



TESTIMONY REGARDING

NYCHA Development and Privatization

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL'S  
COMMITTEE ON PUBLIC HOUSING

PRESENTED BY:

JUSTIN R. LA MORT  
SUPERVISING ATTORNEY  
MOBILIZATION FOR JUSTICE, INC.

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**MOBILIZATION FOR JUSTICE, INC.**

100 William Street, 6<sup>th</sup> Floor

New York, NY 10038

(212) 417-3700

[www.mobilizationforjustice.org](http://www.mobilizationforjustice.org)

## **I. Introduction**

Mobilization for Justice envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. We do this by providing the highest quality direct civil legal assistance, conducting community education and building partnerships, engaging in policy advocacy, and bringing impact litigation.

Mobilization for Justice began as the legal arm of Mobilization for Youth, a large community-based anti-poverty program founded in 1962. The legal unit, MFY Legal Services, was founded on the principle of equal access to justice through community-based legal representation of poor New Yorkers. When the federal Office of Economic Opportunity began funding community-based legal services, our model became the prototype for hundreds of new programs. In 2017, we changed our name to Mobilization for Justice (“MFJ”) to better reflect the expanded scope of our work while honoring our roots. We assist more than 25,000 New Yorkers each year. MFJ’s Housing Project provides advice and representation to thousands of tenants annually and is dedicated to preserving affordable housing in New York City.

We appreciate the Committee’s important work to elevate the discussion concerning the privatization of public housing in New York City. I recently published an article looking at NYCHA where I propose the need for greater funding, transparency, accountability, and equality in reforming public housing.<sup>1</sup> We will use those principles in discussing the proposed privatization measures.

## **II. Rental Assistance Demonstration (RAD)**

The Rental Assistance Demonstration (RAD) is a relatively new program that started in 2012 that has quickly expanded in scope and funding. NYCHA’s willingness to work with the community through the RAD Roundtable has identified many possible complications and steps for NYCHA to alleviate those concerns. We will focus on areas where work remains.

### **A. Data Collection**

HUD does not systemically use its data to measure effects of RAD on tenants (such as changes in rent or relocation) or monitor use of all resident safeguards.<sup>2</sup> For example, a preliminary study by the U.S. Government Accountability Office found 57 percent of tenants in their sample experienced a rent increase after RAD conversion but lacked the necessary information on whether this was increased rent burden or a result of increased incomes of the households.<sup>3</sup> HUD’s lack of proactively collecting data from RAD-converted properties to ensure compliance with laws, regulations, and tenant’s rights makes it challenging to measure its impact on tenants’

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<sup>1</sup> Justin R. La Mort, *Public Housing & Public Health: Separate and Unequal Protection of Tenant’s Health Between Private and Public Housing in New York City*, 27 *Journal of Affordable Housing & Community Development Law* 385 (2018).

<sup>2</sup> U.S. Government Accountability Office, *GAO Report: HUD Needs to Take Action to Improve Metrics and Ongoing Oversight of RAD* 19 (February 2018).

<sup>3</sup> *Id.* at 21.

lives.<sup>4</sup> What little research we have shows greater turnover of tenants and increased evictions<sup>5</sup> without separating the benefits achieved from the change in management versus merely an infusion of capital to provide necessary services.<sup>6</sup> This rush towards desperately needed funding through RAD is happening with very little understanding about the impact it has had and will have on low-income public housing tenants. We urge the city to move cautiously and implement robust data collection so future decisions will be better informed about their impact on tenants' lives.

## **B. Prevent Displacement**

Other communities have seen private landlords fail to keep the promise of following the rules and procedures in evicting tenants. Examples include improper notices to scare tenants in Baltimore<sup>7</sup> and a nonprofit discriminating against families with children and people with disabilities in Virginia.<sup>8</sup>

There have also been concerns that targeting buildings for conversion has led public housing authorities to keep apartments vacant, often called warehousing, or led to increased efforts to evict tenants leading up to conversion.<sup>9</sup> Apartments that are vacant can be given to new tenants who are likely to receive stricter screening and have the ability to pay higher rents.

It is important for the City to learn the lessons from the HOPE VI program where the rush to privatization led to the displacement of tenants.<sup>10</sup> While RAD has additional protections such as prohibitions against rescreening and reduction in the number of housing units, there are real risks. As one housing advocate succinctly summed up the fundamental problem: “achieving RAD's preservation goals will require HUD to exercise its discretion and enforce its regulations in a preservation-minded way, something HUD has struggled to do in the past.”<sup>11</sup>

## **C. Loss of Affordable Housing**

RAD purports to have a one-to-one conversion. However there are many loopholes within the statute. A developer may reduce the total number of units by five percent.<sup>12</sup> In addition to the five percent, the developer and housing authority are allowed to reduce the apartments where the

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<sup>4</sup> National Housing Law Project Letter to Secretary Carson, Re: Concerns with the Rental Assistance Demonstration (RAD) Program 3 (October 11, 2017).

<sup>5</sup> Citizen Housing Planning Council, *New Partners in Public Housing: Evaluation of NYCHA's Triborough Pilot Project* 12-13 (June 2018).

<sup>6</sup> Victor Bach & Afua Atta-Mensah, *Public Housing, Private Pitfalls: What NYCHA Tenants Lose Moving to New Management*, New York Daily News (July 3, 2018).

<sup>7</sup> Luke Broadwater, *Tenants Evicted Improperly from Baltimore's Privatized Public Housing, Complaint Alleges*, The Baltimore Sun (February 8, 2018).

<sup>8</sup> K. Burnell Evans, *Developer Agrees to Pay \$340K, Boost Services in HUD Settlement Over Discrimination Complaints in Hopewell*, Richmond Times-Dispatch (Oct. 3, 2017).

<sup>9</sup> David Forbes, *Asheville Public Housing Evictions Spark Concerns*, Carolina Public Press (January 5, 2015);

<sup>10</sup> Andrew Balashov, *Private Investment: Trojan-Horse or Shining Knight for America's Public Housing Stock*, 4 University of Baltimore Journal of Land and Development 165, 171-72 (2015).

<sup>11</sup> Anne Marie Smetak, *Private Funding, Public Housing: The Devil in the Details*, 21 Virginia Journal of Social Policy and the Law 1, 61-62 (2014).

<sup>12</sup> RAD Notice § 1.4(a)(4).

unit has been vacant for more than two years at the time of the RAD application or if the reduction will allow the housing authority to more effectively or efficiently serve households through: 1) reconfiguring apartments; or 2) facilitating social service delivery.<sup>13</sup> The provisions are both vague and stand in opposition to the proposed preservation purpose of RAD.

There will need to be supervision to ensure that tenants are not rescreened or driven out despite protections prohibiting such action. What is not prohibited is the screening of future tenants using technique of “creaming” where “easy” tenants are chosen.<sup>14</sup> NYCHA, for the last few decades, has been housing of last resort for some of the most vulnerable tenants in the city. Private management will have the ability to screen future tenants and eliminate those with poor credit, past evictions, and other collateral issues of having too little money in a city where the rent is too high.<sup>15</sup> Careful thought needs to be provided where those with the least will live. Much as we saw with the conversion of SRO apartments, when you remove important parts of the affordable housing infrastructure, you push people into more dangerous and less visible housing.<sup>16</sup>

#### **D. Inadequate Relocation Plans**

Despite clear mandates involving the temporary relocation of tenants there have been many challenges in other locations including housing authorities and owners failing to provide tenants with adequate notices, failure to provide the required relocation advisory services, inadequate relocation plans or plans that were not followed, and owners failing to provide adequate housing.<sup>17</sup>

#### **E. Publicize the RFP**

The Request for Proposal (RFP) that developers must complete should be publicly available in an effort to create more transparency.<sup>18</sup> The experiences of public housing tenants warrants skepticism. NYCHA has repeatedly misled this Council and its tenants--whether it was about lead or mold or prior attempts at privatization. Making clear the requirements that developers must meet will be an act of good faith to those tenants on what is being requested and remove any question in their mind of the criteria being used. If the RFP includes requests that would be alarming to tenants then they have a right to know and an opportunity to advocate for their future.

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<sup>13</sup> RAD Notice § 1.4(a)(4)(i-ii).

<sup>14</sup> Jaime Alison Lee, *Rights at Risk in Privatized Public Housing*, 50 *Tulsa Law Review* 759, 772-73 (2015).

<sup>15</sup> Turner Center for Housing Innovation, *Lessons for the Future of Public Housing: Assessing Early Implementation of the Rental Assistance Demonstration Program* 20 (October 2017).

<sup>16</sup> See generally Brian J. Sullivan & Jonathan Burke, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 *CUNY Law Review* 113 (2013).

<sup>17</sup> National Housing Law Project Letter to Secretary Carson, Re: Concerns with the Rental Assistance Demonstration (RAD) Program 4 (October 11, 2017).

<sup>18</sup> Permanent Affordability Commitment Together (PACT) available at <https://www1.nyc.gov/site/nycha/about/nycha-rad.page> (last accessed September 25, 2018).

## **F. Unexpected Consequences**

There is much we don't know and I want to just highlight one example of an unintended consequence. One of the effects of privatization is that tenants may gain enhanced Section 8 vouchers to retain affordability. However my office, with Legal Services NYC and Housing Conservation Coordinators, are suing HUD and HPD as they have a policy that freezes tenants' rents with enhanced vouchers at unaffordable rates.<sup>19</sup> This problem is an unintended consequence where 366 households are required to pay over 50 percent of their income towards rent and more than 100 are paying greater than 71 percent. These unfortunate side effects of conversion are common when tenants transition from a strongly protected regime to one that has fewer protections. Due to the lack of information gathering by HUD there will be unforeseen consequences for early adopters of RAD.

## **G. Privatization of a Public Good**

It is important to recognize the concerns that have given rise to RAD do not disappear with its implementation. If you believe in RAD because it replaces NYCHA mismanagement with new managers, then you must trust those managers as accountability and oversight will be performed by NYCHA and HUD. If you believe in RAD because of pragmatic politics and the fact this program comes with funding, just remember that the same neoliberal policymakers who have attempted to demolish public housing through neglect are the same people in Congress and President Trump's administration who will be funding or defunding Section 8. If the opponents of public housing lose power then there may be real opportunities to fund the capital needs of public housing authorities, such as NYCHA, if there are constituents and elected officials who make such action a priority.

## **III. Infill Development**

The second proposal that we are concerned about is infill development on NYCHA property. Mayor De Blasio successfully campaigned on the promise, “[w]e will not allow any privatization” when it comes to NYCHA.<sup>20</sup> He further detailed that any infill development “must include substantial amounts of affordable housing....”<sup>21</sup> However there are reports the City is considering 100 percent luxury housing on NYCHA grounds.<sup>22</sup> It has also been reported that what was scheduled to be 100 percent affordable housing may instead be built as 70 percent luxury housing with potentially fewer affordable units than originally agreed.<sup>23</sup> This possible reversal towards privatization is troubling.

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<sup>19</sup> Sarina Triangle, *Section 8 Residents Spending More Than 80 Percent of Income on Rent: Suit*, AM New York (April 25, 2018).

<sup>20</sup> Azi Paybarah, *De Blasio Promises NYCHA 'Reset,' with 'Door Open' to Development*, Politico (February 8, 2014).

<sup>21</sup> Steve Wishnia, *Will Bloomberg Infiltrate Infill Into NYCHA Before Term Ends?*, Tenant/Inquilino (October 2013).

<sup>22</sup> Sally Goldenberg, *De Blasio considers Boosting Market-Rate Development on Unused NYCHA Land*, Politico (August 8, 2018); Amy Plitt, *City Considers More Market-Rate Housing on 'Underutilized' NYCHA Land*, Curbed New York (August 9, 2018).

<sup>23</sup> Greg B. Smith, *De Blasio Shifts Plan for Apartment Tower on Public Land From 100% Affordable to 75% Luxury*, New York Daily News (August 8, 2018); Yoav Gonen, *De Blasio Trying to Renege on Public Housing Plan, Build High Rise Instead: Officials*, New York Post (August 8, 2018).

### **A. Affordable For Whom**

There has been much debate regarding the gap between Area Median Income (AMI) and the realities of low-income tenants in New York City. The standards currently proposed would create affordable housing that would be out of reach of many of the city's tenants already in the community. Every effort must be made to create real affordable housing so the City does not waste valuable land and money on units that are affordable in name only.<sup>24</sup>

### **B. Lack of Tenant Involvement**

The communities facing the insertion of luxury housing within their neighborhoods face the consequences of construction and gentrifying forces without adequate notice and input on these proposals.<sup>25</sup> Greater effort must be made for inclusion earlier in the process of the selection of site where infill development is being considered.

### **C. Anti-Discrimination Design**

There are few policies regarding the equality of 50/50 developments on the building design. There should be restrictions on segregating services, amenities, and other architecture of exclusion such as a "poor door." Any development on public land should be economically integrated with prohibitions on relegating the affordable units to separate floors or wings from the luxury units.

### **D. Commodification of Public Goods**

We are concerned that much like other programs, such as 421-a tax exemptions and privately owned public spaces, profits will be large and public benefits will be lacking. So far only private developers have been chosen instead of nonprofit management which is problematic. The luxury buildings will pay nothing in property taxes and receive taxpayer subsidies. We fear construction will remove public land for a century with little assurance against private profits coming at the expense of the public as the amounts of money that have been discussed have been miniscule compared to the needs of NYCHA.

We also worry about setting a precedent. If a progressive administration is able to facilitate private development on public land then what restrictions are in place for future mayors? The risks simply outweigh the reward.

## **IV. Conclusion**

We thank the Committee for holding this hearing and considering our testimony. NYCHA's failures are a serious problem that deserve serious attention and real reform. We urge caution when it comes to privatization so that we do not abandon public housing to profiteering or

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<sup>24</sup> Rachel Holliday Smith, *Atlantic Yards Developers Struggle to Find Tenants for Higher-Income Affordable Units*, CityLimits.org (November 3, 2017).

<sup>25</sup> Isabelle Davis, Geraldine Lawrence, Karen Leader, and Paula Segal, *CityViews: NYCHA's New Leadership Must Rethink Plans to Develop Private Housing*, CityLimits.org (May 25, 2018).

obsolescence. While these proposals come with short-term funding, there are real challenges in sustainable financing, transparency, accountability, and equality. There is much we do not know about these new programs but past attempts at privatization have led to unexpected outcomes to the detriment of tenants. We hope the potential problems we've identified will help strengthen NYCHA and preserve public housing for generations to come.