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Identifying Causes of & Countering Accountability-Avoidance in US administrative agencies

Master's Thesis - by Priti Bali-Kahn

MPA Candidate: CUNY – John Jay College of Criminal Justice

Research Design Framework to apply existing tools used in financial control environments to empower citizen constituents in pursuing organizational accountability in US administrative agencies.

Abstract

Public corruption denies average citizens transparency in government policy effects on their communities. Furthermore, new forms of public corruption not included in the classic “quid pro quo” definition, are creating environments where the independent judgement of elected officials may be influenced by special interests. Campaign finance environments are part of these new forms of public corruption, which ensure average citizens lack influential access to elected officials to have their concerns heard. In accounting, audit, and public administration, 3 industries that require the utmost integrity in providing services, financial and non-financial measures are used to understand the “Internal Control Environment” of an organization. These measures are derived from *COSO's Internal Control Framework*, which was designed by public traded companies as a self-monitoring measure. Based on *COSO's Five Elements of Internal Control Framework*, “Tone at the Top” or the ethics, integrity, and attitudes of those at the upper levels have a significant impact on an organization's effectiveness. *COSO* also informs us that this “Tone at the Top” can help accountants, auditors, and other oversight providers, understand the risk of fraud and non-approved conduct within an organization. Based on this framework, the main hypothesis of this thesis is: *Campaign contributions to Senators, Assemblypersons, Governors, and other primary/secondary legislative bodies, led to “Displacement” of low-income residents of New York City from 2000-2020.* Through initial regression analysis of publicly available data, campaign contributions from the Finance/Insurance/Real Estate industries could be linked causally to the affordable housing crisis in NYC. It contends that these continued contributions led to harmful legislation and accountability avoidance in the main administrative agencies mandated with protecting New York's affordable housing. The proposal being generated from this initial analysis seeks to gather data for a period of 1990-2020, for the main variables identified as being indicators of the *Displacement* of lower-paying tenants with higher paying tenants. The proposal further seeks to create a composite model to apply to different cities, using mostly data available from public sources. Finally, the proposal seeks to create another space for citizens to share their concerns, and to find resources that will help them navigate this deeply ingrained accountability avoidance. To correct the damage of special interest groups on New York's affordable housing requires that we use big data, and tools reserved for accountants, auditors, and researchers, to develop litigation under the Fair Housing Act of 1968.

Executive Summary

Public corruption has been a ubiquitous part of human culture since its inception. It harms more than just the public trust; it continues to have a negative impact on GDP. Public corruption fosters deterioration of democratic institutions, which can quickly become the root cause of a failed nation. Public corruption, especially in the form of patronage, nepotism, and bribery is well-documented in the United States.¹

US legislators have made many efforts to combat symptoms of *corrupting impact*, often identified as Fraud, Waste, & Abuse. Laws encompassing anti-trust, the Foreign Corruption Practices Act (FCPA, 1977), and the Inspector General Act (IGA, 1978), to name a few, speak to the variety of efforts undertaken to combat corruption as defined above.

The purpose of this proposal in understanding the impact of public corruption is 3-prong:

1. Expand the existing definition of public corruption to include newer, less understood, forms of influence that have a *corrupting impact* on implementation of public policy;
2. Apply this as causality to the acceleration of the *Affordable Housing Crisis* in New York City by significant impact of campaign contributions on *Displacement & Affordability Crisis measures*;
3. Use big data and innovative tools to empower everyday citizen constituents to identify and counter this *corrupting impact* directly in their communities.

These forms of *corrupting impact* have been gaining research interest, especially in the last 20 years, as their “indirect²” negative impact on the US political & economic systems is better understood. *Dibley & Mistry*³ indicate that these, more institutionalized, forms of public corruption may not violate existing *Rule of Law*, but they do erode at its foundations by directly damaging the effectiveness of the nation’s civil services institutions.

The research portion of this proposal will attempt to document big data evidence that campaign finance in New York City is a “pay to play” environment⁴, where campaign contributions are used as means to effect housing policy even when clear indicators of housing duress [*Affordability Crisis*] see sharp increases. While this is not yet fully understood as having a *corrupting impact*, a review of the scholarly research reveals it should be. Additionally, original analysis of publicly available data has revealed significant effects of campaign contributions on the 3 main variables of *Displacement* that this study has identified.

The initial analysis studied the impact of giving patterns to the four main legislative bodies for NYS – US Senators & House of Representatives, and the State Assembly & Governor – on: Poverty Rate (decreases); Median Household Income (increases); Median Property Value (increases). It then studied the impact of these variables of *Displacement* on *Affordability Crisis* variables that impacted New York’s lowest income residents, and in later phases, it’s middle-class residents: Evictions (increases); Eviction Filings (increases); Rent Burden (increases); Median Gross Rent (increases).

¹ Dibley, Arjuna; Mistree, Dinsha. *Corruption and the Paradox of Transparency*. Stanford Law School: Rule of Law Program. <https://law.stanford.edu/wp-content/uploads/2018/07/Mistree-Dibley-Corruption.4.18.18.pdf>. (2018).

² One of the key concerns with Campaign Finance is that it does not fit very well into historic forms of “quid pro quo” style corruption. As such, understanding the effects requires that corruption be viewed from a lens of audit whereby independence in fact and independence in appearance must both be satisfied to ensure that conflict of interest does not pose an inherent risk to management’s decision making. Being simply in *Compliance* of legal boundaries is not enough in internal control paradigms.

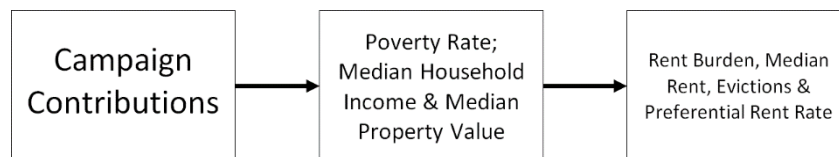
³ Dibley, Arjuna; Mistree, Dinsha. *Corruption and the Paradox of Transparency*. Stanford Law School: Rule of Law Program. <https://law.stanford.edu/wp-content/uploads/2018/07/Mistree-Dibley-Corruption.4.18.18.pdf>. (2018).

⁴ “Pay to Play” is a phenomenon identified in the last 20 years as a concerted effort by wealthy individuals and corporate entities to use 3rd party organizations to make substantial contributions to campaigns in the hopes of currying future policy favor.

The study hopes to add a variable for a very specific policy measure, which this author believes provided the true acceleration of the housing crisis, *Preferential Rent*. Complete data on preferential rent and the actual number of evictions has been difficult to get, indicating the very first sign of accountability avoidance at the agency level.

The experimental design aims to develop a measurement of the effect of campaign contributions by special interests as a tool to enact favorable policy. These policies can be related to fiscal gain, as this proposal argues in New York City’s affordable housing policy. The coefficient measurement will be built using a systematic review of existing databases, collecting original data, and implementing design science models of surveys and analysis to prove the following multi-prong hypothesis:

Hypothesis A	Campaign finance has a corrupting effect on public policy that leads to administrative agency accountability avoidance.
Hypothesis A – Null Hypothesis	Campaign finance DOES NOT have a corrupting effect on public policy that leads to administrative agency accountability avoidance.



The relationship presented above is the composite coefficient this proposal is seeking to create. Poverty Rate (-), Median Household Income (+), and Median Property Value (+) are all indicators of economic prosperity. They speak to “increasing” prosperity of the “residents” of a community. These variables are also readily available for multiple levels of data analysis at the Neighborhood, City, & State levels. Additionally, comparative wage growth data from Census reporting allows us to measure whether the increasing measures were linked to “increasing” prosperity and not *Displacement*.

In an economy with nearly 70% renter households, a unique “rentier” class has been created which alone benefits from increased Median Property Value. To increase Median Property Value, this “rentier” class needs to directly increase Median Household Income of their “renters”, so they can afford to pay the higher median rents, which will ultimately give them the higher property value.

This is the motivation that the proposal believes led to legislative policies listed below passed by the NYS Assembly and approved by the Governor:

1. *Vacancy Decontrol [1997 RRA]*.
2. *Preferential Rent [2002-2003 RRA]*.

HCR & HPD policies that highlight a similar pattern of special interest group influence include:

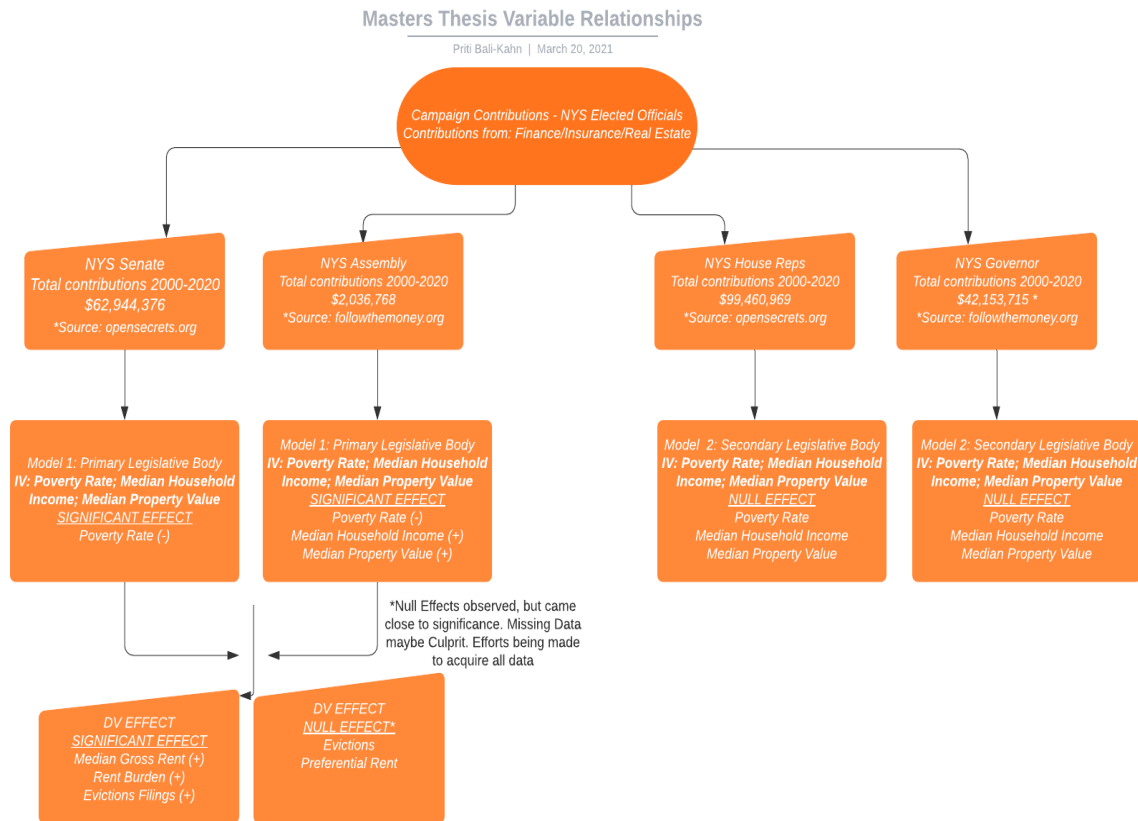
1. *Lack of 3rd party confirmation of improvement-based rent increases [HCR]*.
2. *Underreporting of maintenance code violations [HPD]*.

The legislative policies, combined with the clear lack of resources for oversight and enforcement, created a “perfect storm” of affordability crisis pushing out lower-paying tenants. The proposal wants to show this as driven by the “Tone at the Top” of elected officials, agency commissioners, and agency boards supporting an environment fostering higher median property values for a special interest group.

Phase 1 - Creating a Quantifiable Measure of Campaign Finance as Corrupting Impact

Generating a quantifiable impact of every dollar spent by special interest groups to enact policy favorable to short-term gain is a difficult task. Accounting, Audit, and Public Administration environments, especially in response to large-scale fraud, have been developing tools by looking beyond the financial reporting measures to non-financial measures reporting. This has led to the increased focus on “Tone at the Top” as a driving force behind important non-financial measures⁵ of “Culture” and “Conduct” in organizations.

This proposal is a sincere effort at using this author’s academic and professional knowledge, in combination with a collaborative research environment, to endeavor using specific tools to achieve a definition of *corrupting impact* as **Increasing Campaign Contributions by Special Interest Housing Stakeholders, directly resulting in policies that accelerated Displacement of lower-paying tenants for higher-paying tenants.** It further hopes to show **Disparate Impact under the Fair Housing Act of 1968**, by using race and household type moderators to propose litigatory restorative justice for effected communities. The visualization below presents the first “causal” effects between campaign finance and *Displacement* factors as identified by analysis of the data collated for the proposal’s first phase.



⁵ Internal auditing Culture & Conduct is a fairly new concern within the United States, but countries such as the UK, France, and Australia have been creating robust systems to understand how the “motivations” of the Management and Executive staff of an organization that will have an impact on its functioning ethical environment. External auditors have been doing this since Sarbanes Oxley, but cannot produce ongoing corrections like the Internal Audit environment can.

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Year	poverty-rate	median-household-income	median-property-value	TotSenate	TotGov	TotAssem	TotReps
2000	21	38293	211900	2224966	0	21215	11102618
2002	21	38293	211900	3477197	3122800	40692	4972238
2004	21	38293	211900	5028947	0	78280	5866543
2006	16	50173	501000	5953729	3424481	132388	7648570
2008	16	50173	501000	21840285	1580953	121984	8981369
2010	17	51865	501500	9184066	6475869	229968	10817633
2012	17	53373	494800	3648950	0	372430	9715442
2014	17	53373	494800	2235992	14956191	259747	9909073
2016	17	53373	494800	5786344	0	289799	9859065
2018	17	63799	606000	2263615	9005653	278715	9690034
2020	18	63998	606000	1300285	3587768	211540	10898384

The initial data presented above shows, from 2002 – 2006⁶, an almost fantastical growth in Median Household Income & Property Value, and a corresponding decline in Poverty Rate. A similar, correlating, pattern can be seen in shared contributions data as well. Causal relationship analysis was pursued through linear regression, and the following significant relationships were discovered as contributions increased:

Displacement Variable	Total Senate	Total Assembly	Total Governor	Total House of Reps
Poverty Rate (-)	p= .030* ⁷	p= .014** ⁸	NULL EFFECT	NULL EFFECT
Median Household Inc (+)	NULL EFFECT	p= .012**	NULL EFFECT	NULL EFFECT
Median Prop Value (+)	NULL EFFECT	p= .007**	NULL EFFECT	NULL EFFECT

The Assembly giving clearly shows a trend of causality, and the Assembly is the main legislative body for New York City housing policy. The Senate indicated an interesting effect, likely due to disinvestment in public housing as a predictor as well, which would remove the lowest income households from NYC, leading to a drastically declining poverty rate. While this paper is not focused on public housing, it would be worthwhile to review that, especially for the period 1990 – 2000.⁹

The proposal now seeks peer review of the data collection and analysis method, and a more complete dataset. It would be interesting to, especially, receive complete evictions and preferential rent data to provide for comparative measurements on studying *individual neighborhoods experiencing displacement*.

As next steps, the proposal seeks to review these causality effects, systematically, at the neighborhood level, especially for assembly and house of representatives. Those legislative bodies are closely linked to the districts they represent. Data errors are also a concern, as campaign contribution data is collated differently based on source, so readily agreed upon dataset recommendations will be sought. Regardless, continued peer review will only improve the data, which should not affect the causal relationships already identified for further study.

Based on initial impact of contributions on the *Displacement variables*, a causal relationship was pursued to identify the impact of those on the *Affordability Crisis variables*, which measure the impact of housing policy on households in real-time. The table below summarizes these effects.

⁶ This is the period immediately following the implementation of the Preferential Rent provision in 2002-2003

⁷ *p=significant at .05

⁸ **p=significant at .01

⁹ Public housing was under direct attack from Federal and State defunding during this period. Interestingly, Andrew Cuomo was HUD director under the Clinton Administration, and George Pataki, former NYS Governor, disinvested in NYCHA in 1998.

Effect of Independent Variables [Displacement] on Dependent Variables [Affordability Crisis]

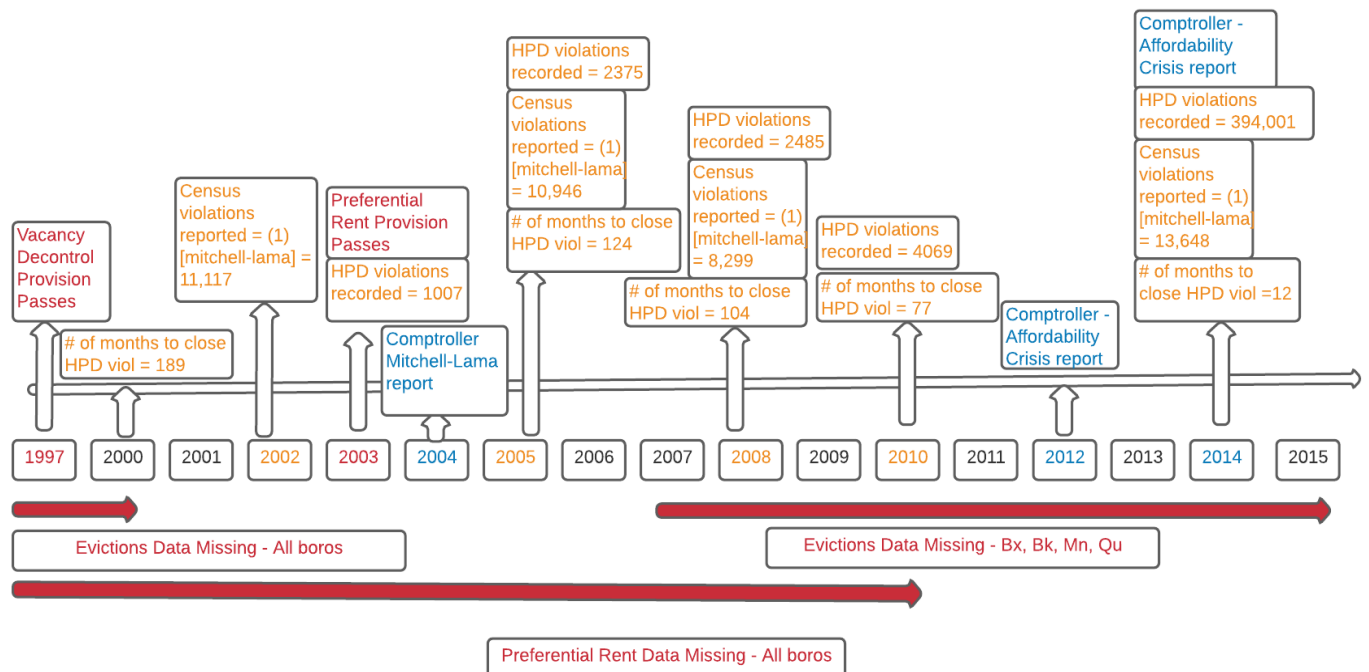
Affordability Crisis Variable	Poverty Rate	Median Household Inc	Median Prop Value
Evictions (+) [Missing Data]	p= .072	NULL EFFECT	NULL EFFECT
Evictions Filings (+)	p= .008**	NULL EFFECT	NULL EFFECT
Rent Burden (+)	p= .006**	p= .025*	p= .034*
Median Gross Rent (+)	p= .002**	NULL EFFECT	NULL EFFECT
Preferential Rent (+)	NEED MORE DATA	NEED MORE DATA	NEED MORE DATA

The final data analysis, and the one that is the focus of this project, is to show the affordable housing crisis as having *Disparate impact under the Fair Housing Act of 1968*. Initial analysis results shared below:

Moderator	Evictions – missing data	Evictions Filings	Rent Burden	Median Gross Rent
Black (-)	p= .041*	p= .003**	p= .000**	p= .000**
White (-)	p= .060	p= .006**	p= .000**	p= .000**
Hispanic (+)	p= .028*	p= .039*	p= .000**	p= .001**
Asian (+)	p= .026*	p= .036*	p= .000**	p= .003**
Native American (-)	p= .037*	p= .002**	p= .000**	p= .000**
Families w/Children (-)	NULL EFFECT	NULL EFFECT	p= .001**	NULL EFFECT

The effect on protected groups is especially troubling, as COVID has shown us how precarious the living situation for these populations really is. The effect of contributions on the *Displacement variables* can now be a causal link to effects on *Affordability Crisis variables* having a “*Disparate Impact*” on protected groups.

The initial analysis provides enough foundation to further study impact of *Campaign Contributions on Displacement variables*, and their impact, in turn, on the *Affordability Crisis variables*. Specifically receiving evictions and preferential rent data is a first step. The pattern of missing data is during a period where the legislative policies mentioned earlier, were in full effect. The timeline below shows this relationship:



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The accountability paradigm proposed here seeks responsibility directly from agency commissioners and boards of directors, besides elected officials, as the purveyors of the “Tone at the Top” that created legislation/policies/procedures that were incongruent to citizen mandate and organizational ethos. The timeline above only shows part of the data, which displays a trend of underreporting at the HPD when compared to *Maintenance Deficiencies* reporting from the Census Housing & Vacancy Survey. Furthermore, missing oversight, that the dearth of reports between 2004 – 2012 indicates, shows a lack of motivation to see the Housing Affordability Crisis that had been deepening in New York City.

Phase 2 of this proposal seeks to build an accountability measurement model by reviewing causal relationships between existing data, and working directly with tenants, agencies, and housing activists to understand what parts of the *2019 Rent Reform Act* will continue to fail tenants if not appropriately fortified.

Phase 3 seeks to increase communication, information dissemination, and provide forensic acculturation to tenants and activists alike for building accountability paradigms that suit the culture of their unique neighborhoods.

Phase 2 - Measuring Accountability Avoidance: A design science paradigm

The proposal combines measurement tools presented by Paul Light and J. Koppell to “audit” both the financial (capacity) & non-financial (compliance, performance) reality of NYC’s housing agencies [1990-2020]. The goal is to study unresponsive policy environments that paid little attention to alarms raised by tenants, which was directed by the “Tone at the Top” of agency management [includes commissioners], boards of directors, and elected officials.

Paul Light [Monitoring Government]: Measures of Accountability for Administrative Agencies¹⁰

1. **Compliance** – A quantitative measure recording requests received, and services performed as defined by existing regulatory and oversight frameworks.
2. **Capacity** – A qualitative, but quantifiable, measure recording the skills, qualifications of civil servants and the fiscal resources available to perform the duties demanded by the mandate.
3. **Performance** – A qualitative measure of whether performance relates to agency ethos and mandates, as measured using compliance & capacity parameters, but can have quantitative measurements such as “Timeliness” of performance assessment and resolution.

J.Koppell – External Audit questions for measuring accountability¹¹

Conception of accountability	Key determination
Transparency	Did the organization reveal the facts of its performance?
Liability	Did the organization face consequences for its performance?
Controllability	Did the organization do what the principal (e.g., Congress, president) desired?
Responsibility	Did the organization follow the rules?
Responsiveness	Did the organization fulfill the substantive expectation (demand/need)?

Using Koppell’s conceptions, we can now assign Paul Light’s 3 measures as shown in the following table:

Measure of Accountability	Conceptualization of Accountability Measure
Compliance	Transparency (record and release all operational data relevant to agency mandate – ie. code violations, evictions, preferential rent)
Capacity	Controllability (resources in personnel and budget to accomplish task = fiscal controllability elected official’s “Tone at the Top”); Responsiveness (ability to respond to violations and investigations in a timely manner – were agency policies being followed. Were agency policies relevant to mandate.)
Performance	Responsibility (policies supporting transparent investigations; access to agency for reporting violations and policy complaints.); Liability (regular performance auditing and sharing to provide risk management framework to stakeholders; agency Management responding to oversight agency corrective recommendations; agency Management responding directly to citizen’s groups.

¹⁰ Light, P. C. (1993). *Monitoring Government: Inspectors General and the search for Accountability*. Brookings Institution.

¹¹ Koppell, J. (2005). *Pathologies of Accountability: ICANN and the Challenge of "Multiple Accountabilities Disorder"*. *Public Administration Review*, 65(1), 94-108. Retrieved December 31, 2020, from <http://www.jstor.org/stable/3542585>

Having areas to focus for measuring accountability does not provide guaranteed definitions for how those areas can be assessed to attain such a measurement. Audit tools are helpful here, and Koppell's conceptions provide excellent audit questions for measuring accountability, as operationalized below.

The legislative and administrative policies presented earlier can be studied through this model as there is extensive publicly available data, even if it has strict access controls. An attempt will be made to causally link the legislative policies of *Vacancy Decontrol* and *Preferential Rent* directly to:

1. HCR Compliance – Recording annual rent information from landlords and making rent charge basis reports easily accessible to tenant.
2. HCR Capacity – The ability of HCR staff and management to adequately conduct due-diligence on rent-charge basis to prevent landlord fraud and abuse.
3. HCR Performance – The timeliness and accuracy of HCR staff and management in responding to tenant “Rent-Overcharge” complaints.
4. HPD Compliance – Recording maintenance Code Violations for annual reporting to oversight and other stakeholders.
5. HPD Performance – The timeliness of closing code violations with corrective action from landlord.
6. Comparisons between Preferential Rent & Legal Rent leases in stabilized housing for:
 - a. 1 or 2-year lease – Duration of Lease;
 - b. % change in rent, year-on-year;
 - c. Duration of tenant prior to *Displacement*
 - d. Demographics of tenant [non-identifying census demographics only]
7. Comparing impact of Evictions & Evictions filings on *Displacement* of Protected Groups:
 - a. Black populations
 - b. Hispanic populations
 - c. Native Americans
 - d. Families with Children
 - e. Single parent families with children
8. Comparing *Displacement and Affordable Crisis variables* with Census “real wage” data for:
 - a. Causal link showing that *Displacement* led to higher-paying tenant, not “real wage” growth.
 - b. Causal link showing that *Affordability Crisis* was an undue burden on protected groups.

Phase 3: Building an accountability model directed by the Citizen

Lee & Whitford¹² introduce a strong concept of public accountability that uses models presented in accounting and audit paradigms for publicly traded companies. With the increased use of non-financial measures, combined with the regulatory frameworks available to us through Sarbanes Oxley & Dodd Frank, their paradigm makes complete sense for transference to public management performance audits. Kurpierz & Smith¹³ take this notion to the next level by introducing a viable experimental model to bring public accountability under accounting and audit paradigms, while doing it working with citizens and activists directly.

The Kurpierz & Smith model to counter accountability avoidance pairs a forensically acculturated individual with a lay citizen not trained in those skills. By providing this pairing, Kurpierz & Smith allow citizens to understand the [audit] questions that make most sense for not only understanding if an agency is adhering to its mandate, but also if an agency is taking liability for policies that hinder that adherence. This is referred to as an audit of culture and conduct at the agencies through the lens of the “customer” and other external stakeholders, which in this case are the citizen, and citizen-activists.

Kurpierz & Smith built their experimental model around the compliant and relevant use of monetary resources [taxpayer funds] to support citizen concerns. By linking compliance to the use of monetary funds, which can be easily assessed using big data that is publicly available, Kurpierz & Smith provide a framework that can be compared to standardized industry KPI’s. While these KPI’s are linked to effective and efficient performance to maximize profit, they are easily transferred to performance effectiveness and efficiency as an end in itself.

This phase will also study the budget [including detailed breakdown of budgetary buckets] to understand if the “Tone at the Top” was focusing on the correct budget line items, as billions of dollars were spent to “correct” New York’s [100-yr+] Affordable Housing crisis. The causal relationships we will study in phase 2 of this proposal will be compared to “budget focus” to bring the conversation, full-circle, back to “Tone at the Top” as the driving force behind the Affordable Housing Crisis in New York City, and likely other cities as well.

Furthermore, comparative data from NYC Council will be used to show that resources were being directed to the wrong budget categories, leaving the NYC Council to fund the immediate crises neighborhoods were experiencing, through discretionary spending. From 2009 – 2015, this discretionary spending amounts to nearly \$50M for HPD related programs, as shown in the table on the next page.

As part of Phase 2, we will collect more NYC Council & NYS Assembly discretionary spending data to pinpoint the budget focus of the “Tone at the Top”, which is more NYS Assembly then it is NYC Council. The proposal hopes to connect discretionary spending as a “stop-gap” to underperforming agencies. The Council, unfortunately, still cannot control NYC Housing policy due to the URSTADT Law.¹⁴

¹² Lee, S., & Whitford, A. (2013). Assessing the Effects of Organizational Resources on Public Agency Performance: Evidence from the US Federal Government. *Journal of Public Administration Research and Theory: J-PART*, 23(3), 687-712.

¹³ John Kurpierz, Kenneth Alan Smith; Forensic Acculturation for Accountability in Local Governments: A Design Science Approach for School Leaders and Citizens. *Journal of Forensic Accounting Research* doi: <https://doi.org/10.2308/jfar-19-035>

¹⁴ <http://www.tenant.net/tengroup/Metcounc/Apr99/urstadt.html>

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Agency ¹⁵	HPD						
Amount Spent by Program	Fiscal Year						
	2009	2010	2011	2012	2013	2014	2015
ANHD				100000	100000	100000	100000
Anti-Eviction	2250000	2250000	2000000	2000000	2000000	2000000	
Anti-Poverty							119000
Anti-Predatory Lending	360000	360000					
Task Force on Housing Court	500000	500000	500000	500000	500000	500000	550000
Consultant Contracts	830000	801789	415000	415000	415000	415000	1000000
CHPS							
Diversity & Inclusion							
Ease Transition in HPD Downsizing							250000
Energy Retrofits for Small Buildings							
Financial Empowerment							
Foreclosure Buyback Initiative							
Gender Equity Liaisons							
Home Loan Program							
Housing Court Answers							
Housing Information Project							
Housing Preservation Initiative	1500000	1260000	1500000	1250000	1250000	1250000	2000000
HPD - AEP							750000
HPD Home Loan Program							
Mortgage Foreclosure	1250000	500000	500000	750000	750000	750000	750000
Neighborhood Preservation Consultants	410000						
NYU Furman Center SHIP						45000	
Pilot Weatherization Program			400000				
Pratt Block by Block				200000	134000		
Speaker's Initiative							
Stabilizing NYC							1000000
SHIP				45000	45000		100000
Grand Total	8171250	6868525	6462633	6534472	6515597	6388977	7717972

This phase will also endeavor to gather current data from tenants, activists, and agency staff themselves regarding avoidance tactics they may still be dealing with. Surveys have been designed and are ready for implementation with both citizens and agency staff. This is extremely important to ensure that the gains made with the 2019 RRA are not lost due to lack of budget capacity, or budget redirection to more “rezoning” programs benefitting developers and investors.

Once we identify agency performance indicators that pose a threat to tenant protections, and any predictable *disparate impact* based on our model in Phase 1, the indicators will be used to directly counter accountability avoidance. This will focus on designing, in tandem with the agencies, control frameworks that ensure *corrupting impact* becomes an ingrained part of the *Risk Management Framework* for their internal audits. This will be combined with training and network support that all citizens can access. As citizens identify issues, we can all work together to generate Forensically Acculturated paradigms that serve to hold the “Tone at the Top” accountable for retaining their independent judgement to develop policy.

¹⁵ Source: NYC Council Discretionary Funding Data – OpendataNYC.org

Literature Review – A brief Primer on Campaign Finance & New York’s Affordable Housing Campaign Finance in the United States – The Case for a “Pay to Play” Phenomenon

To understand its corrupting influence, it’s imperative to study aspects of campaign finance that aid in understanding the “...dangers of interest group politics.”¹⁶ The issue is further exacerbated by the fact that some interest group politics do have benefits. Paramount in these are human rights issues, which may not have widespread support but deserve legislative attention. Often race, gender, and sexual rights are cited as such issues. Interest group politics is beneficial in these cases, but they can still be divisively partisan, and decidedly make the process of legislating campaign finance harder.¹⁷

As *Strauss*, in the article cited above, further explains the campaign finance dichotomy, he parallels a contribution to an extension of a promise to “vote” for the candidate in agreement with their platform. The issue, he expounds, isn’t the act itself, but the lack of equality in various groups’ financial resources to further self-interested legislation in this way. PAC’s, corporations, and unions, for instance, can have an outsized effect if their contributions aren’t curbed in relation to an “unorganized” individual’s influence on the candidate’s electability beyond their personal vote.¹⁸

Ignoring these campaign contribution dichotomies, and the overall inequality in policy influence they pose, has a long history with the Supreme Court in *Buckley v. Valeo*¹⁹; again, in *Federal Election Commission v. Wisconsin Right to Life*²⁰; citing a “...chilling effect on protected speech” if adjudicated in any other way. And finally cemented by the court in *Citizens United v. Federal Election Commission*²¹.

In *Citizens United* the Supreme Court also stated that reform demands are Congress’ purview. The court refuses to legislate the inherent duality of campaign finance, where decisions regarding “good” and “bad” interest group politics are always fraught with partisanship.²² Furthermore, since campaign contributions can only be applied to a “campaign”, the classic “quid pro quo” corruption definition is not applicable. But an expanded definition of *corrupting impact*, presented by *Strauss*, may get to the “intent” of valuing campaign contributions as ways to “...stay in office longer”²³, or even indefinitely. Elected officials can make voting decisions that benefit interest groups providing funds to aid electability, over independent judgement of what is best for overall public welfare.²⁴

In 2000, *Nelson*²⁵ argued that the approach to campaign finance reform is focused on the *supply*²⁶ side but should instead be focused on the *demand*²⁷ side. The Supreme Court has made it clear that efforts at

¹⁶ Strauss, D. (1994). Corruption, Equality, and Campaign Finance Reform. *Columbia Law Review*, 94(4), 1369-1389. doi:10.2307/1123287 (p.1370, pp.4).

¹⁷ *IBID* (p.1378-1379)

¹⁸ Strauss, D. (1994). Corruption, Equality, and Campaign Finance Reform. *Columbia Law Review*, 94(4), 1369-1389. doi:10.2307/1123287 (p.1374, pp.4-1375, pp.1)

¹⁹ 424 U.S. 1 (1976).

²⁰ 551 U.S. 449 (2007).

²¹ 558 U.S. 310 (2010)

²² Strauss, D. (1994). Corruption, Equality, and Campaign Finance Reform. *Columbia Law Review*, 94(4), 1369-1389. doi:10.2307/1123287 (p.1371, pp.2)

²³ *IBID* (p.1373, pp.2)

²⁴ *IBID*

²⁵ Nelson, J. (2000). The Supply and Demand of Campaign Finance Reform. *Columbia Law Review*, 100(2), 524-557. doi:10.2307/1123475 (p. 524-525)

²⁶ special interest groups need to be dissuaded from using contributions to sway the de facto independence of elected officials

²⁷ Elected officials, with increasing campaigning costs, seek out special interest donors to increase incumbency

reform on the supply side are precarious due to “protected speech” concerns.²⁸ Furthermore, the court’s insistence that this reform be directed at the legislative level, is self-monitoring that is often difficult to attain. If these are the facts of the campaign finance reform environment, giving legislators regulatory and oversight guardrails around campaign finance may serve to control its negative aspects. A review of the contribution history to New York city & state officials supports *Nelson’s* argument.

Nelson also argues that campaign finance should be viewed as a market with “buyers” and “sellers” and lists a bevy of scholarly sources that highlight what the various stakeholders are “buying” and “selling”. These sources are identified in Appendix B.²⁹ Even if this “market” is beneficial for both buyers and sellers, *Nelson* argues, it is not necessarily acceptable if this “market” invariably effects 3rd parties, in this case the larger citizenry.³⁰

Citizens United has been hailed as a death knell for campaign finance reform, and, by *Nelson’s* standard, an outright rejection by the court to legislate the supply side of the campaign finance market. It was also a redirection from the early 2000’s when the court had made decisions to expand the definition of public corruption to include “undue influence on an office holder’s judgement”³¹, or what audit professionals would identify as *Independence in Appearance*³².

Undue influence of campaign contributions was the basis for this expansion in definition. *Kang*, in 2012, argued that *Citizens United* contracted the definition of public corruption to a sliver of activities not far from the classic definition of “quid pro quo” bypassing all the legislative and judicial reform of the first decade of the 21st century.³³ This back and forth indicates that campaign finance reform lacks motivation and support across all branches of government.

Considering the myriad of scholarly sources that have identified campaign finance, and its reform, as a crucial part of a healthy republic, the court’s decision in *Citizens United* seems incongruent, even to its own precedent less than 10 years prior. No legislative reform has been posed since 2010 to shore up the vacuum as *McCain-Feingold* did in 2002. Instead, a pattern has emerged since 2007 to explicitly undermine the 2002 legislation and expansion of corrupting influences.

Furthermore, the ever-widening resource inequality, historically exacerbated in the US by institutionalized racism and sexism, ensures that “pernicious” interest group politics can harm the foundations of democratic institutions as officials seek incumbency; even if it can only be attained by serving narrow interests.³⁴ Thereby, it is important we expand the definition of corruption, especially in times of increasing inequality, not contract it.

²⁸ Nelson, J. (2000). The Supply and Demand of Campaign Finance Reform. *Columbia Law Review*, 100(2), 524-557. doi:10.2307/1123475 (p.525-526)

²⁹ *IBID* (p.529)

³⁰ *IBID* (p.529-530)

³¹ Stephanopoulos, N. (2015). ALIGNING CAMPAIGN FINANCE LAW. *Virginia Law Review*, 101(5), 1425-1500. Retrieved December 30, 2020, from <http://www.jstor.org/stable/24643400> (p.1455, pp.2)

³² Independence in appearance is the absence of conflicts of interest that would cause a reasonable and informed third party, having knowledge of the relevant information, to reasonably conclude that the integrity, objectivity, or professional skepticism of audit organization or member of the audit team had been compromised.

³³ Kang, M. (2012). THE END OF CAMPAIGN FINANCE LAW. *Virginia Law Review*, 98(1), 1-65. Retrieved December 30, 2020, from <http://www.jstor.org/stable/41350237> (p.4)

³⁴ Strauss, D. (1994). Corruption, Equality, and Campaign Finance Reform. *Columbia Law Review*, 94(4), 1369-1389. doi:10.2307/1123287(p.1379-1383)

Understanding New York’s Affordable Housing Arena

New York City currently has three forms of affordable housing for its vast and diverse renter economy. These are rent controlled apartments (2017 – 22,000 apartments remaining)³⁵, rent stabilized apartments (2017 – 966,000 apartments remaining)³⁶, and the only remaining public housing agency in the country, the New York City Housing Authority (NYCHA), which has approximately 177,000 apartments³⁷.

In the 1950’s, there were 1M rent controlled apartments in New York City, but rent controlled apartments have all but disappeared as an option for New Yorkers. Rent stabilized apartments are also currently under threat, and NYCHA has most recently come under fire, and even received criminal sanctions, for completely disregarding the habitability conditions of 1000’s of the most vulnerable New Yorkers. During the period 2000-2012, including the 2003 rent reform act period, NYC has lost 400,000 rental units under \$1,000, and, as of 2016, over 54% of its residents are considered “rent burdened” as reported by *Elmedni*.³⁸

Inferring from *Elmedni*, New York’s support of affordable housing can be viewed as politically motivated, as it has always depended on a public/private partnership due to its vast scale. While saving the rent-controlled apartment is impossible at this point, reassessing how rent stabilized apartments are treated may be the key ingredient in ensuring that low and middle-income residents can continue to have stable homes in NYC. In addition, a complete overhaul of how NYCHA functions is necessary if we are going to commit to protecting our truly vulnerable constituents, and especially those of our residents who can no longer participate in the labor economy.

The city had engaged in multiple public/private partnerships starting under Mayor Koch (1987-1992), and the innovative model used by Koch administration in the first 5-year plan is still the basis for housing policy today. It was during this period two of the most important rent reform acts (RRA) of the last 30 years were passed, in 1997 & 2003. These had multiple tenant protections, but provided, seemingly fair and minor, loopholes that worked directly against low & middle-income residents. These policies accelerated the deregulation of 100’s of rent stabilized apartments.

The 1997 & 2003 Rent Reform Acts

In spirit, the rent laws of 1997 & 2003 were designed to protect low-income tenants by dictating how much rent a landlord can charge for a unit that falls under the rent stabilization guidelines. But in parts they worked against tenants as follows:

A major loophole of the 1997 law allowed a landlord to increase an apartment’s “legal rent”, by 20%, outside of RGB approved amounts, plus by any improvement costs³⁹, at the onset of a new lease. The vacancy decontrol increases were designed to protect a landlord’s investment by helping them make-up for lost revenue while an apartment lays vacant, and for making the investment to upgrade the housing under Mayor Koch’s housing plans that lasted 15 years from 1987. In addition to allowing these increases, there were few guidelines provided to oversight regulators as to what exactly can and should constitute as applicable to allowing such an increase. Finally, lack of resources often led to administrative agencies accepting increases with little or no due diligence.

Apartments in NYC are not empty for more than a couple of months, but the landlord can increase the asking rent by 20%, no questions asked, at the time of a lease-turnover. It is not difficult to understand why landlords would prefer faster turnover of tenants in rent stabilized apartments and may even employ

³⁵ Rent Guidelines Board: Retrieved from https://www1.nyc.gov/site/rentguidelinesboard/resources/rent-control_page

³⁶ *IBID*

³⁷ [NYCHA-Fact-Sheet_2019_08-01.pdf](#)

³⁸ [The Mirage of Affordable Housing in New York City.pdf](#) (p.2)

³⁹ (1/40th or 1/60th of total cost of improvement based on size of the apartment building)

harassment techniques⁴⁰. The irony of course is that rent stabilized apartments were meant to provide a long-term housing solution for low-income households, which is why landlords are *required* by law to provide lease renewal to all tenants in rent stabilized apartments.

In addition, landlords can purport improvements to an apartment without disclosing details and costs to the regulator, HCR. RGB⁴¹ annual rent increases often hover around 2% or less. In essence, without verification, the state allowed landlords to dictate rent increases outside of the main rent oversight authority, the RGB.

Accelerated destabilization of rent stabilized apartments continued between the period of 1995-2000. Without regeneration, the loss of any resource is not infinitely sustainable. Supported by the vacancy decontrol portions of the 1997 act, NYC underwent a major *Displacement* period, especially in Manhattan. Neighborhoods such as the Lower East Side, East Village and Soho come to mind when thinking of this period.

State officials approved a second loophole with the 2003 RRA, by legislating an existing landlord option of offering “legal rent” or “preferential rent”. The “legal rent” of a unit is determined by the RGB and is based on the history of the rent increases reported by landlords to the HCR. For instance, an individual apartment may have a “legal rent” of \$2100/month, but its condition, or location, may make it impossible for the landlord to rent the apartment for that amount. In this case, the landlord of a rent stabilized unit could offer the tenant, a lower, “preferential rent”. This form of rent is usually lower because of what accountants would dub the “fair market value” of the apartment. This “fair market value”, which should reflect what the legal rent of an apartment can and should be able to charge, was not codified though. It was provided entirely at the discretion of the landlord and could also be revoked at their behest.

Many landlords, especially corporate ones, bought buildings in neighborhoods not quite catchy yet, as investments, and offered those apartments to low-income tenants on “preferential rent” terms. Or smaller landlords, hoping for neighborhood change, would use this practice as a basis for enticing investment-oriented developers. The term applied to these types of investment purchases by corporate style real estate organizations is “Predatory Equity”.⁴²

The immediate first step for many of these landlords is to close the gap between the “preferential” and the “legal” rents. This can often equate to a 20 – 30% increases in a tenant’s annual rent, literally, overnight. A 20 – 30% increase in rent can equate to \$100’s for a tenant who may already be struggling to pay the current rent. While the tenant received their *legally required* lease renewal, there is no way they can accept the lease at the new rate, and they are efficiently pushed out of their rent stabilized apartment.⁴³

These apartments are then gutted for full renovation, substantially increasing their value and thereby the asking rent. Rapid renovations of multiple apartments in a neighborhood serves to increase the median rent of that neighborhood, fostering faster *Displacement*. This was entirely legal under the 2003 RRA, until the 2019 RRA, which officially ended it. It took 17 years, and a lot of effort by NGO’s & grassroots activists to make it real.

⁴⁰ My husband & I recently rewatched the classic “Batteries Not Included”. We loved the “aliens” as children. Most recently, we were sad that the “aliens” were the resolution to NYC’s affordable housing crisis, as per Spielberg.

⁴¹ Rent Guidelines Board

⁴² Zarin, A., Kasdan, A., Markman, E., Sick, J. (2017, Dec. 14). Stabilizing NYC. The Predatory Equity Story. Retrieved from: https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_SNYCPredatoryEquity_20171214_0.pdf

⁴³ Schwartz, A. (2019). New York City’s Affordable Housing Plans and the Limits of Local Initiative. *Cityscape*, 21(3), 355-388. doi:10.2307/26820664 (p.357)

This, second period of accelerated *Displacement*, took place during the period 2003 – 2019. The neighborhoods that most come to mind for this period include Harlem, East Harlem, Long Island City, Williamsburg, Astoria and Bushwick. The *Displacement* had expanded to Brooklyn and Queens, especially those parts closest to Manhattan.

By the time of this proposal's writing, large swaths of NYC, often neighborhoods closest to Manhattan's working districts in all 5 boroughs, have become unaffordable for those in the middle class and below. This has led to lower-income residents, those currently being considered a part of the "essential workers" gamut, being pushed farther out in the boroughs leading to longer commutes at minimum wage.

The tabulation shown in Appendix C highlights the *Displacement* cycle as experienced by East Harlem in the last 2 decades. While this was tabulated for East Harlem, one of the few remaining Manhattan neighborhoods that did not experience *Displacement* until most recently, it can serve as a blueprint for how so many other neighborhoods were affected.

2019 Housing Stability and Tenant Protection Act

The 2019 rent laws⁴⁴, a product of the progressive politics that swept the nation in the 2018 midterm elections have improved the impact of the 1997 & 2003 rent reform acts. Led by local politicians like Alexandria Ocasio-Cortez and Jumaane Williams, the HPD finally became empowered to respond to landlord violations as criminal offenses. Additionally, the HPD became empowered to provide all tenants in housing court with free legal representation based on income eligibility. Finally, the 2019 rent laws created a stronger internal control environment for the HCR, which is responsible for verifying that rent increases are validated with due diligence. Most importantly though, it requires landlords to base rent increases on EITHER "preferential" vs. "legal" rent, preserving the tenant's ability to accept their lease renewal.⁴⁵

While this law has produced magnificent gains for tenant protections, it has not gone far enough. The conflation the city is experiencing because of the existing environment of inequality and the COVID crisis, has plunged NYC into yet another rent crisis.⁴⁶ Cuts to the HPD budget alone, being floated due to the drastically reduced revenues, can bring back the conditions that failed to protect tenants from eviction in the past. While there is need for a larger, Federal, stimulus plan, direct intervention by the city to protect affected communities, especially as many of these low-income workers are being dubbed "essential" during this pandemic, is required.

These essential workers allowed many of us, much higher on the wage scale, to shelter safely in our homes during the pandemic, and have borne the brunt of lack of affordable healthcare and housing. Housing especially has caused a mass crisis, as many of these workers live in communal environments necessitated by the disparity between wages and housing affordability in NYC. Under Mayor Bloomberg's administration [2002-2012], nearly 2/3 of all affordable housing units became unaffordable for these essential workers. The COVID crisis is merely highlighting this issue starkly.

While the 2019 law may prove to correct future deregulation, *Displacement*, and increases in median rents, it doesn't correct the issue for the nearly 50% of New Yorkers who are already defined as rent burdened because of previous policies. To correct this inherited disparity, clearly exacerbated by the pandemic, two important provisions of the 2019 RRA⁴⁷ need to be expanded and implemented on a wider scale. Fully funding these initiatives is key to ensuring that the 2019 RRA is effectual.

⁴⁴ <https://www.nysenate.gov/legislation/bills/2019/s6458>

⁴⁵ <https://www.villagevoice.com/2017/07/06/preferential-rent-how-landlords-kill-nycs-affordable-apartments-and-get-away-with-it/>

⁴⁶ [NYC 2021 Budget Cuts HPD Capital Funding by 40 Percent \(therealdeal.com\)](https://www.therealdeal.com)

⁴⁷ <https://www.nysenate.gov/legislation/bills/2019/s6458>

1. **Part F:** Empowers HCR to investigate a landlord’s rent charge basis history going back 6 years, or longer if feasible. This “lookback” provision is a very powerful tool but requires serious capacity building of resources at the HCR. The added capacity would allow HCR to identify historically offending landlords, as was done for the Kushner properties⁴⁸, and restate the historic rent basis, in the hopes of reducing the legal rent for many stabilized apartments.
2. **Part K:** Empowers HCR to review 25% of all “upgrade” and “maintenance” rent increase basis for direct oversight and audit. This should be increased to at least 50% annually, combined with capacity building of resources to perform the duties. The extent to which rent stabilized apartment reporting has been fraught with a lack of transparency, the only real way to enforce compliance is, increasing the number of units reviewed. Knowledge of monitoring often leads to compliance as indicated by financial reporting environments.

Expanding organizational capacity would allow the HCR & HPD requisite resources to sufficiently address the concerns of our most vulnerable tenants, which could have been ongoing for many years. The budget cuts threatened by the pandemic, especially if federal stimulus does not arrive, will drastically affect the budgets of housing administrative agencies, and may lead to a return of the *de facto* unregulated environment the 2019 RRA seeks to correct.

Additionally, rent subsidies, the kind currently provided by the “Section 8 Housing Choice Voucher Program”⁴⁹, need to be expanded. These should be further expanded to provide loan subsidies to low-income tenants who are current with their rent to purchase their home from the landlord, with HUD⁵⁰, or similar agency, supplying the loan. It is clear that New York City has lost far too many affordable units, this includes 400,000 apartments \$1000 or under, in the last two decades.⁵¹ Replacing those units through building programs with affordable housing rebates provided to developers, of Hudson Yards⁵² for instance, is nowhere near enough; especially lower-rent units to match the lower wage spectrums of many of our “essential” workers. Directly subsidizing housing, prioritizing helping rent burdened families *stay* in their neighborhoods and homes, is the most efficient policy measure.

The final policy change component advocated by this proposal is to empower affordable housing residents directly. Like HPD provides tenant representation in housing court, a more responsive support system needs to be in place before cases get to housing court. The proposal advocates the following measures:

1. Create strict time frame deadlines for complaint responses⁵³, especially those regarding health and safety conditions, by the HCR⁵⁴, HPD, and NYCHA. Both agencies should have investigators available, based on urgency of case, within a few hours of tenant complaints, so the violation can be viewed in real-time. These investigators should plan to come in audit mode with the necessary tools to assess the situation and provide immediate solutions, even if only remedial. (timeliness and audit planning)
2. Provide annual “welcome packets” for all tenants that sign a rent stabilized lease to fully advise the tenant of their rights. Expand the packet to include detailed instructions on agency contact, text of the law and tenants’ rights, response times for complaints, and online/telephone options to speak to a “housing specialist” at all times, akin to 311 but with professionals trained directly in housing policy. (3rd party hotline for confidential reporting)

⁴⁸ <https://www.nonfictionfilm.com/news/now-streaming-netflix-documentary-slumlord-millionaire-takes-apart-jared-kushner>

⁴⁹ <https://hcr.ny.gov/section-8-housing-choice-voucher-hcv-program>

⁵⁰ Fannie Mae & Freddie Mac would be excellent, including in providing loan approval amount oversight

⁵¹ [The Mirage of Affordable Housing in New York City.pdf](#) (p.2)

⁵² <https://www.nytimes.com/2019/03/09/nyregion/hudson-yards-new-york-tax-breaks.html#:~:text=In%20all%2C%20the%20tax%20breaks,analysis%20by%20the%20New%20School>.

⁵³ <https://www.thecity.nyc/housing/2019/9/30/21210801/new-rent-law-deluges-backlogged-tenant-overcharge-claims>

⁵⁴ rent overcharge cases at DispHCR currently take an average of 24 months to complete

3. Provide all tenants confidentiality of complaint until HCR/HPD have inspected physical premises. No complaint regarding warranty of habitability should be assessed without an initial physical inspection directly in conjunction with the tenant, NOT the landlord. With an immediate physical inspection, the HCR/HPD agent can have a stronger discussion with the landlord/tenant as to each one's rights to attain a sustainable solution to the issue. It also gives them a better understanding as to endemic issues to better engender accountability. (confirmation, risk of material misstatement)
4. Provide the training defined by this proposal, which seasoned activists have learned over years, for tenants that are not as well-versed. This training can be available through organizations like CUNY, Comptroller's offices, Community Boards. The training would empower average citizens to understand multiple factors of capacity limitations at agencies (unintentional accountability avoidance), as well as address agency misbehavior (intentional accountability avoidance). (supervision and oversight of audit team)

Legislation alone cannot correct the issues caused by 30 years of harmful policies. Fortifying the legislation with corresponding capacity building in administrative agencies is extremely important. We once again find ourselves in a situation where administrative agencies may be in *de jure Compliance*, but due to *Capacity* concerns, they would be unable to *comply with Performance of their duties efficiently and effectively*. Paramount of these duties is direct regulatory oversight over landlord activities centering around rent increases, warranty of habitability, and denial of timely service.

In addition to this, NYCHA continues to be a major concern, as evidenced here⁵⁵ and here⁵⁶, and no clear relief has been provided for the most economically vulnerable of New York's tenants. Funding cuts seem to hit NYCHA harder, as public housing has largely fallen out of favor nationwide, especially since the 1990's. With further funding cuts, driven by revenue shortfalls due to the pandemic shutdowns, NYCHA residents are likely to suffer continued mold and heating issues. This project aims to prove that while civil servants are meant to be apolitical, the city/state elected officials' relationships with their donors have an involuntary, political, effect on *Performance* by these civil servants. These agencies are clearly overwhelmed, underfunded, and not prioritized, which is a proven way to keep administrative agencies ineffectual, while still in legal compliance.

⁵⁵ <https://www.nytimes.com/2020/12/04/nyregion/coronavirus-nyc-nycha-gas.html?searchResultPosition=1>

⁵⁶ <https://www.nytimes.com/2020/12/15/nyregion/nyc-public-housing-coronavirus.html?searchResultPosition=3>

Summary Remarks

The initial data gathering and analysis points to an identifiable model to assess the impact of campaign contributions by special interest groups to enact policy that serves their needs.

The Affordable Housing Crisis in New York can be viewed as the special interests of a “rentier” class to increase the value of their properties by replacing lower-paying tenants with high-paying ones.

A combination of incongruent legislation, lack of oversight control, and limited regulatory enforcement led to the crisis being ignored by officials and agencies – which may have been the intended goal.

Accountability avoidance at the Housing Administration agency level, like at NYCHA, may be predictable when viewing it from this model.

New York City will continue to suffer the “100-year” affordable housing crisis unless clear internal control frameworks are identified to limit the impact of campaign contributions on the reward/punishment and financial controllability of administrative agencies.

Restorative justice to displaced communities is not only possible, it should be pursued under the *Fair Housing Act of 1968*. This is imperative to ensure there is no motivation to create similar environments again.