites are once again embracing it—provided they are able to extract a profit.³⁵

The groundwork for the ideology and implementation of public housing stems from the squalid conditions in which many New Yorkers lived in the mid-to-late 19th century and the joint efforts of philanthropists and the government to reform that housing. Over the course of many decades, wealthy city dwellers took a dual approach, lobbying the state legislature to enact a comprehensive tenement building code that would raise tenement standards and engaging in the construction of charitable housing for the poor, a forerunner of government-funded public housing in the 1930s.³⁶

While the movement to reform slum housing can be traced back to the early 19th century, it first gained momentum during New York City's

³⁰ See *infra* Sections I.B.1 and 2.

³¹ 151 *Years of America's Housing History*, NATION (May 24, 2018), <https://perma.cc/7EBT-3TB8>.

³² See RICHARD PLUNZ, A HISTORY OF HOUSING IN NEW YORK CITY 10, 34-36 (rev. ed. 2016).

³³ See BLOOM, *supra* note 26, at 40-41.

³⁴ See VALE, *supra* note 23, at 20.

³⁵ See *infra* Section III.C.

³⁶ PLUNZ, *supra* note 32, at 21-22, 88.

expansion after the Civil War. In 1865, the Citizens' Association of New York, a group of upper-class New Yorkers concerned about the health and welfare of the burgeoning immigrant population in New York, pushed the state to investigate conditions in tenement housing.³⁷ "Tenements" under the law were broadly defined to include nearly any structure with at least three families "living independently of one another."³⁸ This encompassed a diverse array of structures that had cropped up in New York over the course of the 19th century, including tenements, cellars, rookeries, and squatter shacks.³⁹ At the time, there were hardly any laws regulating building construction in New York, and tenement buildings had few if any windows, no running water, and little chance of escape in case of a fire.⁴⁰ Disease and overcrowding were rampant.⁴¹ Ultimately, the shockingly substandard conditions that were uncovered led to the passage of the Tenement House Act in 1867.⁴²

The changes to tenement structures encouraged by the law were fairly limited in scope, mainly requiring fire escapes on the exterior of tenement buildings and some minimum standards for water closets and air shafts.⁴³ Although the city delegated enforcement responsibilities to the newly created Metropolitan Board of Health and the Department of Survey and Inspection of Buildings, the new code's implementation was spotty in a rapidly growing city noted for its corruption and inefficient bureaucracy.⁴⁴ The regulations themselves failed to fully address the poor quality of life for the largely immigrant population inhabiting tenements. For example, even after the passage of the Tenement House Act, air shafts remained too narrow to provide meaningful air or light, and in some cases created just enough of a vent to actually increase the risk of fire.⁴⁵ These apartment blocks were often referred to as "dumb-bell" tenements, because the air shaft between buildings was so narrow that, from above, the space resembled a dumb-bell.⁴⁶

Passage of the early tenement regulations, while mostly ineffective at raising the standards of existing tenements, did help raise awareness of the intractable substandard conditions of tenements in both philanthropic

³⁷ *Id.* at 21-22.

³⁸ *Id.* at 22.

³⁹ *See id.* at 5-6.

⁴⁰ *Id.* at 15 (quoting *Homes of Poor People*, N.Y. DAILY TRIB., Jan. 8, 1882, at 10).

⁴¹ *See generally* JACOB RIIS, *HOW THE OTHER HALF LIVES* (1890).

⁴² *See* PLUNZ, *supra* note 32, at 22.

⁴³ *Id.*

⁴⁴ *Id.* at 22-23.

⁴⁵ THE TENEMENT HOUSE PROBLEM: INCLUDING THE REPORT OF THE NEW YORK STATE TENEMENT HOUSE COMMISSION OF 1900, at 371 (Robert W. DeForest & Lawrence Veiller eds., 1903).

⁴⁶ *Id.*; *see* PLUNZ, *supra* note 32, at 45-56.

and government circles. In 1890, the publication of Jacob Riis's *How the Other Half Lives* was another shocking catalyst that finally prompted meaningful government intervention.⁴⁷ Riis's report contained brutally candid photos of squalid tenement and slum conditions that horrified the city elites.⁴⁸ Outrage over the conditions depicted was widespread enough amongst the city's power brokers that the state legislature was finally prompted to act, starting with a series of investigations and reports.⁴⁹ A New York State Assembly report in 1894 on tenement housing found that while New York City was only the sixth most populous city in the world, it was by far the most densely populated, particularly in the slum neighborhoods on the Lower East Side.⁵⁰ The report also found that over half of the city's population was living in tenement housing.⁵¹ After over a decade of state reports and investigations, the philanthropic community successfully advocated for the passage of a comprehensive tenement building code via the Tenement House Act of 1901.⁵² The Act finally created enforceable standards that form the foundation of the modern building code today, including set-backs on lots, sizeable air shafts, and indoor toilets.⁵³

In the last decades of the 1800s and the beginning of the 1900s, philanthropists also toyed with building low-income housing themselves. Some of these projects were designed as "model tenements" and were meant to encourage other developers to construct more sanitary and safe tenements.⁵⁴ Model tenements designed by the building designer City and Suburban, for example, described how their apartments were complete "homes" with ample air and light in each room, full bathrooms, and running water in each apartment, and most of the other amenities we identify with a functional apartment in New York today.⁵⁵ Many of these projects were small in scale, in part because government subsidies being offered at the time were small, and the cost of land in New York had increased

⁴⁷ Jacob Riis: *Revealing "How the Other Half Lives,"* LIBRARY OF CONG., <https://perma.cc/Y9C7-GKCP> (last visited May 9, 2020).

⁴⁸ *Id.*; Riis, *supra* note 41, at 45, 51, 69, 87.

⁴⁹ Riis, *supra* note 47.

⁵⁰ Report of the Tenement House Committee of 1894, N.Y. State Assemb., 18th Legis. Sess., No. 37, at 10-11 (1895), <https://perma.cc/MYK6-ZPQ3>.

⁵¹ *Id.* at 12.

⁵² PLUNZ, *supra* note 32, at 36-37, 47.

⁵³ *Id.* at 47.

⁵⁴ Andrew S. Dolkart, *City and Suburban Homes Company*, in *AFFORDABLE HOUSING IN NEW YORK 50* (Nicholas Dagen Bloom & Matthew Gordon Lasner eds., 2016).

⁵⁵ *Id.*; LANDMARKS PRESERVATION COMMISSION, LP-1694, DESIGNATION LIST 224, at 14 (1990), <https://perma.cc/JK7E-HU6K>.

exponentially in the last decades of the 1800s.⁵⁶ As long as the government was not purchasing the land or using their existing land for projects, the cost was prohibitive enough to prevent large-scale development.⁵⁷

Early developers of philanthropic housing saw themselves as providing the working class with the stepping-stone of clean, affordable housing on their way to the true goal of owning a single-family home in suburbia.⁵⁸ As a result, many of these early housing projects tried to recruit “model” families that could eventually ascend into a higher socioeconomic class. To screen for this type of tenant, developers created exacting codes of rules and regulation founded in upper-class notions of morality, an early forerunner of the strict rules that would eventually govern NYCHA.⁵⁹

Notions of who constituted the “deserving poor” were central to the construction of early model tenements⁶⁰ and were influenced by efforts to reform housing for the poor already underway in England.⁶¹ The concept of a certain class deserving public benefits, such as housing and healthcare, is derived from the work of Octavia Hill, a leading proponent of public housing in early 19th-century London.⁶² Moralistic notions of how the rich need to control the behavior of the poor reach well back into England’s past: Hill’s efforts have their roots in the passage of the Statutes of Labourers in 1350, which made it the law for every able-bodied Englishman under 60 to work.⁶³ During a severe labor shortage resulting from the breakdown of the feudal structure and the devastation of the Black

⁵⁶ PLUNZ, *supra* note 32, at 93; Eillie Anzilotti, *The Long, Complicated History of Affordable Housing in New York*, CITY LAB (Feb. 26, 2016), <https://perma.cc/7YEN-VWK6>.

⁵⁷ Matthew Gordon Lasner, *Paul Laurence Dunbar Apartments*, in AFFORDABLE HOUSING IN NEW YORK, *supra* note 54, at 52-53.

⁵⁸ PLUNZ, *supra* note 32, at 93. Ultimately, though, public housing as a means of achieving homeownership was only available to white families, as the growth of suburbia in the mid-20th century was largely shaped by redlining practices and effectively trapped families of color in what was supposed to be a stepping-stone to their own suburban home ownership. *See generally* RICHARD ROTHSTEIN, *THE COLOR OF LAW passim* (2017).

⁵⁹ BLOOM, *supra* note 26, at 78-79.

⁶⁰ *See generally* VALE, *supra* note 23, at 1-38.

⁶¹ BLOOM, *supra* note 26, at 78; *see also* Robert H. Bremner, “An Iron Scepter Twined with Roses”: *The Octavia Hill System of Housing Management*, 39 SOC. SERV. REV. 222, 227-29 (1965).

⁶² Bremner, *supra* note 61, at 224-25.

⁶³ William P. Quigley, *Backwards into the Future: How Welfare Changes in the Millennium Resemble English Poor Law of the Middle Ages*, 9 STAN. L. & POL’Y REV. 101, 102 (1998).

Plague, England passed the Poor Laws, which obligated destitute individuals to work.⁶⁴ These laws profoundly impacted the American conception of poverty.⁶⁵

Octavia Hill, whose charity efforts were funded by wealthy English aristocrats, sent employees to each apartment weekly to collect rent and determine if repairs were needed.⁶⁶ Employees also monitored tenants to ensure that they maintained lives consistent with Hill's moral conceptions. Hill believed that "an inexorable demand for rent and an inflexible insistence on obedience to rules" were necessary "for strengthening the character of tenants."⁶⁷ This view was adopted by City and Suburban, a developer constructing model tenements in pre-Depression New York City, which mainly accepted working, married couples with children as tenants, a demographic professed to be the spitting image of the "deserving poor."⁶⁸ Like Hill, City and Suburban routinely sent employees to observe and record tenants' behavior, evicting those who did not live up to their standards.⁶⁹ This system of exchanging access to low-income housing for adherence to strict behavioral regulations was later adopted by NYCHA.⁷⁰ Until 1968, applicants for NYCHA apartments were screened for any pattern of "alcoholism, irregular work history, single motherhood and lack of furniture."⁷¹

It is important to understand public housing's roots in the concerns of the philanthropic class, beginning with Octavia Hill in England, because public housing, along with other welfare programs, is a manifestation of the ruling class's imposition of a set of moral values that aim to guide the behavior of the poor.⁷² Despite the fact that public housing was a vision created and enacted by the wealthy, our conception of poverty, which is rooted in the Elizabethan Poor Laws, ensures that we focus on the failings of the individual recipients of assistance and whether they have fulfilled the obligations set out by their wealthy benefactors.⁷³ As Lawrence Vale notes in *Purging the Poorest*, "city, state, and national officials have long treated housing assistance as a moral good, linking it to an overarching emphasis on the importance of hard work as evidence

⁶⁴ *Id.*

⁶⁵ *Id.* at 103-07.

⁶⁶ See Bremner, *supra* note 61, at 223, 225.

⁶⁷ *Id.* at 225.

⁶⁸ Dolkart, *supra* note 54, at 48, 51.

⁶⁹ *Id.* at 52.

⁷⁰ BLOOM, *supra* note 26, at 94-95.

⁷¹ Ferré-Sadurní, *supra* note 23.

⁷² VALE, *supra* note 23, at 3-6.

⁷³ *Id.* at 2-4; Quigley, *supra* note 63, at 102.

of strong personal character and responsibility.”⁷⁴ When public housing began to fail, society could reason that the poor were to blame for not living in accordance with moral standards imposed by the rich. Not coincidentally, public housing began to be perceived by the public as a failure when the white working-class families that originally constituted the majority of the tenants began to move to the suburbs and Black and Brown families took their place.⁷⁵

B. The Creation of NYCHA and Early Developments

Public housing historians typically break up public housing’s history into three distinct segments. First, from the mid-1930s to the late-1960s, public housing was predicated on “model housing as a municipal service.”⁷⁶ During this period, public housing mostly served upwardly mobile white working-class families.⁷⁷ In New York, where the first public housing in the country was constructed, this period was characterized by an optimism about the utility of public goods across the city.⁷⁸ The next period, from the late-1960s to the 1990s, was characterized by pressure from civil rights advocates to desegregate, which forced public housing to accept much more racially diverse tenants.⁷⁹ In New York, these decades were marked by white flight, which devastated the city tax base, and by the fiscal crisis of the mid-1970s, which gave rise to a new socioeconomic ideology of austerity.⁸⁰ Nationally, this period also saw the first serious backlash against public housing, culminating in the demolition of the Pruitt-Igoe Houses in St. Louis in 1972⁸¹ and the moratorium on public housing construction put in place by Richard Nixon.⁸² Finally, the period from the 1990s to present day is characterized by budget cuts at all

⁷⁴ VALE, *supra* note 23, at 2.

⁷⁵ Mittie Olion Chandler, *Public Housing Desegregation: What Are the Options?*, 3 HOUSING POL’Y DEBATE 509, 512-14 (2010); see Katharine G. Bristol, *The Pruitt-Igoe Myth*, 44 J. ARCHITECTURAL EDUC. 163, 165-66 (1991).

⁷⁶ BLOOM, *supra* note 26, at 5.

⁷⁷ *Id.* at 7-8.

⁷⁸ JOSHUA FREEMAN, WORKING-CLASS NEW YORK 55 (2000); see *First Houses Public Housing Project - New York NY*, LIVING NEW DEAL, <https://perma.cc/XU3R-X39H> (last visited May 1, 2020).

⁷⁹ VALE, *supra* note 23, at 16-17, 90-91.

⁸⁰ *Id.*; KIM PHILLIPS-FEIN, FEAR CITY: NEW YORK’S FISCAL CRISIS AND THE RISE OF AUSTERITY POLITICS 5-6, 21-27 (2017).

⁸¹ Colin Marshall, *Pruitt-Igoe: The Troubled High-Rise That Came to Define Urban America – A History of Cities in 50 Buildings, Day 21*, GUARDIAN (Apr. 22, 2015, 7:52 AM), <https://perma.cc/9XJC-3UAC>.

⁸² Agis Salpukas, *Moratorium on Housing Subsidy Spells Hardship for Thousands*, N.Y. TIMES (Apr. 16, 1973), <https://perma.cc/3SCG-RPGV>.

levels of government so severe that the physical infrastructure of many developments has either failed or begun to fail, laying the groundwork for possible privatization.⁸³ The next several sections examine these three time periods as they relate to NYCHA. NYCHA is a unique lens through which to examine public housing in the United States because many other PHAs that were initially underfunded were unable to survive a mixture of mismanagement and savage budget cuts beginning in the 1970s.⁸⁴ NYCHA, on the other hand, had a relatively stable management structure and continued receiving sufficient city and state funding to enable its survival, although that has not been the case in recent years.⁸⁵

Although the public housing crisis has roots in the budget cuts of austerity politics, the popular conception of public housing is that it is a failure of the poor who live in the developments, and specifically a failure of the people of color who began to inhabit public housing in the 1960s.⁸⁶ As mentioned previously, public housing began with strict moral codes and was explicitly intended for the white working class, which affected public housing policy for decades after.⁸⁷ Budget cuts began shortly after civil rights advocates forced public housing to accept non-white residents.⁸⁸ Public housing was adequately funded during the era when it was majority white and was ignored and mismanaged when it became racially diverse. Once public housing filled with Black and Brown families, who were trapped in cities due to redlining practices,⁸⁹ and the budget cuts began, the public became much more comfortable turning against public housing and open to market-based solutions.⁹⁰

⁸³ BLOOM, *supra* note 26, at 5; Douglas Rice, *Chart Book: Cuts in Federal Assistance Have Exacerbated Families' Struggles to Afford Housing*, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 12, 2016), <https://perma.cc/XR7M-3NVE>; Roller & Casella, *supra* note 1.

⁸⁴ See Bristol, *supra* note 75, at 164-66.

⁸⁵ Murphy, *supra* note 24.

⁸⁶ See, e.g., OSCAR NEWMAN, U.S. DEP'T OF HOUS. & URBAN DEV., CREATING DEFENSIBLE SPACE 11 (1996), <https://perma.cc/4MSG-N6CN>, for an analysis of how the architectural design of the Pruitt-Igoe Houses in St. Louis fostered a dangerous environment, but also a thinly veiled racist attack on the residents of public housing. For example: "Walking through Pruitt-Igoe in its heyday of pervasive crime and vandalism, one could only ask: What kind of people live here?" *Id.*

⁸⁷ BLOOM, *supra* note 26, at 7-8; Robert Pear, *Bias Is Admitted by New York City in Public Housing*, N.Y. TIMES (July 1, 1992) <https://perma.cc/EY3L-K2BS>.

⁸⁸ See VALE, *supra* note 23, at 16-17; BACH, *supra* note 10, at 2-4, 8 (discussing budget cuts enacted in the wake of integration).

⁸⁹ See ROTHSTEIN, *supra* note 58, for a telling overview of how redlining practices influenced current segregation in housing, both public and private.

⁹⁰ See BLOOM, *supra* note 26, at 168-80, for a discussion of integration in NYCHA throughout the 1950s and 1960s, and Bristol, *supra* note 75, for a discussion of the racist rhetoric around mostly black public housing in St. Louis and the eagerness with which the federal government tore down the buildings.

1. Political Will for Construction in the 1930s

Housing reformers in New York City finally had their opportunity to persuade the federal government to seriously invest in public housing in the early 1930s. The moment was ripe for a number of reasons: the onset of the Depression meant that construction in the city had ground to a halt, so the powerful construction trades were clamoring for work and the federal government was eager to create jobs; thousands of old-law tenements that did not comply with 20th-century building codes persisted and continued to be extreme hazards for the poor of the city; and urban planners saw an opportunity to get rid of blighted tenements as a means of bringing New York City in line with the then-fashionable public housing complexes being constructed throughout Europe.⁹¹ In Vienna, for example, the newly-established socialist government had spent much of the 1920s building public housing for a broad swath of its residents, and today 62% of the city residents still live in some form of social housing.⁹² Mayor Fiorello La Guardia, elected as a reform candidate in November 1933 in part based on his support for public housing construction, often cited Vienna and other European cities that were aggressively building public housing as models New York City should follow.⁹³ New York Senator Robert Wagner spoke of public housing as a public good like “free schools, free roads, and free parks.”⁹⁴

The bill that created housing authorities throughout the state, including NYCHA, was passed in January 1934.⁹⁵ The first few developments in Harlem and Williamsburg were constructed with Public Works Administration (PWA) funding,⁹⁶ quickly followed by the Housing Act of 1937 and the subsequent Housing Act of 1949,⁹⁷ which permitted larger-scale, permanent federal funding that enabled NYCHA’s rapid expansion as well as public housing across the country.⁹⁸ Mayor La Guardia, his successor Mayor William O’Dwyer, and the ever-present urban planner Robert Moses kept up a furious construction pace, building the majority of

⁹¹ BLOOM, *supra* note 26, at 13-16.

⁹² Meagan Day, *We Can Have Beautiful Public Housing*, JACOBIN (Nov. 13, 2018), <https://perma.cc/7WRY-S3UN>.

⁹³ BLOOM, *supra* note 26, at 22, 25-26.

⁹⁴ *Id.* at 35.

⁹⁵ *Id.* at 26-27.

⁹⁶ *Id.* at 31-32; *La Guardia Hails Housing Advance*, N.Y. TIMES (Apr. 15, 1936), <https://timesmachine.nytimes.com/timesmachine/1936/04/15/85304924.pdf>.

⁹⁷ Housing Act of 1949, Pub. L. 81-171, 63 Stat. 413; Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888.

⁹⁸ See MAGGIE McCARTY, CONG. RESEARCH SERV., R41654, INTRODUCTION TO PUBLIC HOUSING 3, 10 (2014), <https://perma.cc/Q3QV-VN65>.

NYCHA developments in the 1940s and 1950s.⁹⁹ What made this era unique was city and state officials' commitment to building public housing. During World War II and immediately after, New York officials aggressively allocated city and state funds for public housing construction and worked closely with the federal government to receive a substantial portion of the funds allocated in the wake of the Housing Act of 1949.¹⁰⁰

Public housing fit in well to the city's strong social support network at the time. In the 1930s and 1940s, New York City embodied a unique place in American history because of the scope of social programs funded by the city.¹⁰¹ Historian Joshua Freeman terms New York at this time a "social democratic polity . . . a laboratory for a social urbanism committed to an expansive welfare state, racial equality, and popular access to culture and education," in opposition to the hegemonic vision of "suburban-style, single-family home living, racially exclusive neighborhoods, and low taxes."¹⁰² Public housing was carefully carved out to occupy a specific place in American urban life and was designed so as to not hinder the growth of the suburbs and the true American ideal of the single-family home.¹⁰³

2. The Fiscal Crisis of the Mid-1970s, the End of Public Housing Construction, and the Ideology of Austerity

In the mid-1970s, New York City experienced a near-bankruptcy that would irrevocably alter approaches to municipal spending and lead to a steady increase in the government's reliance on the private sector to provide public goods. While NYCHA survived the immediate aftermath of the crisis with its budget largely intact, the fiscal crisis in New York and larger national recessions of the 1970s signaled an ideological shift away from the New Deal politics that had permitted the rise of NYCHA in the first half of the 20th century.¹⁰⁴ In its place, a new class of economists and politicians began touting and implementing a new neoliberal agenda: one in which the government approached providing services with skepticism rather than considering things like jobs, healthcare, housing, and food to be rights.¹⁰⁵ Much like the philanthropists who shaped public

⁹⁹ See BLOOM, *supra* note 26, at 110-14.

¹⁰⁰ *Id.* at 117.

¹⁰¹ See FREEMAN, *supra* note 78, at 55; Esther B. Fein, *For Families Struggling to Get By, City Projects Offer a Home For Hope*, N. Y. TIMES (Apr. 10, 1986), <https://perma.cc/CXM8-LT4M>.

¹⁰² FREEMAN, *supra* note 78, at 55.

¹⁰³ MCCARTY, *supra* note 98, at 2, 5.

¹⁰⁴ Chris Maisano, *The Fall of Working-Class New York*, JACOBIN (July 11, 2017), <https://perma.cc/S9FT-SCBH>.

¹⁰⁵ *Id.*

housing in the late-19th and early-20th centuries, public discourse once again began to treat poverty as a moral failing that could be overcome if certain restrictions and contingencies were placed on people's ability to receive services.¹⁰⁶

The fiscal crisis, which began in earnest in 1975, was caused by a complicated mix of factors: on the local level, white flight and the loss of manufacturing jobs in the city meant a swift devastation of the municipal tax base, and the city was forced to carry a larger share of Medicaid costs after the federal government slashed its contribution.¹⁰⁷ On the federal level, the country was still in the depths of a recession that had started with the oil crisis in 1973, hurting local economies nationwide.¹⁰⁸ As a result, banks began to refuse to extend credit to New York City, which in turn began defaulting on its loans, quickly resulting in the city being pushed nearly to the edge of bankruptcy. To stave off financial ruin, the state passed the Financial Emergency Act, which created the Emergency Financial Control Board (EFCB, later renamed the FCB), an entity composed of the governor, mayor, and several business leaders.¹⁰⁹ For years after, the FCB had enormous power—with hardly any oversight—to determine the budgets for most city and state funding.¹¹⁰

The fiscal crisis gave rise to what came to be known as “austerity politics,” where an unelected board imposes mandatory cuts on municipal spending ostensibly as a means to balance the budget because the local government has failed to do so on their own.¹¹¹ Much of the EFCB's focus in the immediate years following the crisis had to do with municipal services: the City University of New York instituted a tuition for the first time in its history, firefighter services were seriously curtailed, and there

¹⁰⁶ An article in the *Washington Post* described the decline of the Pruitt-Igoe Houses in St. Louis in thinly veiled racist terms, saying there was an “incompatibility between the high-rise structure and the large poor families who came to inhabit it, only a generation removed from the farm.” Bristol, *supra* note 75, at 167 (quoting Andrew B. Wilson, *Demolition Marks Ultimate Failure of Pruitt-Igoe Project*, WASH. POST, Aug. 27, 1973, at 3).

¹⁰⁷ Maisano, *supra* note 104.

¹⁰⁸ Kim Phillips-Fein, *The Legacy of the 1970s Fiscal Crisis*, NATION (Apr. 16, 2013), <https://perma.cc/GVY4-U3W5>; *Energy Crisis*, NAT'L MUSEUM AM. HIST., <https://perma.cc/SX6X-SBCQ> (last visited May 2, 2020).

¹⁰⁹ N.Y.C. INDEP. BUDGET OFFICE, DAWN OF A NEW ERA: NEW YORK CITY FISCAL POLICY AFTER(?) THE FINANCIAL EMERGENCY ACT 1-2 (2007), <https://perma.cc/R8FE-LYTF>; Sara Margaret Hinkley, *Governing the Broke City: Fiscal Crisis and the Remaking of Urban Governance 151-52* (Summer 2015) (unpublished Ph.D. dissertation, U.C. Berkeley), <https://perma.cc/WZ5A-GAFE>.

¹¹⁰ N.Y.C. INDEP. BUDGET OFFICE, *supra* note 109, at 1-2; Hinkley, *supra* note 109, at 151-52.

¹¹¹ See Maisano, *supra* note 104. Austerity in this context refers to municipal budget cuts, mainly to social services, that are enacted in response to a fiscal crisis. See also Max Rivlin-Nadler, *The Affordability Con*, NEW REPUBLIC (Apr. 7, 2016), <https://perma.cc/ATK4-GSKB>.

was a protracted fight with the municipal labor union DC-37 over the wages and benefits of city workers.¹¹² NYCHA budgets were not immediately affected, although the economic ideology that began to take shape in the 1970s would ultimately have a dire impact on the fiscal health of PHAs nationwide.¹¹³

The draconian budget cuts to municipal services in New York City took place within a broader national shift towards neoconservative economics in the 1970s. The shift began in the Milton Friedman economic school of thought in the 1960s as a fiscally conservative response to the New Deal and the War on Poverty, culminating in eight years of federal budget cuts under President Reagan.¹¹⁴ During this time, deregulation and trickle-down economics went “from bunk theory to federal mandate.”¹¹⁵ As Kim Phillips-Fein notes:

The crisis brought about a transformation of the very language and conception of politics, as the rhetoric of fiscal necessity and business acumen replaced a vision of politics as a domain of struggle and negotiation The old faith in the political importance of the working class, the New Deal sense of the necessity of government action, gave way in the fiscal crisis to a liberalism that borrowed its framework and its values from the private sector.¹¹⁶

Indeed, the rise of austerity politics worked in tandem with a rhetorical shift in American public discourse: no longer was this the country of President Roosevelt and massive public works projects. Instead, President Nixon placed a moratorium on new public housing construction in 1973,¹¹⁷ and Congress created the Section 8 voucher program in 1974 to encourage low-income tenants to begin renting in the private market.¹¹⁸

One of the ways to understand how the austerity measures of the 1970s laid the foundation for modern fiscal policy is through the theoretical framework laid out by Naomi Klein in *The Shock Doctrine*. Klein argues that Milton Friedman’s neoliberal school of thought (a regime of

¹¹² Phillips-Fein, *supra* note 108; see Joshua Freeman, *Organizing New York*, JACOBIN (May 7, 2015), <https://perma.cc/8P2M-GS9J> (discussing DC 37’s protracted fight with New York City).

¹¹³ See *infra* Section I.B.3.

¹¹⁴ JEFFERSON COWIE, *STAYIN’ ALIVE: THE 1970S AND THE LAST DAYS OF THE WORKING CLASS 226* (2010); Andre Shashaty, *U.S. Cuts Back and Shifts Course on Housing Aid*, N.Y. TIMES (Oct. 18, 1981), <https://perma.cc/R9HV-JV2K>.

¹¹⁵ Rivlin-Nadler, *supra* note 111.

¹¹⁶ Phillips-Fein, *supra* note 108.

¹¹⁷ Salpukas, *supra* note 82.

¹¹⁸ *Section 8 Program Background Information*, U.S. DEP’T OF HOUS. & URBAN DEV., <https://perma.cc/Y354-VSYC> (last visited May 3, 2020).

deregulation and privatization) was only able to assert itself on a large scale through “disaster capitalism,” or “crisis to capital”—that is, “orchestrated raids on the public sphere in the wake of catastrophic events, combined with the treatment of disasters as exciting market opportunities.”¹¹⁹ Friedman coined a version of Klein’s phrase himself in the early 1970s, when he described his plan for aggressive privatization and deregulation in Pinochet’s Chile as a “shock treatment.”¹²⁰ Klein identifies a shock doctrine at work in disasters as diffuse as Friedman’s so-called shock treatment of Chile, New Orleans’s complete transformation into a city of charter schools after Hurricane Katrina, and the flood of private contractors that have done most of the fighting in the Iraq War.¹²¹

During the fiscal crisis, some New York City officials proposed budget cuts similar in severity to those envisioned by Friedman. “Planned shrinkage” was a concept proposed by Roger Starr. Originally an advocate for affordable housing,¹²² Starr became the city’s housing commissioner during the fiscal crisis and grew disenchanted with government spending, eventually spouting an almost comically-drawn austerity agenda that hinged on the racist exclusion of the outer boroughs and low-income neighborhoods from city services.¹²³ Starr’s plan was simple: the “withdrawal of capital and services from such neighborhoods in hopes the devastation would drive the poor from the city.”¹²⁴ He put it rather bluntly:

Stop Puerto Ricans and the rural blacks from living in the city Our urban system is based on the theory of taking the peasant and turning him into an industrial worker. Now there are no industrial jobs. Why not keep him a peasant. Better a thriving city of five million than a Calcutta of seven million.¹²⁵

While Starr may not have been advocating this sinister plot as a means of eventually privatizing those services, his desire to cut services to poor communities of color at this time was not uncommon and ultimately created the disastrous conditions of neglect that laid the foundation for privatization.¹²⁶ Starr’s racist budget-slashing could also be found on

¹¹⁹ KLEIN, *supra* note 21, at 6.

¹²⁰ *Id.* at 8.

¹²¹ *See id.* at 5-9.

¹²² KIM MOODY, FROM WELFARE STATE TO REAL ESTATE: REGIME CHANGE IN NEW YORK CITY, 1974 TO THE PRESENT 76 (2007).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ This is evidenced in part by Reagan’s HUD Administration eagerly slashing its own budget. Shashaty, *supra* note 114.

the national level. In reference to public housing, President Nixon in 1973 declared in a radio address that “we must stop programs that have been turning the Federal Government into a nationwide slumlord.”¹²⁷ Nixon’s cuts to public housing funding were the first in a series of budget cuts over the next few decades, which in turn led to the rapid deterioration of public housing.¹²⁸ While *The Shock Doctrine* explores instances of disaster capitalism that happened rapidly, the failure of public housing took decades of defunding and neglect to develop, thereby winning popular support for privatization.¹²⁹

3. Budget Cuts to Public Housing After the Rise of Austerity Politics

While NYCHA was able to maintain its housing stock through the budget cuts of the 1980s, the cuts became precipitously steeper in the late 1990s and early 2000s, leading to rapid physical deterioration and mismanagement and ultimately setting the stage for HUD to pressure the agency to begin RAD conversions.¹³⁰ This was the legacy of austerity politics: starve a public good of the resources it needs to function; blame the people who rely on that good as truly at fault when it begins to fail; and then turn to the private market as the only viable solution to keep the public good functioning. So powerful and pervasive was this narrative as formulated and pushed by Milton Friedman, by Ronald Reagan, and by New York City officials like Roger Starr that the creation of RAD in the early 2010s came not from a conservative think tank, but from the Department of Housing and Urban Development (HUD) in President Obama’s administration.¹³¹

NYCHA has always been mostly funded by grants from HUD (as well as federal housing agencies that existed prior to HUD), along with smaller city and state subsidies.¹³² As a result, public housing has largely been at the mercy of shifting political winds at the national level for dec-

¹²⁷ *President Finds End of City Crisis, with Dip in Crime*, N.Y. TIMES (Mar. 5, 1973), <https://perma.cc/95L5-NTBP>.

¹²⁸ See *infra* Section I.B.3 for a discussion on budget cuts.

¹²⁹ KLEIN, *supra* note 21, at 5-9. See Glen, *supra* note 15, for a mainstream liberal housing advocate’s take on why RAD is the right approach after decades of defunding.

¹³⁰ See BACH, *supra* note 10, at 3-4, 6, 17-18.

¹³¹ RAD was created via an appropriations bill in late 2011. Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 673-75.

¹³² In 2018, NYCHA’s revenue consisted of approximately \$1 billion in rent from tenants and \$2.34 billion in subsidies, with \$1.9 billion of those subsidies coming from the federal government. N.Y.C. COUNCIL, REPORT OF THE FINANCE DIVISION ON THE FISCAL 2019 PRELIMINARY BUDGET AND THE FISCAL 2018 PRELIMINARY MAYOR’S MANAGEMENT REPORT FOR THE NEW YORK CITY HOUSING AUTHORITY 5 (2018), <https://perma.cc/J22U-WTRJ>.

ades. As the nation moved farther away from New Deal public works programs and towards the laissez-faire ideology of the 1980s, the federal government began to cut HUD's budget in more drastic ways, thus impacting the subsidies available to local agencies like NYCHA.¹³³

Serious budget cuts began with Reagan's anti-spending stance in the 1980s. In his decision to cut social services, Reagan was heavily influenced by Milton Friedman and his disparaging attitude towards the poor. In one speech, he quoted Friedman, saying, "When you start paying people to be poor, you wind up with an awful lot of poor people."¹³⁴ From 1980 to 1988, Reagan slashed HUD's budget from approximately \$36 billion to \$15 billion.¹³⁵ A top HUD official under Reagan was quoted as saying, "We're getting out of the housing business. Period."¹³⁶

Budget cuts from conservative politicians on the state and local level in New York soon followed. In the 1990s, New York Governor Pataki began slashing public housing funding by terminating the operating subsidies for 15 state-financed public housing developments.¹³⁷ When Michael Bloomberg began his term as mayor of New York City in the early 2000s, he continued this policy and terminated operating subsidies for another six city-financed developments.¹³⁸ Bloomberg also required NYCHA to cover the costs of the NYPD policing their property, amounting to some \$100 million by the end of his mayoral terms.¹³⁹

While the city and state began slashing the budget for public housing where they could, the cuts were most significant on the federal level. Between 2001 and 2013, NYCHA estimated their cumulative operating subsidy loss from the federal government to be approximately \$1 billion.¹⁴⁰ The gap between NYCHA's Physical Needs Assessment, which is conducted every five years, and federal funding provided to NYCHA was even greater. In 2006, NYCHA's five-year capital need for repairs was \$6.9 billion; in 2011, it was approximately \$16.8 billion; and in 2017, it

¹³³ W. REG'L ADVOCACY PROJECT, HISTORY OF SLASHING HUD BUDGET, <https://perma.cc/E36F-BDQH> (last visited May 11, 2020).

¹³⁴ Greg Ip & Mark Whitehouse, *How Milton Friedman Changed Economics, Policy and Markets*, WALL ST. J. (Nov. 17, 2006, 12:01 AM), <https://perma.cc/Q5DP-E5FB>.

¹³⁵ Charles H. Moore & Patricia A. Hoban-Moore, *Some Lessons from Reagan's HUD: Housing Policy and Public Service*, 23 PS: POL. SCI. & POL. 13, 14 (1990).

¹³⁶ Brian Goldstone, *The New American Homeless*, NEW REPUBLIC (Aug. 21, 2019), <https://perma.cc/2MTC-SCU3>.

¹³⁷ BACH, *supra* note 10, at 3.

¹³⁸ *Id.*

¹³⁹ *Id.* at 4.

¹⁴⁰ VICTOR BACH & TOM WATERS, CMTY. SERV. SOC'Y, STRENGTHENING NEW YORK CITY'S PUBLIC HOUSING 9 (2014), <https://perma.cc/UHH8-8NNH>.

had reached a staggering \$31.8 billion.¹⁴¹ Throughout this time, federal funding based on five-year capital needs assessments never even hit \$5 billion.¹⁴²

As budget cuts increased, buildings swiftly physically deteriorated. NYCHA apartments have deteriorated more rapidly in the 21st century than any time in their history due to a combination of an aging housing stock and the cumulative effect of federal neglect.¹⁴³ In 2002, fewer than 20% of public housing residents reported three or more “deficiencies” in the condition of their apartments; by 2011, that number had jumped to approximately 35%.¹⁴⁴ Whole developments went without heat for entire winters.¹⁴⁵ Other issues frequently reported include rodent infestations, lack of hot water, and mold accumulation.¹⁴⁶ In 2018, NYCHA made headlines for engaging in a decades-long cover-up of tests showing that there are still high levels of lead in NYCHA apartments.¹⁴⁷ According to NYCHA, the current breakdown of spending required to repair its buildings includes almost \$11 billion in repairs to exteriors of the buildings, \$6 billion for building-wide services like boilers and elevators, \$12.5 billion for individual apartment renovations, and \$2.5 billion in repairs to playgrounds and sidewalks—\$32 billion in total.¹⁴⁸

II. HUD’S CREATION OF THE RENTAL ASSISTANCE DEMONSTRATION PROGRAM

The RAD program has developed against a backdrop of both intended and unintended crises that have left NYCHA crumbling. As discussed next, Ocean Bay, a development in Far Rockaway, was chosen as the first RAD site because of the severe damage wrought by Hurricane Sandy, a natural disaster similar to Hurricane Katrina in New Orleans.¹⁴⁹

¹⁴¹ N.Y.C. HOUS. AUTH., NYCHA 2.0 PART 1: INVEST TO PRESERVE 9 (2018), <https://perma.cc/3H3K-XGFW>; Sally Goldenberg, *At \$31.8B, NYCHA’S Unmet Capital Needs Dwarf Government Allocations*, POLITICO N.Y. (Jul. 2, 2018, 5:04 AM), <https://perma.cc/6RGU-6A4K>.

¹⁴² N.Y.C. HOUS. AUTH., *supra* note 141, at 7.

¹⁴³ BACH & WATERS, *supra* note 140, at 5, 8.

¹⁴⁴ *Id.* at 5.

¹⁴⁵ Luis Ferré-Sadurní, *No Heat for 10 Years, and the City Is Their Landlord*, N.Y. TIMES (Dec. 19, 2018), <https://perma.cc/5SAE-ZPHE>.

¹⁴⁶ Amanda Luz Henning Santiago, *NYCHA’s List of Unresolved Issues Grows*, CITY & ST. N.Y. (Jan. 13, 2020), <https://perma.cc/R9LT-NPLD>.

¹⁴⁷ J. David Goodman et al., *Tests Showed Children Were Exposed to Lead. The Official Response: Challenge the Tests*, N.Y. TIMES (Nov. 18, 2018), <https://perma.cc/C8FS-4KN5>.

¹⁴⁸ N.Y.C. HOUS. AUTH., *supra* note 141, at 10.

¹⁴⁹ Press Release, N.Y.C. Hous. Auth. et al., NYCHA, NYS, & HUD Announce \$560 Million Upgrade & Preservation of NYCHA’s Ocean Bay Bayside Apartments in Far Rockaway (June 19, 2017), <https://perma.cc/CQ4J-GD6W>.

The revelations that NYCHA failed to remove lead paint from thousands of apartments and then intentionally covered it up, which has led to federal lawsuits against NYCHA, may also be speeding up the process by which RAD conversions are taking place.¹⁵⁰ Crises, whether intentional like Roger Starr’s concept of “planned shrinkage,” or natural like Hurricane Sandy, have become vehicles through which our public goods can become private. RAD is by no means a complete privatization of NYCHA, but, as outlined in this Note, it is a bold step in that direction, and very much follows the trajectory of crisis-to-capital laid out by Naomi Klein. By relying so heavily on private funds, public housing joins a long list of public institutions that suffered from decades of neglect and have been handed over to the private market with decidedly mixed results: charter schools, hospital and other medical services, and prisons, to name a few.¹⁵¹ NYCHA historian Nicolas Bloom explicitly ties RAD to privatization efforts in other sectors of society: “like charter schools, [RAD] can be an important program for residents who want dramatic changes and are willing to cast their lot with the private sector.”¹⁵²

RAD came into being via a federal appropriations bill in late 2011.¹⁵³ Congress, long skeptical of providing any kind of increased assistance to PHAs, was willing to give the program a try because it was revenue neutral and would not require any increase in federal funding, as the private entities involved could take on debt to finance repairs that the PHAs could

¹⁵⁰ Luis Ferré-Sadurní & Frank G. Runyeon, *NYCHA Has a New Plan to Clean Up Rats, Mold and Lead Paint: Bring in Private Landlords*, N.Y. TIMES, (Nov. 15, 2018), <https://perma.cc/VQ2R-UP8U>. See also Complaint, *United States v. N.Y.C. Hous. Auth.*, No. 18-cv-05213 (S.D.N.Y. 2018), <https://perma.cc/RG44-QTGF> (filing by U.S. against NYCHA for their failure to protect children from lead paint in the complexes); HUD & N.Y.C. HOUS. AUTH., AGREEMENT (Jan. 31, 2019), <https://perma.cc/HGJ4-AVGN> (Consent Decree after lead paint lawsuit brought by the U.S. against NYCHA).

¹⁵¹ Eliza Shapiro, *Why Some of the Country’s Best Urban Schools Are Facing a Reckoning*, N.Y. TIMES (July 5, 2019), <https://perma.cc/6BAT-GZY7> (charter schools); *Defend Public Hospitals*, N.Y. STATE NURSES ASS’N, <https://perma.cc/PEC2-J48M> (last visited May 5, 2020); Elaine Gartelos, *After Medicaid was Privatized, I Went From a ‘Normal’ Life to Spending Most of the Time in Bed*, DES MOINES REGISTER (Jan. 20, 2020), <https://perma.cc/5ZGQ-2RPH> (health care services); PRIVATE PRISONS IN THE UNITED STATES, THE SENTENCING PROJECT (Oct. 24, 2019), <https://perma.cc/D2SF-3VVF>; OFFICE OF INSPECTOR GEN., U.S. DEP’T OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISONS’ MONITORING OF CONTRACT PRISONS, (Aug. 2016), <https://perma.cc/XDG3-5NX7> (private prisons). Even prior HUD experiments in public-private partnerships have had mixed results: Rachel M. Cohen, *Donald Trump and the GOP are Expanding a Controversial Obama-Era Public Housing Program*, THE INTERCEPT (Apr. 2, 2018, 3:40 PM), <https://perma.cc/ZQA7-AUL4>.

¹⁵² Bloom, *supra* note 16.

¹⁵³ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552 (2011). <https://perma.cc/RWJ7-JL2J>.

not on their own.¹⁵⁴ While Congress initially conceived of RAD as a small-scale program (hence the inclusion of “demonstration” in its name), PHAs across the nation and HUD quickly began to see it as a faster way to fill public housing budget gaps.¹⁵⁵ By 2014, Secretary Castro began pushing for much wider implementation of the program, expanding the number of RAD-eligible units from 60,000 to 185,000 in just two years.¹⁵⁶

Cash-strapped PHAs across the nation have quickly turned to RAD as a possible solution for their massive budget gaps. By fall of 2016, just a few years into this small pilot program, 400 PHAs across the country had submitted 1,000 applications.¹⁵⁷ As of 2019, the cap on the number of units in the program had been extended to 455,000.¹⁵⁸ Advocates have expressed concern that “the RAD program has nearly quadrupled in size over the last five years without any evaluation of its impact on tenants.”¹⁵⁹ HUD itself quantifies RAD success in terms of how many units enter the program, not the impact on tenants themselves¹⁶⁰ and, according to a letter sent to HUD by housing advocates, has made it difficult for tenant organizations to review relevant documents and contract proposals before the deals are made between the local PHA and HUD.¹⁶¹

In general terms, a PHA that enters a RAD contract with HUD promises to convert public housing units from Section 9 of the Housing Act of 1937 to Section 8 vouchers by decreasing federal subsidies to local housing authorities and bringing in private property managers that will collect rent, manage day-to-day affairs of the building, and use private capital to cover repairs and maintenance.¹⁶² Since creation of the Section 8 program

¹⁵⁴ City Limits, *Under the RADar: Community Development and the Future of NYCHA*, YOUTUBE (Apr. 24, 2019) at 2:00-2:20, <https://perma.cc/GCV7-ZZ47>, <https://www.youtube.com/watch?v=l6miwaLkPt0&t=191s>.

¹⁵⁵ *Id.* at 2:55-3:05; Roller & Cassella, *supra* note 1.

¹⁵⁶ Jake Blumgart, *The Obama Administration Is Expanding a Program to Fix Up Public Housing—Too Bad the Program Might Also Privatize It*, NATION (June 9, 2015), <https://perma.cc/8FZY-9FQR>.

¹⁵⁷ ECONOMETRICA, INC., OFFICE OF POLICY DEV. & RESEARCH, HUD, INTERIM REPORT: EVALUATION OF HUD’S RENTAL ASSISTANCE DEMONSTRATION (RAD), at iii (2016), <https://perma.cc/5A6E-6J9D>.

¹⁵⁸ City Limits, *supra* note 154, at 3:05-3:15.

¹⁵⁹ Letter from Shamus Roller, Exec. Dir., Nat’l Hous. Law Project, to Dr. Benjamin S. Carson, Sr., Sec’y, HUD, at 1 (Oct. 11, 2017), <https://perma.cc/547Z-6WGH>.

¹⁶⁰ *Id.* at 2; *see also* ECONOMETRICA, INC., *supra* note 157, at xvii (refraining from mention of tenant satisfaction with the project before conversion is finalized).

¹⁶¹ Letter from Roller, *supra* note 159, at 2-3.

¹⁶² NAT’L HOUS. LAW PROJECT, *supra* note 14; CoreData.NYC, Directory of NYC Housing Programs: Public Housing (PH), NYU FURMAN CENTER, <https://perma.cc/W5VA-J963> (last visited May 5, 2020); *Rental Assistance Demonstration (RAD)*, HUD, <https://perma.cc/8998-BJFJ> (last visited May 5, 2020).

in the 1970s, HUD funding has generally favored Section 8 over the Section 9 programs under which NYCHA was originally created.¹⁶³ By cutting funding for traditional Section 9 public housing, RAD continues a nationwide trend towards Section 8 vouchers:

HUD will no longer provide RAD buildings with direct funding for public housing, and the units will no longer be reserved as public housing. As HUD continues to cut funding for public housing, it will force more housing authorities to apply for RAD funding to keep their buildings in shape, resulting in more public-private funding.¹⁶⁴

RAD also encourages public housing residents to enter the private market—after one or two years of participation in RAD, depending on the kind of voucher the tenant receives, they are eligible to apply for a tenant-based voucher, rather than the project-based Section 8 voucher they initially receive when RAD is put in place.¹⁶⁵

RAD is a public-private partnership because the PHA still retains ownership of the land, and the private landlord enters into a long-term lease with the housing authority in order to collect rent and manage the day-to-day affairs of the building.¹⁶⁶ How this looks in practice will vary depending on the PHA: in Baltimore, for example, the private property managers actually purchased a majority share in the buildings and received low-income housing tax credits (LIHTC) for doing so;¹⁶⁷ for NYCHA, as described below, NYCHA itself still owns the buildings while the new landlord leases the properties.¹⁶⁸ In contrast to Hope VI, which forced tenants into the private market, tenants are guaranteed the same rights and obligations that were already in place.¹⁶⁹ Beyond these basic terms, implementation of RAD differs depending on the needs of the housing authority and the contract between HUD, the housing authority, and the private landlord.¹⁷⁰

¹⁶³ MCCARTY, *supra* note 98, at 5-6.

¹⁶⁴ Khafagy, *supra* note 4.

¹⁶⁵ Roller & Cassella, *supra* note 1. Tenant-based vouchers are also known as housing-choice vouchers. See HUD, RENTAL ASSISTANCE DEMONSTRATION (RAD): FACT SHEET #1: RAD OVERVIEW 2 (July 2017), <https://perma.cc/FW87-P9RC>.

¹⁶⁶ HUD, *supra* note 165; Roller & Cassella, *supra* note 1.

¹⁶⁷ Yvonne Wenger et al., *Baltimore Housing Authority to Sell 22 Complexes to Private Developers*, BALT. SUN (Mar. 5, 2014, 9:27 PM), <https://perma.cc/43QW-WW9M>.

¹⁶⁸ See *infra* Section III.A.

¹⁶⁹ HUD, *supra* note 165; See Roller & Cassella, *supra* note 1, for a brief description of the differences between Hope IV and RAD.

¹⁷⁰ HUD, RENTAL ASSISTANCE DEMONSTRATION (RAD): FACT SHEET #2: STEPS IN A RAD CONVERSION 1 (2017), <https://perma.cc/V7EJ-EFH7>. See HUD, RENTAL ASSISTANCE DEM-

Although PHAs are typically deeply in debt, investors have been attracted to RAD because it is a reasonably safe, low-risk opportunity with a stable revenue stream guaranteed by the federal government.¹⁷¹ Before RAD, PHAs were barred from seeking private investment on their own, but with the RAD agreement in place, they are permitted to collaborate with private investors to mortgage the property and seek private funding.¹⁷² HUD encourages PHAs to raise money in a variety of ways, usually through a combination of the PHA mortgaging the property and encouraging private investors to utilize LIHTC.¹⁷³ LIHTC is a lucrative tax break program for developers who are constructing or maintaining affordable housing, sometimes providing a “dollar-for-dollar reduction in their federal tax liability.”¹⁷⁴

A RAD regulatory agreement also promotes a low-risk investment opportunity by putting in place a Housing Assistance Program (HAP) contract, the mechanism by which Section 9 public housing units are converted to Section 8 housing vouchers.¹⁷⁵ As a HUD report from 2016 noted, “[t]he long-term Section 8 contract under RAD provides those projects with a stable and predictable revenue stream that is essential to meeting the underwriting requirements of the lenders who provide that debt.”¹⁷⁶ Investors are attracted by the money freed up from the mortgage, the reliable stream of Section 8 money, and the lucrative federal tax credits.¹⁷⁷

Responses from housing advocates to RAD’s creation and implementation have been hopeful, if skeptical. Whereas prior Republican presidents like Reagan and Bush had done nothing but slash HUD’s budget, and Clinton had presided over the violent demolition process of HOPE VI, Julián Castro’s HUD was actually trying to rescue public housing by locating and encouraging new sources of revenue. An investigation

ONSTRATION USE AGREEMENT: FORM HUD- 52625 (Dec. 2019), <https://perma.cc/7ZTE-XLA9>, for boilerplate HUD agreement prepared for NYCHA housing.

¹⁷¹ Rico Cleffi, *The Vultures Are Circling NYCHA*, INDYPENDEENT (Feb. 1, 2019), <https://perma.cc/9QER-9X7V>.

¹⁷² Roller & Cassella, *supra* note 1; Khafagy, *supra* note 4.

¹⁷³ ECONOMETRICA, INC., *supra* note 157, at xv.

¹⁷⁴ *Affordable Housing Resource Center: About the LIHTC*, NOVOGRADAC (last visited Feb. 16, 2020). <https://perma.cc/RGW8-8M7P>.

¹⁷⁵ ECONOMETRICA, INC., *supra* note 157, at xxi. *See also* HUD, RENTAL ASSISTANCE DEMONSTRATION (RAD): QUICK REFERENCE GUIDE FOR PUBLIC HOUSING PROJECTS CONVERTING TO PROJECT-BASED VOUCHER (PBV) ASSISTANCE 5-6 (Oct. 2014), <https://perma.cc/WT76-GV5G>.

¹⁷⁶ *See* ECONOMETRICA, INC., *supra* note 157, at xxi, 49-51 (“[F]or every \$1 invested by the PHA, private investors put in \$3.91 in federal tax credits (\$1.90 for 9-percent LIHTC equity + \$2.01 for 4-percent LIHTC equity . . .”).

¹⁷⁷ *Id.*

into NYCHA's first RAD conversion, Ocean Bay Apartments, noted that "public-private partnerships come in all moral flavors . . . [a]t least in its early stages, RAD seems to be settling at the virtuous end of the spectrum."¹⁷⁸

III. IMPLEMENTING RAD IN NEW YORK CITY, OR NYCHA 2.0

A. NYCHA 2.0

In December 2018, NYCHA and the New York City Mayor's Office announced NYCHA 2.0, a sweeping plan to generate revenue for maintenance and repairs in NYCHA buildings.¹⁷⁹ Altogether, the plan expects to generate approximately \$23.8 billion over 10 years, out of the \$31.8 billion required to meet the agency's 2017 five-year capital needs assessment.¹⁸⁰ The plan contains three main components: the RAD program, in-fill projects, and the sale of air rights. First, NYCHA will implement RAD, with the goal of converting around one-third of NYCHA apartments to Section 8 within 10 years. The partnership between NYCHA and HUD to implement the RAD program is called "Permanent Affordability Commitment Together" (PACT).¹⁸¹ PACT is expected to generate the most significant revenue out of the three components of the plan, totaling \$12.8 billion over 10 years.¹⁸²

The second component of NYCHA 2.0 is the in-fill program, called "Build to Preserve," which will lease NYCHA land to developers to build apartment towers on what are termed "underutilized" portions of NYCHA space, including parking lots and playgrounds.¹⁸³ Developers would be required to pay for at least some of the capital needs of the NYCHA development on which they construct.¹⁸⁴ Some of the new developments will be required to make 50% of the units set at levels of affordability determined by the Area Median Income,¹⁸⁵ a disputed measure of affordability that still frequently sets rents much higher than are affordable for

¹⁷⁸ Justin Davidson, *This New York City Housing Project Works. What's Different About Ocean Bay?*, N.Y. MAG.: INTELLIGENCER (Aug. 2, 2017), <https://perma.cc/9FPF-VC6J>.

¹⁷⁹ Press Release, Office of the Mayor of N.Y., *Fixing NYCHA: Mayor de Blasio Announces Comprehensive Plan to Renovate NYCHA Apartments and Preserve Public Housing* (Dec. 12, 2018), <https://perma.cc/GD2M-LSMJ>.

¹⁸⁰ SEAN CAMPION, CITIZENS BUDGET COMM'N, *NYCHA 2.0: PROGRESS AT RISK 2-3* (2019), <https://perma.cc/8P5J-UMPC>.

¹⁸¹ *Permanent Affordability Commitment Together (PACT)*, N.Y.C. HOUS. AUTH. (2019), <https://perma.cc/2XST-DHUQ>.

¹⁸² CAMPION, *supra* note 180, at 2.

¹⁸³ Campion, *supra* note 28.

¹⁸⁴ *Id.*

¹⁸⁵ Area Median Income is a measure used by the city to determine who is eligible for affordable apartments. Affordable housing advocates argue that the measure is not reflective

working-class communities, while others will be required to use Mandatory Inclusionary Housing guidelines: that is, roughly 70% of the units will have rents set at the market rate, while approximately 30% of the units will be affordable.¹⁸⁶ In-fill projects have so far faced the fiercest community opposition, and all of the proposed projects are currently stalled.¹⁸⁷

Finally, the third component of NYCHA 2.0 is for NYCHA to generate some revenue by selling air-rights to adjacent real estate developers to allow them to construct taller buildings.¹⁸⁸ Developers will also be required to include some number of affordable units in such buildings.¹⁸⁹ The first project to actually go through, in Fort Greene, will allow the developer to build 400 units, as opposed to an initial projection of 187 without the purchase of the air-rights; 25% of these will be set aside as affordable, and the NYCHA development, Ingersoll Houses, will receive \$25 million out of an estimated \$159 million required for repairs.¹⁹⁰

Much like RAD, both the in-fill projects and sale of air-rights purport to raise sorely needed money in the short term but do little to examine the long-term effects on NYCHA tenants, or gentrification in the city as a whole. In-fill projects will destroy the parking lots and playgrounds that NYCHA tenants, who have struggled through decades of aforementioned neglect and disrepair, have grown to rely on to foster their communities.¹⁹¹ The above-mentioned air rights sale in Fort Greene in Ingersoll Houses might provide some injection of capital to meet repair needs, but it will also bring hundreds of new luxury units to a neighborhood already

of income for working class communities because it considers the suburban counties surrounding New York City (including Westchester and parts of Long Island), which tend to be wealthier than New York City itself. For a full discussion, see Kay Dervishi, *Why AMI are the Three Most Controversial Letters in New York Housing Policy*, CITY & ST. N.Y. (Aug. 13, 2018), <https://perma.cc/3F29-M32R>.

¹⁸⁶ *Campion*, *supra* note 28. See ERIC KOBER, DE BLASIO'S MANDATORY INCLUSIONARY HOUSING PROGRAM: WHAT IS WRONG, AND HOW IT CAN BE MADE RIGHT 4 (Jan. 2020), <https://perma.cc/PS7Z-8TVC>.

¹⁸⁷ Jeff Coltin, *Infill Opponents "Instilling Fear," Says NYCHA Exec*, CITY & ST. N.Y. (Sept. 24, 2019), <https://perma.cc/Q6R5-ESN8>.

¹⁸⁸ Zoe Rosenberg, *NYCHA Air Rights Eyed by Private Developers*, CURBED N.Y. (May 2, 2019, 2:10 PM), <https://perma.cc/VL9G-GD6K>.

¹⁸⁹ Valeria Ricciulli, *Brooklyn NYCHA Complex to Sell Air Rights in First-of-Its-Kind Deal*, CURBED N.Y. (Oct. 11, 2019, 11:22 AM), <https://perma.cc/MYJ5-V8RG>.

¹⁹⁰ *Id.*

¹⁹¹ Tom Angotti, *Stop NYCHA Infill Plan, Save Public Housing*, CITY LIMITS (May 9, 2013), <https://perma.cc/TR3Y-7WMX>; Nicholas Dagen Bloom, *Hidden in Plain Sight: Billions in Potential Revenue for NYCHA*, GOTHAM GAZETTE (Dec. 2, 2019), <https://perma.cc/C2TM-5AC7>; Harry DiPrinzio, *NYCHA Development Dreams at a Crossroads*, CITY LIMITS (Dec. 18, 2019), <https://perma.cc/CY4X-6Y7E>.

inundated with expensive apartments and struggling against the effects of gentrification.¹⁹² Moreover, the one-time payment to Ingersoll Houses for repairs is only a fraction of what the development needs now, and there is no obligation for the developer to meet the rest of these capital repair needs, or needs that may surface in the future.¹⁹³

B. Ocean Bay, the First RAD Pilot Project for NYCHA

The first NYCHA development to undergo a RAD conversion was the Ocean Bay Apartments in Far Rockaway. With almost 1,400 apartments and 4,000 residents,¹⁹⁴ Ocean Bay has experienced decades-long neglect typical of many NYCHA developments, including deteriorating apartments, spotty heat, and crumbling exteriors.¹⁹⁵ What made Ocean Bay stand out as a good target for the first NYCHA RAD conversion was the development's ability to access FEMA money after Hurricane Sandy.¹⁹⁶ Situated in Far Rockaway, Ocean Bay was particularly hard-hit after Sandy: tenants suffered from lack of heat, intermittent electricity, and leaking gas lines for weeks after the storm.¹⁹⁷ Along with city and state support, the stable revenue of FEMA money helped encourage private investment for the pilot program.¹⁹⁸ Klein's theory of disaster capitalism is highly relevant here—much like New Orleans public schools after Hurricane Katrina, long-neglected NYCHA housing most impacted by Hurricane Sandy became the best place to convince the public of the merits of privatization.¹⁹⁹

Financing for the Ocean Bay development comes from a complicated mix of public and private funds, and a number of entities are involved. At the front is the property manager Wavecrest Management, which is now the landlord for the 4,000 Ocean Bay residents.²⁰⁰ As landlord, they are in charge of collecting rent, handling tenant grievances, taking tenants to court for nonpayment or lease violations, and overseeing day-to-day repairs. Backing Wavecrest are the investors. Investments have come in

¹⁹² Jake Bittle, *Unprecedented NYCHA Air-Rights Deal Nears Completion at Ingersoll Houses*, BROOKLYN DAILY EAGLE (Oct. 10, 2019), <https://perma.cc/CK6Q-PX74>.

¹⁹³ *Id.*

¹⁹⁴ Press Release, N.Y.C. Hous. Auth. et al., *supra* note 149.

¹⁹⁵ Khafagy, *supra* note 4.

¹⁹⁶ *Id.*

¹⁹⁷ Davidson, *supra* note 178.

¹⁹⁸ *Id.*

¹⁹⁹ Naomi Klein, *How Power Profits from Disaster*, GUARDIAN (July 6, 2017, 1:00 PM), <https://perma.cc/TR9X-K565>. See also Dani McClain, *Former Residents of New Orleans's Demolished Housing Projects Tell Their Stories*, NATION (Aug. 28, 2015), <https://perma.cc/85Q9-8PZR>, for stories of the demolition and privatization of housing in New Orleans after Hurricane Katrina.

²⁰⁰ Press Release, N.Y.C. Hous. Auth. et al., *supra* note 149.

from some of the most prominent banks in the country: both Goldman Sachs and Citibank have invested millions in the project.²⁰¹ In total, approximately \$560 million in public and private money has been raised to complete renovations like updating kitchens and replacing the development's boiler system.²⁰² Renovations will be carried out by the contractor MDG Design + Construction.²⁰³ The non-profit Catholic Charities of Brooklyn and Queens is also receiving funding to provide on-site social services.²⁰⁴

In the few short years that Wavecrest Management has managed Ocean Bay, interviews with residents indicate that at least some badly needed repairs are being completed, and some residents are glad that work is finally being done.²⁰⁵ One investigation reports that "improvements such as new kitchens, renovated apartments, and increased security have all given residents an overdue feeling of relief from the decades of decay and despair."²⁰⁶ Mold that had been accumulating in apartments since Hurricane Sandy has been mitigated, and a new boiler system installed.²⁰⁷

Wavecrest has been completing desperately needed repairs, but some residents worry that the changes are merely "cosmetic" and do not address ongoing structural problems with buildings.²⁰⁸ Although Wavecrest is charged with maintaining the properties that they operate by law, the regulatory agreement with HUD that installs Wavecrest as the property manager does not require it to inject so much capital into the buildings ever again, meaning that Wavecrest is most likely front-loading repairs and will not perform such large infrastructure work again.²⁰⁹ There are also signs that Wavecrest is acting more aggressively to remove tenants. Since 2017, Ocean Bay residents have experienced the highest number of evictions of any NYCHA development—more than double that of the next highest development.²¹⁰ Many of these cases, at least thus far, are the result of bureaucratic miscommunications and mismanagement between

²⁰¹ Khafagy, *supra* note 4; *RDC Development Holds Ribbon Cutting for \$560 Million Re-development; For Ocean Bay Apartments, a 24-building, 1,395-unit Public Housing Complex*, N.Y. REAL EST. J. (June 18, 2019), <https://perma.cc/3SSL-2QRJ>.

²⁰² Khafagy, *supra* note 4.

²⁰³ Press Release, N.Y.C. Hous. Auth. et al., *supra* note 149.

²⁰⁴ Khafagy, *supra* note 4.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ HUD, RENTAL ASSISTANCE DEMONSTRATION USE AGREEMENT: FORM HUD- 52625, *supra* note 170; Greg B. Smith & Trone Dowd, *Tenants in Privately Managed NYCHA Homes Kept in Dark on Building Repairs*, CITY (Feb. 3, 2020), <https://perma.cc/TLQ4-HCL5>.

²¹⁰ Harry DiPrinzio, *Hundreds of NYCHA Evictions Raise Questions About Process*, CITY LIMITS (Aug. 14, 2019) <https://perma.cc/VU8L-YUL6>.

Wavecrest and HUD and the residents.²¹¹ As discussed below, this lack of oversight and mismanagement has been an issue in RAD conversions across the country. Additionally, housing lawyers who have represented tenants who live in buildings owned by Wavecrest Management in other parts of the city describe Wavecrest as a “slumlord” that fails to do necessary repairs.²¹²

C. Advocates’ Concerns and Uncertainties with RAD’s Implementation

Over the last two years, as it became clear that NYCHA would heavily invest in RAD, advocates have identified a number of issues in the way the program is being implemented that could have adverse impacts on tenants.²¹³ One major concern amongst advocates has to do with how many of the rights of public housing tenants will remain, and how many will change as they become Section 8 tenants.²¹⁴ NYCHA tenants will begin to have different obligations and be governed by a different set of regulations as Section 8 tenants. Adding to the confusion, NYCHA tenants will continue to have certain reporting obligations to NYCHA, which administers the Section 8 program, and other obligations to their new landlords.²¹⁵ Tenants will continue to fill out their annual recertification, which tracks their household composition and income, and send this information to NYCHA.²¹⁶ They will pay rent to their new landlord, and will have to contact the landlord about any repair issues.²¹⁷ The new landlords will also be responsible for taking tenants to housing court for normal landlord-tenant issues like nonpayment of rent or violations of the lease.²¹⁸ However, NYCHA can also move to terminate the Section 8 voucher under Section 8 regulations, which can lead to a separate administrative hearing with NYCHA.²¹⁹

The mechanism by which PHAs are converted to RAD is a multi-step procedure that also remains a point of concern.²²⁰ One of the main issues with RAD conversions that has faced opposition in other PHAs is

²¹¹ *Id.*

²¹² Anjali Kamat, *NYCHA Hires Private ‘Slumlord’ to Run Public Housing*, WNYC (Feb. 6, 2019), <https://perma.cc/WU22-XTUQ>.

²¹³ Louis Flores, Opinion, *RAD Is a Raw Deal for Public Housing: Well-Intentioned Program Actually Hikes Rents, Empowers Landlords and Fuels Evictions*, N.Y. DAILY NEWS (Feb. 15, 2020, 5:00 AM), <https://perma.cc/Q5DG-QX9W>.

²¹⁴ Whitford, *supra* note 13.

²¹⁵ See generally CMTY. SERV. SOC’Y ET AL., RESIDENT HANDBOOK: A GUIDE TO NYCHA RAD CONVERSIONS 2, 14 (Mar. 2018), <https://perma.cc/Y9EC-J2KX>.

²¹⁶ *Id.* at 14.

²¹⁷ *Id.*

²¹⁸ *Id.* at 18.

²¹⁹ *Id.*

²²⁰ *Id.* at 8.

tenants' rights to return after renovations to their apartments have been completed.²²¹ Under RAD, HUD regulations guarantee residents the right to return if they are temporarily relocated while renovations of their apartments occur.²²² However, there have already been documented instances of PHAs, in conjunction with the newly present private landlords, violating this procedure and refusing to allow families to return to their apartments. In Spokane, Washington, for example, residents were re-screened for household income because the private landlord was receiving LIHTC, which has its own income requirements, and households that were found to be over-income were not allowed to return to their apartments.²²³ HUD promises that no RAD tenants will be re-screened in such a manner.²²⁴ NYCHA also claims that tenants will not be re-screened,²²⁵ although private investors in New York involved in RAD are actively seeking the same federal tax credits, LIHTC, that were applied for in Spokane.²²⁶

In Hopewell, Virginia, residents of a RAD-converted public housing development settled a lawsuit in 2017 with HUD over violations of the Fair Housing Act, the Americans with Disabilities Act, and HUD regulations during and after the conversion process.²²⁷ The development was completely demolished and rebuilt under RAD, and the complaints and a subsequent HUD investigation found that the new private manager and the PHA denied existing residents the right to return, coerced them into leaving with buyout offers, refused to provide reasonable accommodation to residents with disabilities, and harassed families with young children.²²⁸

Illegal evictions are also a concern. In 2018, Disability Rights Maryland filed a complaint with HUD over illegal evictions at RAD-

²²¹ Tanner Howard, *Fearing Privatization: Public Housing Activists Push Back Against RAD Plans*, SHELTERFORCE (Mar. 21, 2019), <https://perma.cc/EZ9R-V9DT>.

²²² OFFICE OF PUB. & INDIAN HOUS., HUD, PIH 2016-17, RENTAL ASSISTANCE DEMONSTRATION (RAD) NOTICE REGARDING FAIR HOUSING AND CIVIL RIGHTS REQUIREMENTS AND RELOCATION REQUIREMENTS APPLICABLE TO RAD FIRST COMPONENT – PUBLIC HOUSING CONVERSIONS, at 41-42 (2016), <https://perma.cc/TU6P-J7EL>.

²²³ *RAD Project Failed to Follow Relocation Requirements*, NAT'L LOW INCOME HOUS. COAL. (May 7, 2018), <https://perma.cc/3ZG3-FKBR>.

²²⁴ OFFICE OF PUB. & INDIAN HOUS., HUD, *supra* note 223, at 43; *RAD Program Details for Residents*, HUD, <https://perma.cc/HQ63-B3TB> (last visited Feb. 23, 2020).

²²⁵ CMTY. SERV. SOC'Y, *supra* note 216, at 17.

²²⁶ *See* Cleffi, *supra* note 171.

²²⁷ *See* Press Release, Legal Aid Justice Ctr., HUD Settles Civil Rights Claims Made by Residents of First Public Housing Site in Virginia to Be Privatized via Federal RAD Program (Oct. 2, 2017), <https://perma.cc/2QGG-RUR9>.

²²⁸ *Id.*; *see also* Press Release, Legal Aid Justice Ctr., HUD to Investigate Redevelopment Abuses (Mar. 9, 2017), <https://perma.cc/H5FJ-R5P5> (explaining the allegations made against HUD for the aforementioned settlement).

converted housing in Baltimore.²²⁹ The complaint cited such issues as defective notices, failure to notify residents of their right to request a hearing, confusing letters, and premature filings of breach-of-lease complaints.²³⁰ The group found at least seven cases in 2017 in which residents were improperly evicted.²³¹

Although NYCHA tenants are not supposed to be re-examined for their household income, they are re-assessed to determine whether they are living in an apartment that is the right size for their household composition, under a process known as “rightsizing.”²³² Tenants “have the right to return to the same *property*, but not necessarily the same *unit*.”²³³ Rightsizing carries its own concern, since new landlords will be inspecting apartments and bringing eviction actions against people who are not in the household composition.²³⁴ Although NYCHA officially has approximately 400,000 residents, unofficial estimates put the number closer to 600,000.²³⁵ Since residents who are not included in the household composition can be evicted from NYCHA apartments, the additional inspections that occur due to RAD will make up to 200,000 people vulnerable to eviction proceedings.²³⁶

Community input during RAD conversions and rights of resident organizations (ROs are like Tenant Associations for NYCHA) are also points of contention. Although in the lead-up to the Ocean Bay conversion, community meetings were held to educate residents on what the RAD program is, advocates say that “it is unclear whether or how resident and community preferences can be exercised in the conversion process.”²³⁷ NYCHA says that resident organizations, which have been a

²²⁹ Luke Broadwater, *Tenants Evicted Improperly from Baltimore’s Privatized Public Housing, Complaint Alleges*, BALT. SUN (Feb. 8, 2018, 3:00 PM), <https://perma.cc/2VTM-CBTF>. See also Tom Lisi & Brittany Hailer, *In Housing Authority’s Attempt to Privatize Public Housing, Missteps Bear Down on Glen Hazel Residents*, PUB. SOURCE (Apr. 1, 2019), <https://perma.cc/XF5H-HLML>, for another RAD attempt in Pittsburgh that is facing challenges from residence.

²³⁰ Broadwater, *supra* note 229.

²³¹ *Id.*

²³² CMTY. SERV. SOC’Y ET AL., *supra* note 215, at 17, 20, 42.

²³³ *Id.* at 42.

²³⁴ Brett Yates, *What Will Happen to NYCHA’s Hidden Population Under RAD?*, RED HOOK STAR REVUE (Dec. 6, 2019), <https://perma.cc/6BDB-8UT6>.

²³⁵ Jessica Dailey, *10 Surprising Facts About NYCHA, New York’s ‘Shadow City’*, CURBED N.Y. (Sept. 10, 2012, 4:05 PM), <https://perma.cc/NW7W-PU7M>; see also Brett Yates, *supra* note 234.

²³⁶ Yates, *supra* note 234.

²³⁷ Cmty. Serv. Soc’y et al., Testimony at the NYCHA Public Hearing on the Significant Amendment to the Annual PHA Plan for FY 2019 on NYCHA Pact Plan (Feb. 13, 2019), <https://perma.cc/M6UC-JBBW>; see *NYCHA Releases RFP for Ocean Bay*, NYCHA Now:

powerful force for community engagement in NYCHA developments for decades, will continue to be funded by the new private landlord.²³⁸ Curiously, a new RAD handbook notes that the property manager will be permitted to take 40% of the funds for “administration,” although the specifics of this term are not defined.²³⁹

Advocates are also concerned about the types of vouchers that tenants are receiving as part of the transition from Section 9 to Section 8 housing. As stated earlier, tenants in RAD apartments are being given Section 8 vouchers, like low-income tenants who receive a subsidy to rent in the private market. Although all tenants are receiving Section 8 vouchers, the apartments themselves are being converted under different programs: the majority of the apartments are being converted under RAD, but a percentage are being converted under a section of the Housing Act called Section 18.²⁴⁰ While Section 18 is mainly used to demolish public housing, it can also be used to “dispose” of units, like in the case of RAD conversions.²⁴¹ The key difference is that the type of voucher HUD issues is based on whether the apartment is converted under RAD or Section 18. As of now, it is unclear how or even which apartments are being designated for Section 18 or RAD.

Private landlords are interested in this distinction because the Section 18 vouchers are more lucrative, and one investigation notes:

RAD and Section 18 function differently. RAD converts NYCHA’s existing federal HUD funding—for both capital repairs (such as roofs and boilers) and everyday maintenance—into Project Based Vouchers that can be used for privately run projects. Section 18, meanwhile, unlocks more lucrative Tenant Protection Vouchers: Where RAD vouchers only pay the difference between residents’ rent (set at 30 percent of their adjusted gross income) and \$1,220 a month, TPVs can cover the gap all the way up to \$2,014 a month.²⁴²

YOUR EMPLOYEE BULLETIN (Mar. 2016), <https://perma.cc/TCW5-2BV4>, for information on tenant meetings held on Ocean Bay project.

²³⁸ See CMTY. SERV. SOC’Y ET. AL, *supra* note 215, at 21.

²³⁹ CMTY. SERV. SOC’Y ET AL., *supra* note 215, at 13.

²⁴⁰ OFFICE OF PUB. & INDIAN HOUS., HUD, RAD - Section 18 (75/25) Blend FAQs 1-2 (Mar. 2020), <https://perma.cc/AS9E-J73H>; *Demolition and Disposition*, NAT’L HOUS. LAW PROJECT, <https://perma.cc/SVJ5-MU9U> (last visited May 10, 2020).

²⁴¹ *Demolition/Disposition*, OFFICE OF PUB. & INDIAN HOUS., HUD, <https://perma.cc/2WSQ-E2FP> (last visited Feb. 21, 2020).

²⁴² Whitford, *supra* note 13.

The more Section 18 apartments a private landlord includes in their contract with HUD to convert to RAD, the more they will receive in subsidies.²⁴³ Under the current NYCHA 2.0 plan, a significant majority of NYCHA units are actually projected to be converted through the TPV voucher system.²⁴⁴

There are serious issues around the ongoing affordability of apartments that are being converted under Section 18. As advocates pointed out in a letter to NYCHA in early 2019:

RAD provides assurances of ongoing affordability that are not matched under Section 18. Under federal law and HUD regulations, RAD requires that, at the end of the 20-year rent assistance contract, HUD must offer to renew the contract and the owner must accept the offer, thereby guaranteeing ongoing affordability. In contrast, Section 18 TPVs are a budget line item subject to annual Congressional appropriations. There is no assurance that Congress will appropriate the funds needed for the large number of Section 18 conversions that NYCHA envisions, or that Section 18 rent assistance contracts will be sustained after they end in 20 years.²⁴⁵

Not only is funding for Section 18 more tenuous, but the specific kind of voucher attached to Section 18 apartments provides tenants with fewer rights. Since Section 18 is normally used to dispose of or demolish public housing, it does not have the built-in tenant protections public housing residents have, such as succession rights, a grievance procedure, and the right to organize resident associations.²⁴⁶ HUD has promulgated regulations that will require developments that apply for RAD to limit the number of units converted under Section 18 to 25% of the total number in the development.²⁴⁷ If the development chooses to convert units under Section 18, HUD requires that the development extend the same tenant protections to all residents, regardless of whether they are living in a RAD unit or a Section 18 unit.²⁴⁸ What is alarming, however, is that some of

²⁴³ *Id.*

²⁴⁴ N.Y.C. HOUS. AUTH., *supra* note 141, at 22.

²⁴⁵ CMTY. SERV. SOC'Y ET AL., *supra* note 215.

²⁴⁶ Whitford, *supra* note 13; see OFFICE OF PUB. & INDIAN HOUS., HUD, *supra* note 241, where HUD provides no details about any built-in tenant protections of those mentioned above.

²⁴⁷ OFFICE OF PUB. & INDIAN HOUS., HUD, RENTAL ASSISTANCE DEMONSTRATION (RAD) SUPPLEMENTAL GUIDANCE (July 2, 2018), <https://perma.cc/6XUD-T84M>.

²⁴⁸ HUD Issues Two RAD Notices Implementing FY18 Appropriations Act Provisions and Making Additional Changes, NAT'L LOW INCOME HOUS. COAL. (July 9, 2018), <https://perma.cc/5WAA-E3UK>.

the recent applications from NYCHA for RAD conversions have requested well over 25% of the units to be converted under Section 18: advocates note that NYCHA is requesting approval for a development in Bushwick to contain 58% Section 18 units and only 42% RAD units.²⁴⁹ If HUD begins approving plans that contain more than 25% Section 18 units, it is unclear if Section 18 residents will still be guaranteed the same rights as residents in RAD apartments.²⁵⁰

Finally, the RAD Use Agreements entered into by the new private property manager and HUD—which regulates the setting of rents as well as income requirements for residents—permit acceptance of higher-income residents (those making 80% of AMI) upon termination of the contract for breach or noncompliance.²⁵¹ The agreement also allows HUD to authorize reductions in the total number of rent-restricted units where the owner is “unable . . . to otherwise provide for the financial viability of the project.”²⁵²

Much like the other components of NYCHA 2.0, the in-fill projects and the air-rights sales, RAD promises a quick influx of cash for tenants who have suffered nothing but divestment and poor maintenance for decades. In the short-term, as promised, new investors are providing enough funding to do cosmetic repairs, which are indeed necessary.²⁵³ But in the long-term, there are a number of uncertainties, particularly for the maintenance of the “public” half of this public-private partnership. There is little oversight from HUD for a program that requires serious enforcement to ensure tenants maintain the same rights they had under traditional public housing.²⁵⁴ There is no readily apparent incentive for the new private landlords to invest more seriously down the line in infrastructure upgrades. Inevitably, much like other public spheres that have succumbed to privatization in the United States, the momentum only goes in one direction. As Naomi Klein says:

[D]isaster capitalists (referring to the private companies that take over the public sphere in the wake of a man-made or natural disaster) have no interest in repairing what was. In Iraq, Sri Lanka and New Orleans, the process deceptively called “reconstruction” began with finishing the job of the original disaster by erasing what was left of the public sphere and rooted communities, then

²⁴⁹ CMTY. SERV. SOC’Y ET AL., *supra* note 215.

²⁵⁰ *See id.*

²⁵¹ HUD, RENTAL ASSISTANCE DEMONSTRATION USE AGREEMENT: FORM HUD- 52625, *supra* note 170, at 3.

²⁵² *Id.*

²⁵³ Whitford, *supra* note 13.

²⁵⁴ Roller & Cassella, *supra* note 1.

quickly moving to replace them with a kind of corporate New Jerusalem.²⁵⁵

There will be more pressures to further privatize: from HUD, as the agency continues to struggle with an ever-shrinking budget; from the PHAs themselves, desperate for new sources of revenue; and from the private sector itself, which will inevitably require an increasingly greater return on its investments.

CONCLUSION: THE FUTURE OF NYCHA AND ALTERNATIVE MODELS FOR PUBLIC HOUSING

Much of the rhetoric around RAD, even from advocates, takes on a resigned air of inevitability, as though privatization, at least partially, is the only way to raise funds for public housing. As NYCHA historian Nicholas Bloom says, “Given the dominance of the private sector in federal policy, and the current balance of power in Washington, those who believe in purely public housing—the old NYCHA—will have difficulty developing an alternative and equally beneficial plan. The ball is in their court as the NYCHA 2.0 plan develops.”²⁵⁶ While many longtime NYCHA advocates have come to the same conclusion, the air of inevitability given to a market-based solution like RAD will only result in further privatization efforts, not only in public housing, but in all public goods that we have fought to create and maintain over the course of the 20th century.

One of the debates about the implementation of a program like RAD, a public-private partnership, is whether it truly amounts to privatization. NYCHA has gone to great lengths to stress that RAD is not privatization.²⁵⁷ The public housing residents who have formed Fight for NYCHA, however, see things differently.²⁵⁸ They argue, “[B]ecause the New York City Council has a non-stop record of turning over strategic assets to the private sector—from charity hospitals, to public library branches, to parks, and gardens—that [sic] there is a demonstrated failure of leadership to audit Mayor de Blasio’s financial projections for RAD.”²⁵⁹

²⁵⁵ KLEIN, *supra* note 21, at 10.

²⁵⁶ Nicholas Dagen Bloom, *NYCHA Follows the Money*, GOTHAM GAZETTE (Nov. 21, 2018), <https://perma.cc/2G2H-STW9>.

²⁵⁷ *Fact Check: Top 5 Myths About RAD*, N.Y.C. HOUS. AUTH., <https://perma.cc/3LPF-8ECK> (last visited May 10, 2020).

²⁵⁸ *About - Fight for NYCHA*, FIGHT FOR NYCHA, <https://perma.cc/KRY2-7EDH> (last visited May 10, 2020); Spectrum News Staff, *NYCHA Residents Take to the Streets to Protest Privatization*, SPECTRUM NEWS (Oct. 19, 2019), <https://perma.cc/34Q9-MA4U>.

²⁵⁹ *RAD is Bad*, FIGHT FOR NYCHA, <https://perma.cc/AWC5-3QEM> (last visited Feb. 25, 2020). *See also* Flores, *supra* note 213.

NYCHA activists intuit what theorists like Naomi Klein spelled out, that capitalism is never content with small gains when there is the possibility of ever-greater profits, particularly when there is an ailing public entity that the government will not assist.²⁶⁰ NYCHA developments sit on some of the most valuable land in the city.²⁶¹ Knowing what we do about the gargantuan profits of some of the early investors in RAD, like Goldman Sachs and Citigroup, and the dependency of these banks on year-over-year increases, it is likely that they will seek bigger returns from their investment into RAD down the line. As outlined above, RAD has many built-in protections to ensure that affordable housing is not lost—for now. But some of those protections are tenuous, like the Section 18 units that are contingent on congressional appropriation funding, or PHAs' spotty records of fulfilling the "right to return" promise in other cities.²⁶²

Given the private sector's generally poor, sometimes appalling, track record when tasked with managing public goods,²⁶³ it is crucial for advocates to think creatively and ambitiously about ways to push federal funding back toward public housing. Part of this will require an acknowledgment of the United States' cultural shift toward a nation of renters rather than owners, a shift that is already taking place: as more people in the country populate urban areas, more of them are renting, and protecting affordable rents becomes more important.²⁶⁴ This is to say that we should seriously rethink the approximately \$134 billion in tax subsidies we provide to homeowners every year, mostly in the form of mortgage interest deductions, which disproportionately benefit wealthy homeowners.²⁶⁵ Mitchell-Lama, an affordable ownership housing program with its own set of issues, did a great deal in the mid-20th century to marshal public and private money to build permanently affordable housing.²⁶⁶ While the

²⁶⁰ KLEIN, *supra* note 21, at 18.

²⁶¹ For info on the dramatic rise of land value in NYC, see Richard Florida, *What's Manhattan's Land Worth? Try 'Canada's Entire GDP'*, CITYLAB (Apr. 24, 2018), <https://perma.cc/6N5F-YGUA>.

²⁶² Press Release, Tim Wallace, Dir. of Dev., Legal Aid Justice Ctr, HUD to Investigate Redevelopment Abuses (Mar. 9, 2017), <https://perma.cc/JJ9E-3AKB>; Howard, *supra* note 222; Whitford, *supra* note 13.

²⁶³ A couple of examples: Isaac Arnsdorf & Jon Greenberg, *The VA's Private Care Program Gave Companies Billions and Vets Longer Waits*, PROPUBLICA (Jan. 30, 2019), <https://perma.cc/Y478-NNAQ>; Matthew Desmond, *How Homeownership Became the Engine of American Inequality*, N.Y. TIMES MAG. (May 9, 2017), <https://perma.cc/NH34-DC8R>; ProPublica, *Treated Like Trash*, YOUTUBE (June 8, 2018), <https://perma.cc/72SZ-9CX5>.

²⁶⁴ Richard Florida, *The Steady Rise of Renting*, CITYLAB (Feb. 16, 2016), <https://perma.cc/J6ZY-CY9A>.

²⁶⁵ Desmond, *supra* note 263.

²⁶⁶ Mitchell-Llama was a mid-century affordable housing program for middle-income New Yorkers. While further discussion of the program is outside the scope of this article, it is a program worth revisiting because the developments were funded through a range of both

difficulties of construction and finding land in New York have grown exponentially worse since those developments were built, it is a program worth revisiting if HUD and the city are so keen on using private funds to preserve affordable housing.

Although politically challenging in our current government, there are proposals to make public housing funding a renewed priority. The Green New Deal for Public Housing, a bill spearheaded by Representative Alexandria Ocasio-Cortez and Senator Bernie Sanders, aims to spend \$180 billion over 10 years to revitalize and upgrade public housing across the country with green infrastructure.²⁶⁷

It is important to remember as well that cities across the globe have dedicated resources to keep public housing completely out of the private sector. Berlin, which had its own privatization movement for public housing after the end of the Cold War, is beginning to re-nationalize developments after years of skyrocketing rents.²⁶⁸ In Singapore, where most residents live in some form of public housing, it is considered “an asset to the public purse, as well as a social asset—and carries no stigma.”²⁶⁹

Ultimately, decent and accessible public housing is achievable in the United States—we had it for many years. Instead of turning to a private housing market that relies on maximized investment returns, that has and continues to extract immense profits from buildings all around public housing developments even as they languish and crumble, we should acknowledge the destructive and inhumane practices of capitalism while simultaneously protecting and strengthening a viable alternative to commodified housing. Only a solution that guarantees permanent affordability and protections through public control can truly create justice for those who have suffered through intense racial segregation, exclusion, and dispossession at the hands of federal, state, and city governments, and the real estate industry. Public housing is a human right, and NYCHA residents are long overdue for it.

public and private sources and contained long-term commitments to affordability. They are not without their own problems in today’s red-hot New York real estate market, though. Norman Oder, *In Rising Market, Vital Mitchell-Lama Program at Crossroads*, CITY & ST. N.Y. (Mar. 23, 2015), <https://perma.cc/RL3M-GDVE>.

²⁶⁷ Diana Budds, *What Would a Green New Deal for NYCHA Look Like?*, CURBED N.Y. (Nov. 15, 2019), <https://perma.cc/5B2M-HFC7>.

²⁶⁸ *Berlin Spends €1 Billion to Buy Back Public Flats*, LOCAL, (Sept. 27, 2019), <https://perma.cc/C3CY-4UYY>.

²⁶⁹ John Bryson, *A Century of Public Housing: Lessons From Singapore, Where Housing is a Social, Not Financial, Asset*, CONVERSATION (July 31, 2019, 9:52 AM), <https://perma.cc/4FPV-XU77>.