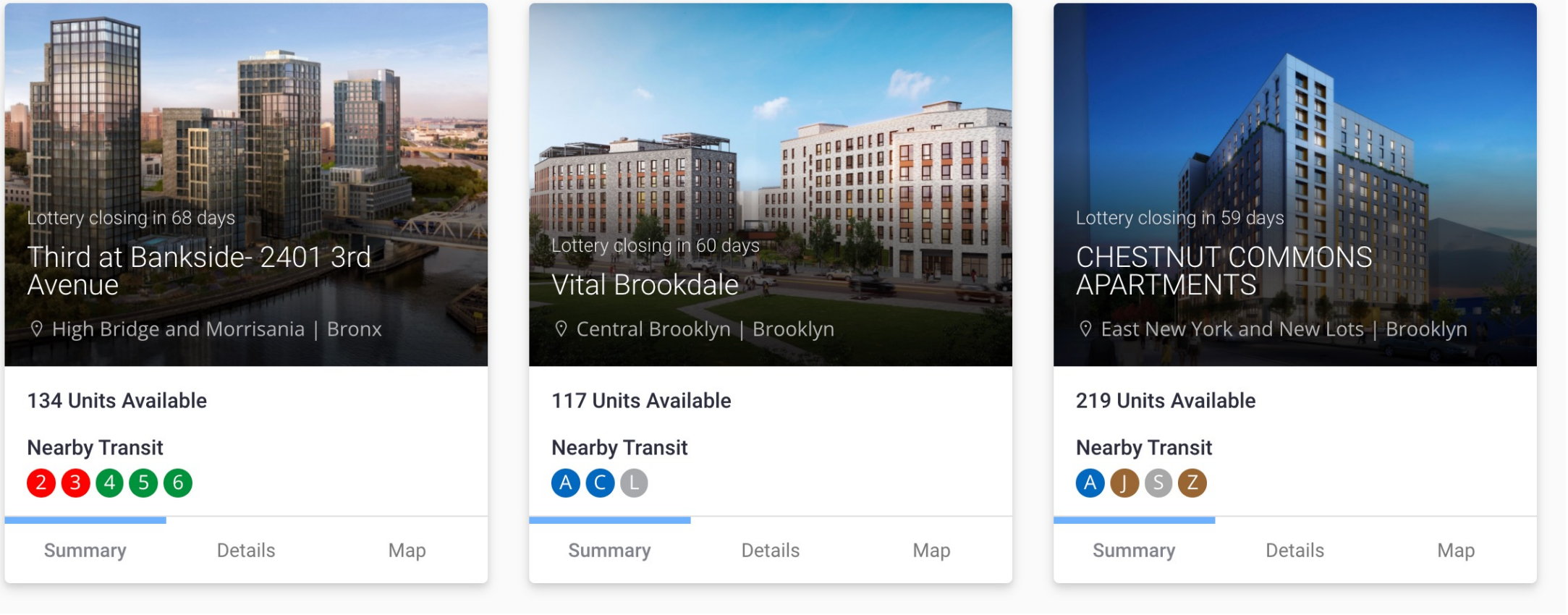
Do “Community Preference” Policies Violate the Fair Housing Act?

Examining the Plaintiff Analysis

Nick Arnosti (not a legal scholar)

New York Affordable Housing Lotteries



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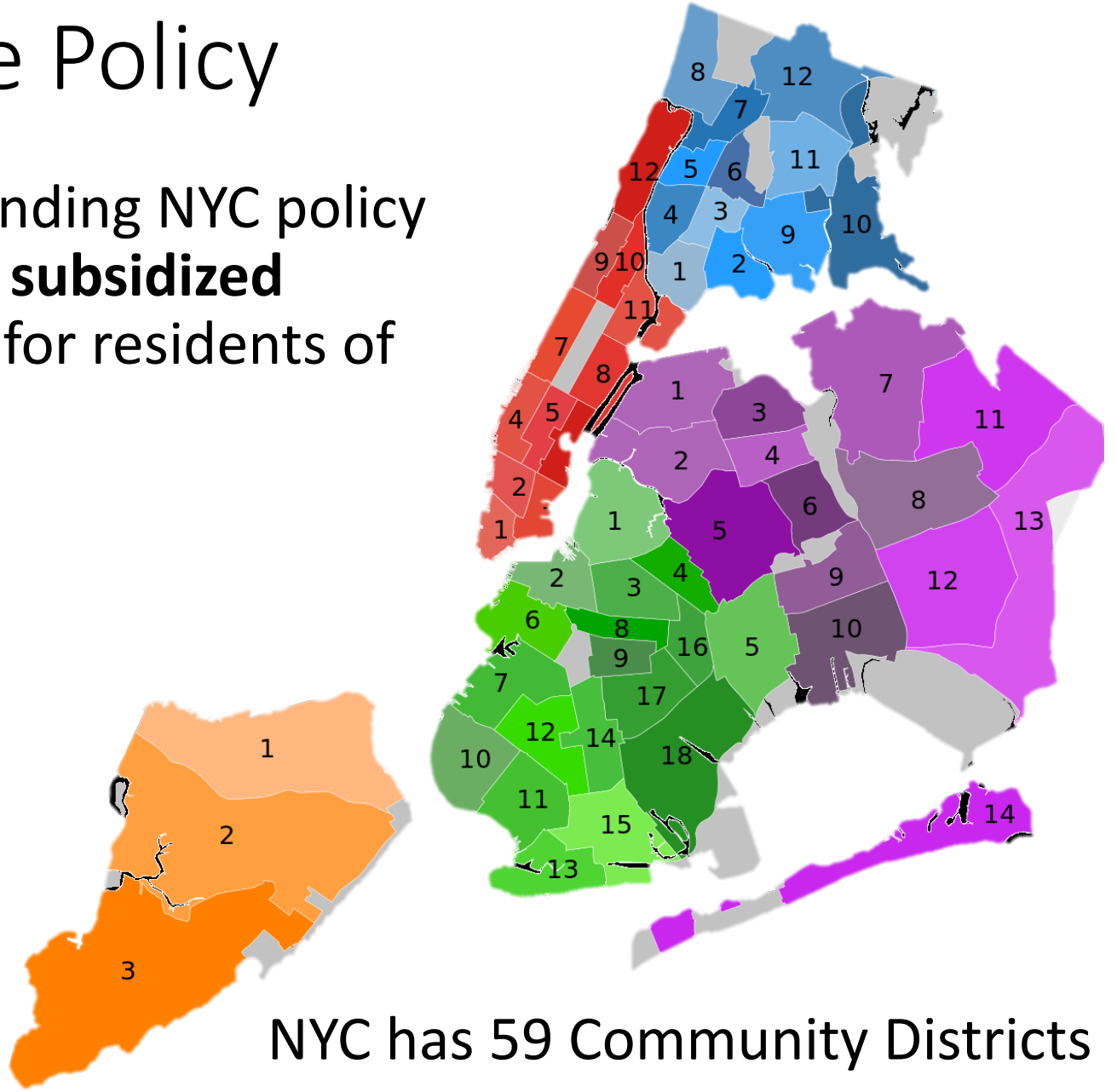

NYC has 59 Community Districts

Community Preference Policy

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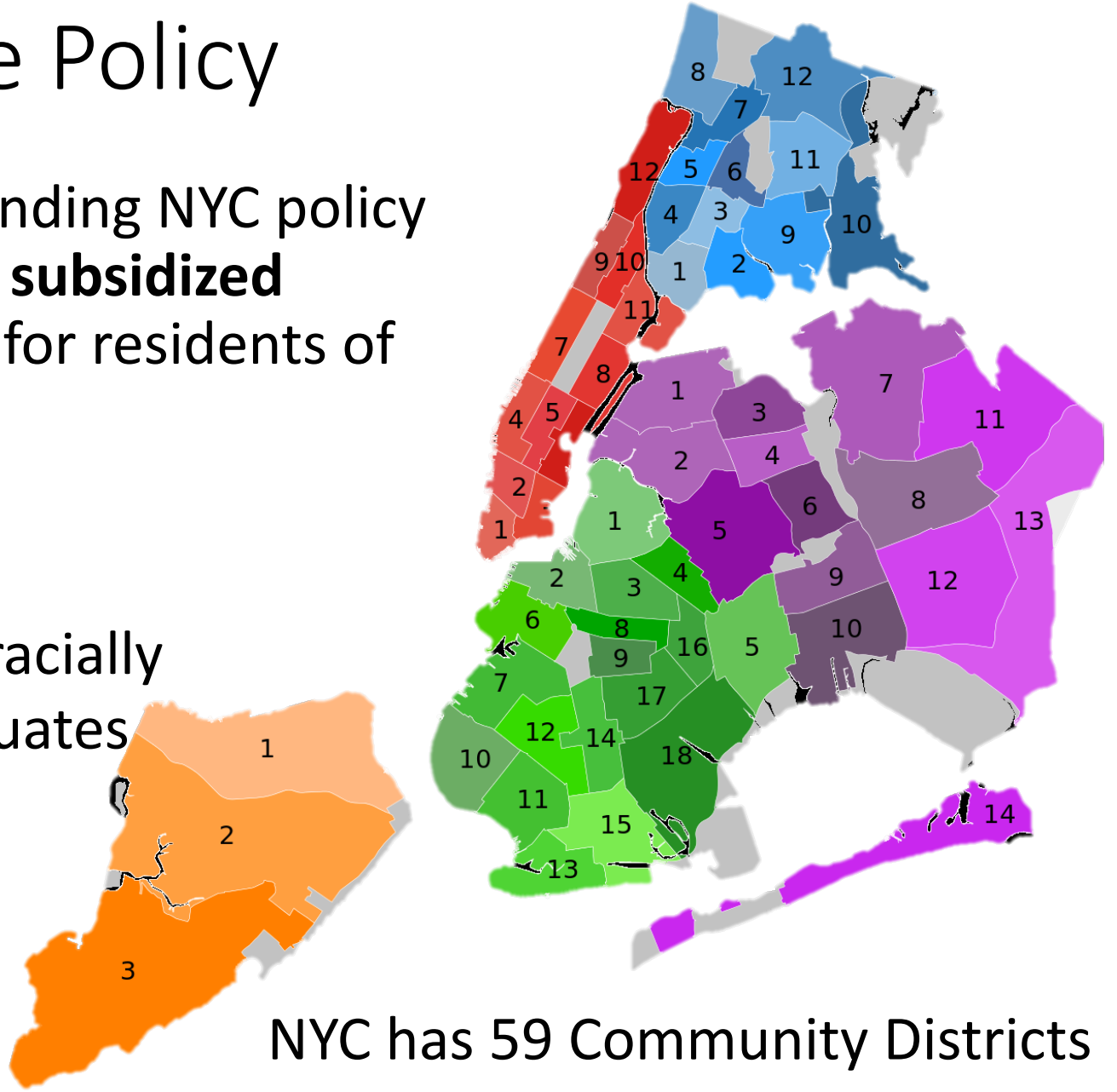
Lawsuit!

Plaintiffs claim that the policy has racially discriminatory impacts and perpetuates the harmful legacy of segregation.



NYC has 59 Community Districts

New York City is Actively Perpetuating Segregation in Violation of the Fair Housing Act

by Ian Weiner | Dec 7, 2020 | Press Releases

The Dark Side of Community Preference Policies

Community preference policies give existing residents first dibs on subsidized housing built in their neighborhoods. But what happens when these policies are applied to communities that are exclusive, well-off, and majority white?

By **Brandon Duong** - March 23, 2021

NYC's affordable housing lottery perpetuates segregation in neighborhoods: report

An expert found that the city's lottery system reinforces racial segregation

By **Caroline Spivack** | Jul 17, 2019, 9:32am EDT

How to establish “disparate impact on the basis of race”?

Plaintiffs hired Andrew Beveridge to make the case. Part 1

The city hired Bernard Siskin to rebut. Part 2

I offer my own take. Part 3

Part 1: Beveridge's Report

Analyzes data from 168 lotteries from 2012-2018.

Total units allocated: 10,245.

68 pages long (22 of them are Beveridge's CV)

My goal: simplify.

- Focus on key points, **not** comprehensive.
- Omit some details (i.e. disability set-asides).

How to study disparate impact of CP on race?
Compare outcomes by race, with and without CP

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Difficult Questions:

- Which outcomes to compare?
- How to estimate outcomes without CP?

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Must compare outcomes by race, with and without CP

Difficult Questions:

- Which outcomes to compare?
- How to estimate outcomes without CP?

Beveridge's analyses don't even attempt to do this!

1. Some don't incorporate **outcomes**.
2. Some don't incorporate **race**.
3. None address would happen **without** the policy.

How to study disparate impact of CP on race?

Must compare outcomes by race, with and without CP

	Incorporates Outcomes	Incorporates Applicant Race	Clear what would happen without CP
Table 1			
Table 2			
Table 3			
Table 4			
Table 5			
Table 6			
Table 7			
Table 8			

How to study disparate impact of CP on race?
Must compare outcomes by race, with and without CP

Beveridge fails to do this!

	Incorporates Outcomes	Incorporates Applicant Race	Clear what would happen without CP
Table 1	✓	✗	✗
Table 2	✗	✓	✓
Table 3	✗	✓	✓
Table 4	✓	✗	✗
Table 5	✗	✓	✓
Table 6	✗	✓	✓
Table 7	✓	✓	✗
Table 8	✓	✓	✗

The Plaintiff's Argument

Community Preference (CP) significantly advantages insiders.

+

Insiders are more likely to belong to the Community District's majority race.

⇓

Community Preference increases the number of housed applicants who belong to the CD's majority race.

The Plaintiff's Argument

Community Preference (CP) significantly advantages insiders.

Tables 1, 4

+

Insiders are more likely to belong to the Community District's majority race.

Tables 2, 3, 5, 6

⇓

Community Preference increases the number of housed applicants who belong to the CD's majority race.

No analysis

Beveridge's Units of Analysis

Applicants classified into 4 (mutually exclusive) racial groups:

- White, Black, Hispanic, Asian.

In addition, classified as "Insider" (from CD) or "Outsider" (not from CD)

Community Districts classified into 7 "typologies":

- **Majority** White, Black, Hispanic, Asian
- **Plurality** White, Black, Hispanic

Beveridge's Units of Analysis

		White	Black	Hispanic	Asian
Majority	White				
	Black				
	Hispanic				
	Asian				
Plurality	White				
	Black				
	Hispanic				

Table 1 – Chances per 1,000 entrants of an award of a lottery unit, by CD typology			
CD typology	Non-beneficiary entrant chances	CP beneficiary entrant chances	Multiple by which CP beneficiary entrant chances exceed non-beneficiary entrant chances
Majority White	0.502	15.163	30.24
Majority Black	0.754	9.315	12.36
Majority Hispanic	1.073	14.416	13.44
Majority Asian	2.089	16.288	7.80
Plurality White	0.734	14.715	20.04
Plurality Black	0.552	3.621	6.55
Plurality Hispanic	1.330	24.954	18.76

$$\frac{\text{Outsiders Housed}}{\text{Outsiders Applied}} \qquad \frac{\text{Insiders Housed}}{\text{Insiders Applied}} \qquad \frac{\text{Insiders Housed}}{\text{Insiders Applied}} \Big/ \frac{\text{Outsiders Housed}}{\text{Outsiders Applied}}$$

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Interpretation: in majority white districts, insiders are 30x more likely to be housed than outsiders.

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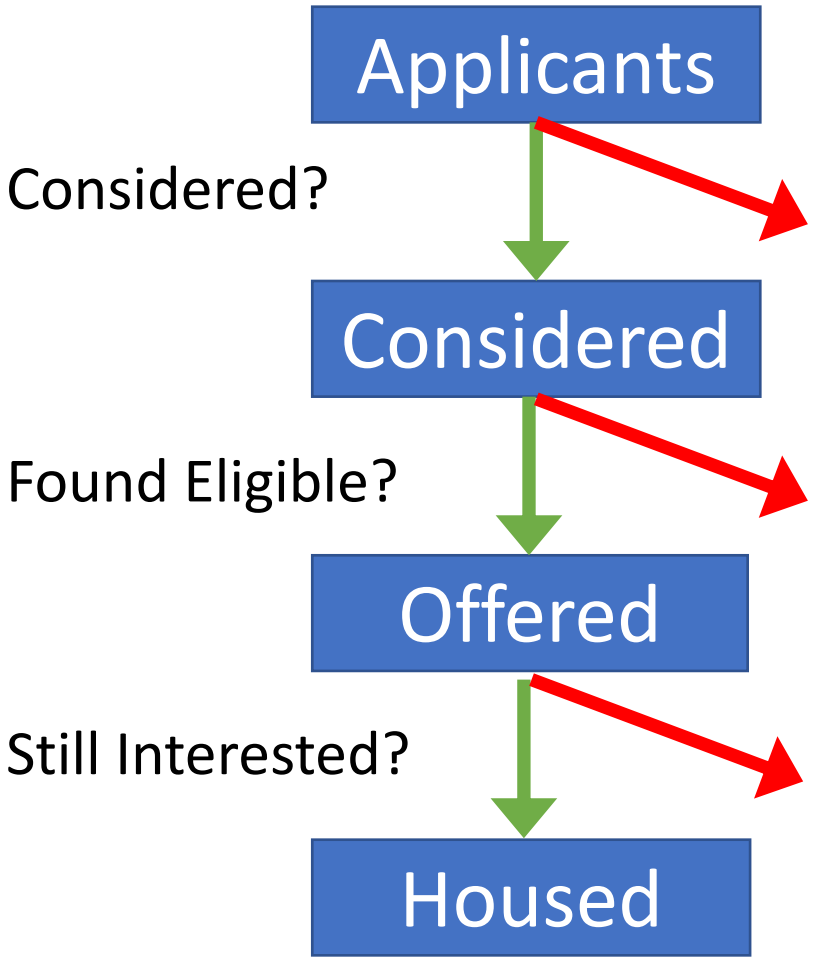
Observations:

- No incorporation of applicant **race**.
- Not clear what numbers would be **without** CP.

Multi-Stage Pipeline



Community Preference affects who is **considered.**

Outsiders could be less likely to be eligible.

Outsiders could be less likely to accept an offer.

$$\frac{\text{Outsiders Housed}}{\text{Outsiders Applied}} \qquad \frac{\text{Insiders Housed}}{\text{Insiders Applied}} \qquad \frac{\text{Insiders Housed}}{\text{Insiders Applied}} \Big/ \frac{\text{Outsiders Housed}}{\text{Outsiders Applied}}$$

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Without policy, would insiders still be housed at significantly higher rates?

Siskin's Rebuttal to Table 1

The CP policy was specifically designed to be a preference and give a boost to applications from within the community preference area. The fact that it succeeds in the objective for which it is designed… does not address the impact of the CP policy by race.

Dr. Beveridge Conflates Correlation with Causation… While people may apply to many lotteries in many locations, they tend to follow through more during the confirmation stage if they are from the community preference area.

Logistic Regression: among considered applicants,

"insider" status ⇒ 7x more likely to be housed.

On to Table 2…

6.86%

$$\frac{White\ Insiders}{White\ Applicants} \Big/ \frac{Black\ Insiders}{Black\ Applicants} - 1$$

0.86%

Table 2 – Comparing each group's CP beneficiary applications as a percentage of that group's total applications against the highest such percentage for any group, by CD typology

CD typology	Group with highest percentage of its awardees being CP beneficiary awardees	Relative percentage by which highest group exceeds other groups			
		White	Black	Hispanic	Asian
Majority White	White	Highest Group	691.86%	110.19%	256.54%
Majority Black	Black	211.32%	Highest Group	139.13%	310.79%
Majority Hispanic	Hispanic	262.56%	68.81%	Highest Group	268.00%
Majority Asian	Asian	495.57%	3000.00%	618.22%	Highest Group
Plurality White	White	Highest Group	29.67%	69.95%	28.68%
Plurality Black	Black	107.91%	Highest Group	63.34%	446.24%
Plurality Hispanic	Hispanic	6.29%	48.02%	Highest Group	3.97%

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6.86% 0.86%

Interpretation: in majority white districts, white applicants are nearly 8x more likely to be insiders than black applicants.

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6.86% / 0.86%

Interpretation: in majority white districts, white applicants are nearly 8x more likely to be insiders than black applicants.

Observations:

Confusing way to present data!

- No incorporation of **outcomes**
- Numbers would be identical **without** CP.

Beveridge's "second method of assessing CP disparate impact"

Table 3 – Comparing relative percentage change for each group from share of non-beneficiary entrants to share of CP beneficiary entrants, by CD typology				
CD typology	White	Black	Hispanic	Asian
Majority White	169.37%	-67.91%	23.40%	-28.07%
Majority Black	-55.56%	48.90%	-41.48%	-66.59%
Majority Hispanic	-64.18%	-21.32%	36.99%	-64.90%
Majority Asian	-49.40%	-90.78%	-58.50%	343.91%
Plurality White	35.45%	2.72%	-22.64%	3.53%
Plurality Black	-40.03%	36.37%	-21.95%	-78.20%
Plurality Hispanic	10.13%	-22.25%	17.22%	12.52%

26.6% 9.9%

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Analysis of “Apparently Eligible” applicants

Challenge:

- Not all applicants are eligible.
- We don’t observe which applicants are eligible.

Proposed Solution:

- Determine “apparently eligibility” from self-reported income, household data.
- Analyze only apparently eligible applicants.

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Challenge:

- Not all applicants are eligible.
- We don’t observe which applicants are eligible.

Proposed Solution:

- Determine “apparently eligibility” from self-reported income, household data.
- Analyze only apparently eligible applicants.

Concerns:

- Many apparently eligible applicants are not eligible.
- Some apparently ***in***eligible applicants are eligible (and housed).

  844 units (out of 10,245) awarded to “apparently ineligible” applicants.

Tables 4, 5, 6: same critiques as for Tables 1, 2, 3

Table 4 – Chances per 1,000 apparently eligible HHs of an award of a lottery unit, by CD typology

CD typology	Non-beneficiary apparently eligible HH chances	CD beneficiary appare… HH	Multiple by which CD beneficiary apparently eligible HH chances
Majority White	1.142	2	
Majority Black	1.782	2	
Majority Hispanic	2.646	3	
Majority Asian	4.438	3	
Plurality White	1.699	2	
Plurality Black	1.167		
Plurality Hispanic	3.105	5	

No analysis of **race**.

Unclear what would happen **without** CP.

Table 5 – Comparing each group's CP beneficiary apparent… percentage of that group's total apparently eligible HHs aga… percentage for any group, by CD typolog…

CD typology	Group with highest percentage of its apparently eligible HHs being CP beneficiary apparently eligible HHs	Relative percentage b… exceeds o…	
		White	Black
Majority White	White	Highest Group	690.98%
Majority Black	Black	215.04%	Highest Group
Majority Hispanic	Hispanic	269.86%	51.64%
Majority Asian	Asian	574.21%	2722.99%
Plurality White	White	Highest Group	16.07%
Plurality Black	Black	114.43%	Highest Group
Plurality Hispanic	White	Highest Group	54.58%

No analysis of **outcomes**.

Would be identical **without** CP.

Table 6 – Comparing relative percentage change for each group from share of non-beneficiary apparently eligible HHs to share of CP beneficiary apparently eligible HHs, by CD typology

CD typology	White	Black	Hispanic	Asian
Majority White	164.66%	-68.84%	27.01%	-31.14%
Majority Black	-56.54%	47.91%	-38.67%	-65.85%
Majority Hispanic	-66.25%	-15.20%	32.08%	-66.14%
Majority Asian	-59.80%	-90.80%	-66.83%	305.79%
Plurality White	29.72%	10.39%	-29.28%	-10.70%
Plurality Black	-41.29%	37.92%	-22.22%	-79.71%
Plurality Hispanic	21.37%	-23.09%	12.58%	16.97%

No analysis of **outcomes**.

Would be identical **without** CP.

Table 7…

$$\frac{White\ Insiders\ Housed}{White\ Applicants\ Housed} \Big/ \frac{Black\ Insiders\ Housed}{Black\ Applicants\ Housed} - 1$$

Table 7 – Comparing each group's CP beneficiary awardees as a percentage of that group's total awardees against the highest such percentage for any group, by CD typology

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Majority Asian	Asian	No Beneficiary Awardees	No Beneficiary Awardees	178.96%	Highest Group
Plurality White	Black	16.15%	Highest Group	18.76%	50.50%
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Interpretation: in majority white districts, housed white applicants are 2.8x more likely to be insiders than housed black applicants.

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\+ Considers **outcomes** by **race**.

\- Unclear what would result **without** CP.

Base rates: white applicants more likely to be insiders in majority white districts!

Table 8…

$$\frac{White\ Insiders\ Housed}{All\ Insiders\ Housed} \Big/ \frac{White\ Outsiders\ Housed}{All\ Outsiders\ Housed} - 1$$

Table 8 – Comparing relative percentage change for each group from share of non-beneficiary awardees to share of CP beneficiary awardees, by CD typology				
CD typology	White	Black	Hispanic	Asian
Majority White	88.34%	-65.94%	16.77%	-0.99%
Majority Black	-45.30%	21.38%	-25.47%	-45.39%
Majority Hispanic	-61.11%	-11.59%	17.76%	-11.76%
Majority Asian	-100.00%	-100.00%	-65.21%	157.13%
Plurality White	0.84%	41.71%	-3.64%	-37.56%
Plurality Black	15.88%	13.94%	-12.03%	-23.04%
Plurality Hispanic	25.85%	-40.15%	10.80%	13.11%

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Plurality Hispanic	25.85%	-40.15%	10.80%	13.11%

Interpretation: in majority white districts, housed insiders are 1.9x more likely to be white (and 66% less likely to be black) as housed outsiders.

+ Considers **outcomes** by **race**.
- Unclear what would result **without** CP.

Base rates: white applicants more likely to be insiders in majority white districts!

Summary

Plaintiff's Argument:

Community Preference (CP) significantly advantages insiders.

+

Insiders are more likely to belong to the Community District's majority race.

⇓

Community Preference increases the number of housed applicants who belong to the CD's majority race.

Summary

Plaintiff's Argument:

Community Preference (CP) significantly advantages insiders.

+

Insiders are more likely to belong to the Community District's majority race.

⇓

Community Preference increases the number of housed applicants who belong to the CD's majority race.

Beveridge report provides little evidence for this argument.

- Doesn't provide reliable estimate of insider advantage.
- Also true without community preference.
- Presents **no** analysis that compares **outcomes** by **race**, with and **without** CP.