

ARTICLES

UNENDING ENVIRONMENTAL INJUSTICE: THE LEGACY OF THE 1956 FEDERAL-AID HIGHWAY ACT

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SUMMARY

The Federal Aid Highway Act of 1956 led to massive investments in highway construction, changed the nation's physical landscape, and transformed how people traveled and where they lived. It also wreaked havoc on low-income and Black neighborhoods, imposing undeniable injustices, making no aid available to support residents displaced from their homes, and doing little to protect them from deleterious effects on air quality. This Article reviews events leading up to and repercussions flowing from the decision to build the Interstate Highway System, focusing on Black and low-income displacement and its repercussions in Baltimore, Maryland; Columbus, Ohio; and St. Paul, Minnesota. It reviews the impacts of the environmental justice movement on the federal government's strategy and on the current regulatory policies of the Federal Highway Administration. The authors offer examples from Charleston, South Carolina, and Houston, Texas, that demonstrate the limits of federal leverage on road-building, and conclude with suggestions for moving forward.

The environmental justice¹ movement (EJM) developed in the early 1980s as a compelling extension of the 1960s Civil Rights Movement.² It focused on

Authors' Note: The authors wish to thank Clovia Hamilton of Indiana University Kelley School of Business for her helpful observations regarding South Carolina's I-526 project, and Amanda Shoemaker of Cornell University Law School and Noah Jordan of Bentley University for their research assistance.

1. The U.S. Department of Transportation (DOT) provides the following definition:

"Environmental justice" is the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, income, national origin, or educational level with respect to the development, implementation and enforcement of environmental laws, regulations and policies. For the purpose of this strategy, fair treatment means that no population, due to policy or economic disempowerment, is forced to bear a disproportionate burden of the negative human health and environmental impacts, including social and economic effects, resulting from transportation decisions, programs and policies made, implemented and enforced at the Federal, State, local or tribal level.

DOT, *Environmental Justice Strategy*, <https://www.transportation.gov/transportation-policy/environmental-justice/environmental-justice-strategy> (last updated Jan. 18, 2017).

2. Congressional Black Caucus Foundation, *History*, <https://avoice.cbccfinc.org/exhibits/environmental-justice/history/> (last visited Feb. 4, 2023).

discriminatory environmental policies and practices that adversely affected low-income communities of color in the United States.³ At the time, EJM activists protested against the dumping of toxic waste, the placement of municipal waste facilities, and the other land use decisions of policymakers that had a deleterious impact on Black and low-income communities.⁴ They perceived these decisions as an affront and an assault on civil liberties.⁵

Nearly 40 years after the EJM took root, during the summer of 2020, there was a nationwide uprising to protest the killing of George Floyd by police officers in Minneapolis.⁶ In response to this killing, protestors exceeding half a million in a single day took to the streets in nearly 550 cities and towns across America, demanding police and institutional reforms.⁷ In the weeks following Floyd's death the protests continued, with millions of people

3. *Id.*

4. *Id.*

5. *Id.*

6. Holly Bailey et al., *Chaotic Minneapolis Protests Spread Amid Emotional Calls for Justice, Peace*, WASH. POST (May 29, 2020, 12:49 AM), <https://www.washingtonpost.com/nation/2020/05/29/chaotic-minneapolis-protests-spread-amid-emotional-calls-justice-peace/>.

7. Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

demonstrating for racial justice and equity in what some scholars and experts called “the largest movement in the country’s history.”⁸

Emanating from these Black Lives Matter protests is a recognition by many of the extent to which “anti-Blackness and structural racism are deeply rooted in the foundations of American institutions.”⁹ The transportation sector in the United States represents one of those areas where structural racism exists.¹⁰ For example, the Peace Bridge crosses the Niagara River located at the eastern end of Lake Erie; the bridge serves to connect the United States and Canada.¹¹ It is one of the most heavily used bridges for vehicular traffic between the two countries, with more than 15,000 vehicle crossings each day, including about 3,400 daily truck crossings.¹² On the U.S. side of the border, tucked closely under the bridge, the residents of the small neighborhood known as West Side, populated mostly by people of color, inhale toxic emissions from diesel trucks and other vehicles crossing the bridge each day.¹³

Not surprisingly, many West Side residents suffer from persistent asthma likely caused by the noxious fumes of these overhead vehicle emissions.¹⁴ Indeed, a U.S. Environmental Protection Agency (EPA)-funded grant discovered that residents were inhaling “more than 1.8 times the EPA recommended limit of particle pollutants.”¹⁵ However, rather than addressing the air quality needs of West Side residents and the serious health problems caused by the heavy bridge traffic, the Peace Bridge Authority recently completed a \$100-million bridge rehabilitation project that widened the bridge to accommodate additional traffic flow,¹⁶ with the likely result being increased vehicle emissions and further damage to the health of the Black and low-income residents of West Side.

As only one example, the Peace Bridge demonstrates that roadway projects do result in inequitable environmental and racial impacts. Aware of these impacts, the U.S. Department of Transportation (DOT) finally in 2016 developed a strategy across all its agencies to address the problem of environmental injustice in a systematic way.¹⁷ The goal is to ensure “that no population, due to policy

or economic disempowerment, is forced to bear a disproportionate burden of the negative human health and environmental impacts, including social and economic effects, resulting from transportation decisions, programs and policies made, implemented and enforced at the Federal, State, local or tribal level.”¹⁸

Establishing a systematic federal strategy for addressing environmental injustice in transportation projects, particularly roadway projects, is a critical step to righting the wrongs of past injustice. While the Peace Bridge project did not utilize federal funds,¹⁹ many major highway projects in the United States are dependent upon some level of federal funding, giving federal agencies responsible for transportation and the environment leverage in addressing systemic environmental injustices.²⁰ Historical and even some contemporary examples exist, however, that show the limitations, and even failure, of that leverage.

In exploring those limitations and failures, this Article proceeds as follows. First, because history provides a rich perspective on the racially unjust impacts of highway construction in the United States, we review events leading up to and repercussions flowing from the decision in 1956 to build the Interstate Highway System. To augment this historical perspective, we focus on Black and low-income neighborhood displacement and its repercussions in three U.S. cities: Baltimore, Maryland; Columbus, Ohio; and St. Paul, Minnesota.

Second, in view of the damage done by these projects, the Article provides an overview of the origins of the EJM. Viewing the EJM as a fusion of the civil rights and environmental movements of the 1960s and 1970s, we review the impacts of the EJM on the federal government’s environmental justice strategy and on the concomitant current regulatory policies of the Federal Highway Administration (FHWA), the federal agency primarily responsible for overseeing highway construction. Finally, we offer examples from Charleston, South Carolina, and Houston, Texas, that demonstrate the limits of federal leverage on current road-building projects, and conclude with a brief summary of suggestions for moving forward.

I. Federal Involvement in Highway Development Prior to 1956

The proposal to construct an interstate highway or even an interstate highway system funded by the federal government was not new to 1956. Indeed, as far back as 1811,

8. *Id.*

9. Gabi Velasco, *How Transportation Planners Can Advance Racial Equity and Environmental Justice*, URB. INST. (Aug. 18, 2020), <https://www.urban.org/urban-wire/how-transportation-planners-can-advance-racial-equity-and-environmental-justice>.

10. *Id.*

11. Corinne Ramey, *America’s Unfair Rules of the Road: How Our Transportation System Discriminates Against the Most Vulnerable*, SLATE (Feb. 27, 2015, 3:33 AM), <https://slate.com/news-and-politics/2015/02/americas-transportation-system-discriminates-against-minorities-and-poor-federal-funding-for-roads-buses-and-mass-transit-still-segregates-americans.html>.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Michael Mroziak, *Peace Bridge Marks Completion of \$100 Million Rehabilitation Project*, WSKG/NPR (June 21, 2019), <https://www.wskg.org/news/2019-06-21/peace-bridge-marks-completion-of-100-million-rehabilitation-project>.

17. DOT established a series of guiding environmental justice principles and established a set of core objectives for all transportation planning decisions. DOT, *supra* note 1.

18. *Id.*

19. Mroziak, *supra* note 16. The project cost of \$100 million was self-funded by the Peace Bridge Authority. *Id.*

20. Urban Institute estimates that in 2019, the federal government funded 24% of all state and local highway expenditures. Urban Institute, *State and Local Backgrounders*, <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/highway-and-road-expenditures> (last visited Jan. 23, 2023). Further, federal funding for state capital transportation projects requires states to submit to an extensive project review process under the National Environmental Policy Act (NEPA). U.S. EPA, *What Is the National Environmental Policy Act?*, <https://www.epa.gov/nepa/what-national-environmental-policy-act> (last updated Oct. 26, 2022).

the federal government, engaging in a program of “internal improvements,”²¹ undertook construction of an interstate highway starting at Cumberland, Maryland.²² With state support, the road ultimately reached Vandalia, Illinois, on the Mississippi River in 1852.²³ By most accounts, the finished road did what it was intended to do: increase prosperity, land values, and the growth of western population centers.²⁴

After a significant hiatus in road construction following Cumberland, the federal government again turned its attention to roadways with the establishment in 1893 of the Office of Road Inquiry (ORI).²⁵ Nestled within the U.S. Department of Agriculture (USDA), ORI was given a budget of \$10,000.²⁶ Its charge was to promote the development of roads,²⁷ which at the time consisted primarily of wooden planks and graded dirt lanes cutting through thick forests.²⁸ Surprisingly, the inspiration for this federal foray into roadway travel came not from the nascent automobile industry,²⁹ but from bicyclists, who at the time played a major role in urban commercial life.³⁰ Contending with

rutted and otherwise dangerous road surfaces, cyclists led a coalition of interests that inspired the “good roads movement” of the late 1800s.³¹ Not surprisingly, however, it was not long after the good roads movement began that it was co-opted by automobile interests.³² Thus, ironically out of the bicyclist-led good roads movement and the establishment of ORI, the federal government commenced what would become a gradual and growing engagement with roadway projects for automobiles.³³

Initially, the federal role was narrowly focused. Operating out of USDA, ORI, which was renamed the Office of Public Roads (OPR) in 1905, concentrated on constructing and maintaining roads and trails for the U.S. Forest Service.³⁴ Not too long after, however, recognizing the importance of providing access for conservation and the development of natural resources, the U.S. Congress passed the Federal-Aid Highway Act of 1921,³⁵ which increased substantially the funds for forest highways.³⁶ Federal engagement in highway construction beyond the forests, however, was not the goal of the legislation, for the Act recognized the preeminent role of the states in building and maintaining highways.³⁷

In the 1930s, the Great Depression caused a reevaluation of the federal role in highway construction, as Congress sought to alleviate the effects of the depression by increasing the number of public works projects.³⁸ For its part in meeting the congressional objective, the Bureau

21. Early in the country's history, western settlement was dependent upon a series of “internal improvements” that would allow for commerce and communication between the developed eastern seaboard and the undeveloped Ohio Valley. States and private enterprises led the way with improvements to the avenues of travel, including for example the Erie Canal, and the Baltimore and Ohio Railroad. The federal government's only foray into the effort to improve east-west commerce was the construction of the National Road, also known as the Cumberland Road. See generally MARCUS CUNLIFFE, *THE NATION TAKES SHAPE 1789-1837*, at 102-12 (1959).

22. The Cumberland Road reached Wheeling, Virginia (now West Virginia), in 1818 and Columbus, Ohio, in 1833. *Id.* at 102. For a map of the road, see THOMAS A. BAILEY & DAVID M. KENNEDY, *THE AMERICAN PAGEANT* 283 (7th ed. 1983).

23. BAILEY & KENNEDY, *supra* note 22, at 283. States' righters objected to the federal government funding local projects, which hobbled federal appropriations leading the road project to be completed with the aid of state funds. *Id.* In fact, while President Thomas Jefferson supported such federal involvement, neither of his successors, Presidents James Madison and James Monroe, were keen on federal involvement in such projects, to the point where President Monroe vetoed a bill to pay for repairs to the road “out of constitutional scruple.” CUNLIFFE, *supra* note 21, at 109.

24. BAILEY & KENNEDY, *supra* note 22, at 283.

25. DOT FHWA, *The Bicycle Revolution*, <http://www.fhwa.dot.gov/infrastructure/bicycle/cfm> (last updated June 27, 2017).

26. *Id.*

27. *Id.* ORI promoted the development of roads through education and encouragement; it was not a road-building agency. *Id.*

28. The condition of what passed for roads in the late 1800s was not much improved since the period of “internal improvements” in the early 1800s. See Susan Croce Kelly, *Good Roads Movement*, BRITANNICA, <https://www.britannica.com/event/Good-Roads-movement> (last visited Jan. 23, 2023).

29. The first gasoline-powered automobile in the United States was built in 1893, just a few weeks prior to the establishment of ORI. See DOT FHWA, *supra* note 25. In the United States, the mass production of the automobile, which was pioneered by Henry Ford's assembly line, was not realized until the 1920s. See Henry Ford, *Henry Ford: Assembly Line*, <https://www.thehenryford.org/collections-and-research/digital-collections/expert-sets/7139/> (last visited Jan. 23, 2023).

30. DOT FHWA, *supra* note 25 (“The bicycle was seen as a revolution in personal transportation that affected many aspects of life, especially in cities.”). Bicycle production levels during the period provide further evidence of the importance of bicycles commercially. For instance, between 1889 and 1899, the number of bicycles manufactured in the United States grew from 200,000 to 1,000,000. Smithsonian National Museum of American History, *The Safety Bicycle and Beyond*, <http://americanhistory.si.edu/collections/object-groups/si-bikes/si-bikes-safety> (last visited Jan. 23, 2023). Further, even the Michigan Supreme Court noted the importance of bicycles in the nation's commercial life, stating that “[t]he bicycle has become almost a necessity for the use of workmen, clerks, and others in going to and from

their places of work.” *Lee v. Port Huron*, 87 N.W. 637, 637 (Mich. 1901) (ruling that where streets are unpaved, a municipality was authorized to allow bicycling on sidewalks).

31. Kelly, *supra* note 28.

32. *Id.*

33. FHWA has published an overview of the growth of federal involvement in roadway projects beginning in 1905. See DOT FHWA, *History*, <https://highways.dot.gov/federal-lands/about/history> (last updated Feb. 25, 2022).

34. *Id.* In 1914, OPR undertook road surveys and plan preparation for the U.S. Department of the Interior in Yosemite, Glacier, and other national parks. This came with successive name changes: to the Office of Public Roads and Rural Engineering (OPRRE) in 1915, the Bureau of Public Roads (BPR) in 1919, the Public Roads Administration (PRA) in 1939, reverted back to BPR in 1949, and finally FHWA in 1974. *Id.*

35. Federal-Aid Highway Act, Pub. L. No. 67-87, 42 Stat. 212 (1921). “The intent of the Federal-Aid Highway Act of 1921, successor to the earlier highway appropriations legislation of 1916, was to create a coherent highway network by requiring that Federal aid be concentrated on projects that would expedite completion of an adequate and connected system of interstate highways.” U.S. Department of the Interior National Park Service, *Before 1926: The Origins of Route 66*, https://www.nps.gov/nr/travel/route66/origins_of%20route66.html (last visited Jan. 23, 2023).

36. DOT FHWA, *supra* note 33. Rejecting the view that the federal government should build a national highway network, the 1921 Act did provide limited federal aid to states for farm-to-market road building and roads of an interstate character. See Richard F. Weingroff, *From 1916 to 1939: The Federal-State Partnership at Work*, PUB. RDS. MAG., Summer 1996, available at <https://highways.dot.gov/public-roads/summer-1996/1916-1939-federal-state-partnership-work>.

37. There was disagreement, of course, as to how involved the federal government should be in highway building. Thomas McDonald, the chief of BPR, held the view that the federal government should not commission the construction of a long-distance highway system and that the states should take the lead. This was reflected in the 1921 Act. See David A. Pfeiffer, *Ike's Interstates at 50*, PROLOGUE MAG., Summer 2006, available at <https://www.archives.gov/publications/prologue/2006/summer/interstates.html>.

38. DOT FHWA, *supra* note 33. To combat the unemployment that the Great Depression wrought, President Franklin Roosevelt supported construction by the federal government of three east-west and three north-south super-highways. See Pfeiffer, *supra* note 37.

of Public Roads (BPR), successor to OPR, established a discretionary program that allowed the states to submit funding requests directly to the Bureau for road-building projects.³⁹ Money for state projects that were selected was taken from the General Fund.⁴⁰ In addition to this unusual step of making federal funds directly available for general highway construction, the 1930s also saw the beginnings of federal planning for a national system of highways and toll roads.⁴¹

Pursuant to the Federal-Aid Highway Act of 1938,⁴² BPR issued a master plan for highway development calling for the construction of a 43,000-mile system of transcontinental highways.⁴³ Entitled “Toll Roads and Free Roads,” it was the first attempt to conceptualize a system of highways linking the nation’s major metropolitan areas.⁴⁴ Ominously, the plan also linked highway construction to urban renewal and reconstruction.⁴⁵ As one commentator noted, citing 1939 internal documents at BPR, “[The plan] made a strong case that highway planning should take place within the context of an ongoing program of slum clearance and urban redevelopment.”⁴⁶ With the approach of World War II, however, BPR’s plan for a national highway system and all that it would portend became less of a priority as the nation turned its attention to fighting the war.⁴⁷

Nonetheless, despite this wartime deferral, the growing interest within BPR in matters related to highways was inevitable.⁴⁸ Automobile production during the early 20th century was exploding.⁴⁹ As a means of urban transportation, automobiles had long ago eclipsed the bicycle,⁵⁰ and during the 1920s and 1930s, were eclipsing the streetcar,

which had become a main driver in the economic health of the nation.⁵¹ By the end of World War II, the impact of the automobile on cities was indeed significant, even transformative.⁵² City streets that had accommodated streetcars, horse-drawn wagons, bicycles, and pedestrians, were confronted with ever-increasing numbers of automobiles, which had become a means of “private mass-transit.”⁵³ To accommodate those private means, city streets, which had traditionally been the focal points of social and recreational neighborhood interaction, had transitioned to avenues of mounting vehicular traffic and congestion.⁵⁴

In addition to this increase in urban traffic and congestion, the automobile provided many city dwellers who could afford it and were not subject to restrictive covenants the opportunity to flee the city and move to suburban locales.⁵⁵ Nonetheless, this in turn created its own problem—how to ease the commute of these new suburban dwellers travelling daily back to their jobs in the city core.⁵⁶ Expressways connecting cities and suburbs were proposed as the solution to the problem, but, as history has since shown, had several significant negative impacts.

First, rather than relieving congestion and easing the commute, urban highways proved to increase traffic and congestion.⁵⁷ Second, the anticipated ease of highway travel encouraged even more flight by urban dwellers to the suburbs, further hollowing out the city core.⁵⁸ Third, to make room for highways, city neighborhoods were destroyed

39. DOT FHwA, *supra* note 33.

40. *Id.*

41. Pfeiffer, *supra* note 37. One commentator notes that the federal government’s planning for a national system was in response to the emerging automobile culture and its negative impact on mass transit and railroad ridership. See RAYMOND A. MOHL, POVERTY AND RACE RESEARCH ACTION COUNCIL, THE INTERSTATES AND THE CITIES: HIGHWAYS, HOUSING, AND THE FREEWAY REVOLT 4 (2002), <http://www.prrac.org/pdf/mohl.pdf>.

42. Federal-Aid Highway Act of 1938, Pub. L. No. 75-584, 52 Stat. 633.

43. Pfeiffer, *supra* note 37.

44. *Id.* As conceptualized, the roads included many features of what was finally implemented by the 1956 Act—above- and below-grade intersections, limited access slip roads, and beltways encircling major metropolitan areas. *Id.*

45. MOHL, *supra* note 41, at 4.

46. *Id.* Secretary of Agriculture Henry Wallace, within whose department BPR resided, reported to President Roosevelt that the new highways could help relieve urban traffic congestion by cutting through and clearing out blighted housing. He reportedly said, “There exists at present around the cores of the cities, particularly of older ones, a wide border of decadent and dying property which has become, or is fast becoming, a slum area.” He concluded that highway construction coupled with urban redevelopment would eliminate unsightly unsanitary districts where land values had greatly depreciated. *Id.* at 5.

47. Pfeiffer, *supra* note 37. Actions related to constructing a national highway system did not totally cease, however, for Congress did pass the 1944 Federal-Aid Highway Act that authorized a 40,000-mile interstate system. The authorization, however, came without any appropriation to pay for it. *Id.*

48. It did not hurt that the auto industry had a major interest in a national highway system, and it promoted that interest most notably through General Motors’ 1939 New York World’s Fair Futurama exhibit that painted an enticing vision of that system. See MOHL, *supra* note 41, at 4.

49. For example, between 1920 and 1940, the number of registered automobiles on America’s roads ballooned from 8.1 million to 27.5 million. SARAH JANSSEN, THE WORLD ALMANAC AND BOOK OF FACTS 2022, at 120 (2022).

50. See *supra* notes 29-33 and accompanying text.

51. See Franklyn P. Salimbeni, *Seeking Peaceful Coexistence: Streetcars and Bicycles in the New Urban Environment*, 7 WAKE FOREST J.L. & POL’Y 365, 369-70 (2017).

52. Martin V. Melosi, *The Automobile Shapes the City*, AUTO. AM. LIFE & SOC’Y, http://autolife.umd.umich.edu/Environment/E_Casestudy/E_casestudy.htm (last visited Jan. 23, 2023). While observing that the transformation brought by the automobile was a 20th-century phenomenon that permitted great flexibility in where people could live, work, shop, and recreate, Martin Melosi also recognizes that the automobile undermined the physical integrity of the city, generating urban sprawl and “sabotaging” the sense of community. *Id.*

53. *Id.* (identifying the automobile as “a type of universal territorial adapter” that enabled it to control the street space).

54. *Id.*

55. In a 2004 quantitative assessment of the role of the automobile in the development of suburbs, one study concluded that the dominant driver of suburbanization between 1910 and 1950 was the decreasing price of automobiles and reductions in the cost of automobile travel. See Karen A. Kopecky & Richard M.H. Suen, A Quantitative Analysis of Suburbanization and the Diffusion of the Automobile (2009), https://www.researchgate.net/publication/4882927_Suburbanization_and_the_Automobile (last visited Jan. 23, 2023). For Black residents, however, the move to the suburbs, whether they owned an automobile or not, was hindered by redlining policies in certain areas that denied them federal home loans and by restrictive covenants in certain suburban communities that prevented homeowners from selling to them. Alana Semuels, *The Role of Highways in American Poverty*, ATLANTIC (Mar. 18, 2016), <https://www.theatlantic.com/business/archive/2016/03/role-of-highways-in-american-poverty/474282/>.

56. According to Raymond Mohl, between 1950 and 1955, metropolitan areas absorbed 97% of the nation’s population growth with most of that occurring in city suburbs. The move to the suburbs did not mean that the jobs of these new suburbanites moved with them, however. Many of their jobs remained in the city center. See MOHL, *supra* note 41, at 7-8.

57. See Melosi, *supra* note 52. Adding to the problem of roadway congestion in the 1950s was the simultaneous increase in automobile sales and decline in public transportation. MOHL, *supra* note 41, at 8.

58. MOHL, *supra* note 41, at 7-8. Other elements that encouraged the move to the suburbs by primarily white city dwellers included the expansion of suburban housing developments and the availability of federal mortgage insurance. *Id.*

and community life degraded.⁵⁹ At some point in this process, the need (desire) of urban planners to demolish some neighborhoods to provide highway access to the city core merged with the need (desire) of planners to clear “slums,”⁶⁰ the very result envisioned in 1939 by BPR.⁶¹ This slum clearance effectively meant sacrificing low-income Black and minority neighborhoods on the altar of the daily automotive commute.⁶²

With the end of the war and still without any financial commitment to constructing an interstate system by the federal government,⁶³ cities took the lead in highway planning and development.⁶⁴ Chicago offers a prime example. In 1948, in an attempt to connect downtown Chicago to its suburbs, planners using a 1940 planning document began construction of a system of expressways leading into the city.⁶⁵ These expressways often created barriers between

Black and white ethnic neighborhoods and led to massive residential displacements.⁶⁶

The displaced residents were primarily Blacks on Chicago’s south side, Mexicans to the west, and older immigrant communities to the northwest of downtown Chicago.⁶⁷ In addition to displacing these thousands of minority families, the expressways added to the woes of those still living near them by attracting thousands of automobiles each day, generating pollution and the congestion that the expressways were supposed to remedy.⁶⁸ Unfortunately, without paying much attention to the facts on the ground like these in Chicago, the federal government made the decision in 1956 to move forcefully to implement a national highway construction program that would in effect transport the Chicago experience to cities across the country.⁶⁹

II. The Federal-Aid Highway Act of 1956 and Its Impact on Communities of Color

While not the first federal highway act passed by Congress, the Federal-Aid Highway Act of 1956 (the 1956 Act)⁷⁰ was seminal. It committed the federal government as never before to highway construction.⁷¹ In doing so, it changed the places where people chose to live⁷²; it changed how people traveled⁷³; it changed the physical landscape of the

59. Mohl notes the narrowness of vision of highway planners, who only saw highways as an engineering challenge with little regard for the best overall development of the urban core. *Id.* at 11.

60. See generally Scott Beyer, *How the U.S. Government Destroyed Black Neighborhoods*, CATALYST (Apr. 2, 2020), <https://catalyst.independent.org/2020/04/02/how-the-u-s-government-destroyed-black-neighborhoods/> (noting that using eminent domain and federal funds, in part from the 1956 Act, government bureaucracies engaged in slum clearance, demolishing Black neighborhoods to make way for highways).

61. Mohl notes that BPR was not unsympathetic to the impacts that road building would have on urban neighborhoods. He notes that Thomas MacDonald, who headed BPR during the 1940s while campaigning for highways that would clear urban blight, also pushed for local planning policies that would require new housing construction for those displaced by highway construction. He quotes MacDonald:

No matter how urgently a highway improvement may be needed, the homes of people who have nowhere to go should not be destroyed. Before dwellings are razed, new housing facilities should be provided for the dispossessed occupants. This question of housing should be accepted as one of the major planning problems when a city decides that it needs and wants an expressway.

Ultimately, MacDonald’s efforts to link housing policy to highway policy were unsuccessful because President Harry Truman was concerned that the linkage would dissuade Congress from passing legislation specific to housing. MOHL, *supra* note 41, at 5-7.

62. Transportation Secretary Pete Buttigieg has echoed the claim that race played a notable role in highway planners’ decisions as to where urban highways were located. As reported, many experts in urban history support his claim, noting that even where not intentionally racist, the planners’ decisions about highway placement were racist in effect. Louis Jacobson, *Fact Check: Buttigieg Says Racism Shaped Some American Highways*, WRAL News (Apr. 22, 2021, 4:27 PM), <https://www.wral.com/fact-check-buttigieg-says-racism-shaped-some-american-highways/19640510/>.

63. While Congress did pass the Federal-Aid Highway Act of 1944 (Pub. L. No. 78-521, 58 Stat. 838) that authorized a 40,000-mile system of highways that would connect major metropolitan areas, it did not provide any funds for construction of the system. Pfeiffer, *supra* note 37. See also DOT FHWA, *Interstate System*, <https://www.fhwa.dot.gov/programadmin/interstate.cfm> (last updated Feb. 5, 2019) (the first federal funding of the interstate system in the amount of \$25 million was authorized in the Federal-Aid Highway Act of 1952).

64. See, e.g., David Leonhardt, *Fixing What Highways Destroyed*, N.Y. TIMES (May 28, 2021), <https://www.nytimes.com/2021/05/28/briefing/us-highways-destruction-sugar-hill.html> (construction of the Santa Monica Freeway in Los Angeles); Chris Naffziger, *In 1951 City Planners Plotted Out New Interstates to Accommodate the Growing Population. What St. Louis Ended Up With Looked Very Different*, ST. LOUIS MAG. (Nov. 11, 2020, 9:22 AM), <https://www.stlmag.com/history/highways-interstates-st-louis/> (discussing St. Louis’ expressway plan, including the Ozark Expressway).

65. Smithsonian National Museum of American History, *City and Suburb*, <https://americanhistory.si.edu/america-on-the-move/city-and-suburb> (last visited Jan. 23, 2023) (discussing rapid suburbanization after World War II, which led to Chicago’s plans for building expressways).

66. *Id.* For example, the construction of the Dan Ryan Expressway, originally the Southside Expressway, led to the displacement of more than 6,000 family homes in mostly poor and minority neighborhoods. *Id.* Echoing generally the experience in Chicago and other cities, one commentator noted that highways were often built around and through Black communities, creating a segregated landscape and entrenching racial inequality. Deborah N. Archer, Essay, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2135-36 (2021).

67. Smithsonian National Museum of American History, *supra* note 65.

68. *Id.* The Dan Ryan and other Chicago expressways drew so many automobiles into the city core that Chicago had to build 74 parking garages to hold approximately 14,000 vehicles. *Id.*

69. There were warnings about the negative impacts that urban expressways would have on city life. For instance, a 1957 study of land use and urban redevelopment undertaken at Purdue University concluded that “[s]peedier highway transportation may not be a blessing to urban centers.” ARTHUR K. BRANHAM, PURDUE UNIVERSITY, *THE FEDERAL-AID HIGHWAY ACT OF 1956—ITS IMPLICATIONS, BENEFITS, AND THE PROBLEM OF HIGHWAY COST ALLOCATION* 9 (1957), <https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=1885&context=jtrp>. Others were even more direct in their criticism. See, e.g., Richard F. Weingroff, *The Genie in the Bottle: The Interstate System and Urban Problems, 1939-1957*, PUB. RDS. MAG., Sept./Oct. 2000, available at <https://highways.dot.gov/public-roads/septoct-2000/genie-bottle-interstate-system-and-urban-problems-1939-1957>.

70. Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, 70 Stat. 374 (codified as amended in scattered sections of 23 U.S.C.). For a historical overview of events leading to the passage of the Act, see Richard F. Weingroff, *Federal-Aid Highway Act of 1956: Creating the Interstate System*, PUB. RDS. MAG., Summer 1996, available at <https://highways.dot.gov/public-roads/summer-1996/federal-aid-highway-act-1956-creating-interstate-system>.

71. Weingroff, *supra* note 70. The Act established that the federal government’s share of the cost of constructing the interstate system would be 90% with the states contributing the other 10%. *Id.*

72. Pfeiffer, *supra* note 37 (noting that the interstates “increased the mobility of all Americans, allowing them to move out of the cities and establish homes in a growing suburbia even farther from their workplaces and to travel quickly from one region to another for vacation and business”).

73. There is a distinct correlation between the rise of the automobile and the 1956 Act on the one hand, and the decline in travel by public transit on the other. As discussed in this Article, the automobile and the highway system it inspired made living in the suburbs possible for many. In doing so, it reduced the competitive advantage of public transit. In a project sponsored by

nation.⁷⁴ While earlier federal legislation and planning had been moving toward an interstate system of highways, it was the 1956 Act and the advocacy of President Dwight Eisenhower particularly that made that system and its ultimate impacts a reality.⁷⁵

Critical to President Eisenhower's effectiveness as the interstate system's champion was the work of the Clay Committee, led by retired General Lucius Clay.⁷⁶ President Eisenhower's selection of Clay as chair was a considered one. Clay not only worked with President Eisenhower during World War II as chief procurement officer for the Army, but served on General Motors' board of directors, an important constituency for the road-building program.⁷⁷ The other individuals selected to serve with Clay were likewise people who understood automobiles, financing, and construction.⁷⁸ From their biographies, however, it is not clear that any of them understood low-income city neighborhoods and those who lived in them.⁷⁹

the Federal Transit Administration, researchers concluded that the interstate system "biased transportation investments in favor of high-speed, limited-access highways. This enhanced automobile travel at a time when transit service was already declining and further encouraged the use of the automobile and reduced use of transit." In effect, public transit as designed at the time was not able to serve a suburban population living in dispersed, low-density communities. JUDY DAVIS, PARSONS BRINCKERHOFF QUADE AND DOUGLAS, INC., CONSEQUENCES OF THE DEVELOPMENT OF THE INTERSTATE HIGHWAY SYSTEM FOR TRANSIT 9 (1997), https://onlinepubs.trb.org/Onlinepubs/tcrp/tcrp_rtd_21.pdf.

74. The 1956 Act built 46,000 miles of roadway comprising 54,663 bridges and 104 tunnels, and used 2.3 billion tons of cement and crushed rock. Pete Sigmund, *U.S. Interstate System—From I-4 to I-99*, CONSTR. EQUIP. GUIDE (Aug. 11, 2004), <https://www.constructionequipmentguide.com/us-interstate-system-from-i-4-to-i-99/4836>.
75. Pfeiffer, *supra* note 37. See also Gary Schwartz, *Urban Freeways and the Interstate System*, 8 TRANSP. L.J. 167, 186-87 (1976) (Gary Schwartz discusses President Eisenhower's leadership and concludes that "the real impetus for an accelerated Interstate program came in the form of a Presidential address delivered on July 12, 1954." Vice President Nixon delivered the address for President Eisenhower to a meeting of state governors. Contemporaries concluded that the address had "an electrifying effect.").
76. See Richard F. Weingroff, *General Lucius D. Clay—The President's Man*, DOT FHWA, <https://www.fhwa.dot.gov/infrastructure/clay.cfm> (last updated June 27, 2017). Acknowledging President Eisenhower's pivotal role in promoting the interstate system, President George H.W. Bush signed legislation naming the interstate system the "Dwight D. Eisenhower System of Interstate and Defense Highways." Weingroff, *supra* note 70.
77. Weingroff, *supra* note 76.
78. *Id.* They included Steve Bechtel (Bechtel Corporation), Sloan Colt (Bankers Trust), William Roberts (Allis-Chalmers Manufacturing), and David Beck (International Brotherhood of Teamsters). Francis Turner of BPR was appointed to serve as the committee's executive secretary. As Clay put it, "If we were going to build highways, I wanted people who knew something about it." *Id.*
79. Both Bechtel and Colt were raised in families of relative wealth. Bechtel, a graduate of University of California, Berkeley, became an officer in his father's well-established construction company in his 20s. See Bechtel, *Who We Are*, <https://www.bechtel.com/about-us/stephen-d-bechtel-sr/> (last visited Jan. 23, 2023). Colt, a graduate of Yale, was the grandson of the president of the Delaware, Lackawanna, and Western Railroad. See William M. Freeman, *S. Sloan Colt of Port Authority and Banker Trust Dead at 82*, N.Y. TIMES (May 3, 1975), <https://www.nytimes.com/1975/05/03/archives/s-sloan-colt-of-port-authority-and-bankers-trust-dead-at-82.html>. Roberts, who did not have a wealthy family background, was a country boy, not a city boy, growing up on a farm in Missouri. See Horatio Alger Association, *William A. Roberts*, <https://horatioalger.org/members/member-detail/william-a-roberts> (last visited Jan. 23, 2023). Turner was a graduate of what is now Texas A&M University with a degree in engineering. See Nick Ravo, *Francis C. Turner, 90, Dies; Shaped the Interstate System*, N.Y. TIMES (Oct. 6, 1999), <https://www.nytimes.com/1999/10/06/us/francis-c-turner-90-dies-shaped-the-interstate-system.html>. Of the five, Beck, whose father

While the Clay Committee was not fully successful in convincing Congress to incorporate into the 1956 Act all of its recommendations, particularly those related to financing the project,⁸⁰ it did succeed in focusing the planning and construction of the interstate system on the overriding goal of getting the project built quickly and capturing the necessary funding.⁸¹ As a result, there was no action to aid minority and inner-city residents displaced from their homes⁸²; there was no action to support alternative forms of transportation for those who were transit-dependent⁸³; there was no action to manage any negative impacts on the economic vitality of downtown city cores⁸⁴; and there was no action to address the deleterious effects on air quality that an interstate highway would bring to the urban environment.⁸⁵ There was basically only concern for the goal of moving the project quickly and with the necessary funding.

In an extensive and detailed account using excerpts directly from the magazine *American Highways* published between 1956 and 1973, FHWA has documented the pervasiveness of this overriding goal in the thinking of those involved in planning the project.⁸⁶ Taken verbatim from contemporary reports, meeting minutes, and discussions of state highway officials, members of Congress, and other

was a carpet cleaner and mother was a laundress, seems the only one who actually knew poverty; he left high school to get a job. See Ronald Sullivan, *Dave Beck, 99, Teamsters Chief, Convicted of Corruption, Is Dead*, N.Y. TIMES (Dec. 28, 1993), <https://www.nytimes.com/1993/12/28/obituaries/dave-beck-99-teamsters-chief-convicted-of-corruption-is-dead.html>.

80. Weingroff, *supra* note 76. "The reception on Capitol Hill was ominous. Support for the Interstate System was universal and bipartisan. But reaction to the financing mechanism was mostly negative." *Id.*
81. *Id.* As Clay put it, "The question really is not whether or not we need highway improvements. It is, rather, how we may get them quickly, economically, and how they may be financed sensibly and within reason." *Id.*
82. During congressional consideration of the 1956 Act, the U.S. House of Representatives had included funds to compensate people required to relocate their homes, but the funds were not included in the U.S. Senate version or in the final bill despite the fact that many knew that as many as 90,000 people could be relocated annually. MOHL, *supra* note 41, at 12.
83. *Id.* at 11. See also Melosi, *supra* note 52 (stating that highway construction committed cities to a one-dimensional transportation system that paid little respect to urban design values and land textures).
84. MOHL, *supra* note 41, at 11 (stating that because there was no comprehensive planning, highways actually increased congestion of downtown city streets). As early as 1957, because highways were being approached solely as engineering challenges, one study anticipated that urban congestion would be the result. BRANHAM, *supra* note 69, at 9.
85. Researchers as early as 1950 linked air pollution to automobiles. The increase in automobile use especially with rapid suburbanization had serious impacts on public health and the environment. U.S. EPA, *Timeline of Major Accomplishments in Transportation, Air Pollution, and Climate Change*, <https://www.epa.gov/transportation-air-pollution-and-climate-change/timeline-major-accomplishments-transportation-air> (last updated Dec. 21, 2022). Yet, with no reference to the environmental impacts, the 1956 Act promoted air pollution. *Future Federal Role for Surface Transportation, S. Comm. on Env't and Pub. Works*, 110th Cong. 2 (2008) (testimony of Deron Lovaas, Vehicles Campaign Director, Natural Resources Defense Council), https://www.epw.senate.gov/public/_cache/files/1/3/13b6eb8c-a6f0-43e5-9069-e52d113f731d/01AFD79733D77F24A71FEF9DAFC-CB056.lovaastestimony.pdf.
86. W. LEE MERTZ & JOYCE RITTER, DOT, BUILDING THE INTERSTATE, <https://www.fhwa.dot.gov/infrastructure/build.pdf>. The reader should note that as a practical matter, referencing this document is made difficult because it is not paginated despite being more than 200 pages in print. In the following related footnotes, therefore, to make specific referrals as easy as possible, footnotes will cite the name and title of the speaker, the topic being addressed, and the date the comment was published in *American Highways*.

interested parties, FHwA's account catalogues the primary focus of project proponents that nothing delay the work of roadway engineers in constructing the system.⁸⁷ For example, at one point, a proposed two-year moratorium in the highway program so that urban planners could have time to prepare for the project was deemed "ridiculous" by the president of the American Association of State Highway Officials (AASHO).⁸⁸

Likewise, the use of outside planners to assist highway engineers in assessing future traffic flow and land use was discredited as time-consuming,⁸⁹ and the introduction of a more inclusive transportation planning process was dismissed as a ploy for stopping highway construction in urban areas altogether.⁹⁰ Further, by the late 1960s, state highway officials were even objecting to new federal regulations promulgated by a "domineering bureaucracy"⁹¹ that, they exaggerated, "would allow a single individual appearing in opposition to a highway project, to effectively tie up the project for an indefinite period of time."⁹²

As to costs, while the highway project was subject to inflationary pressures,⁹³ FHwA's account evidences an oft-stated concern by proponents that the Highway Trust Fund, which was created to fund the highway project, might be raided for peripheral projects beyond actual construction, thus increasing the overall costs of the highway program beyond inflation.⁹⁴ Proponents seemed to view the public transit sector as the chief raider.⁹⁵ To counter the threat, proponents painted efforts to promote public transit in urban areas as "misguided"⁹⁶ and "crack-brained,"⁹⁷ and argued that highways themselves are "mass

transit" and that in comparison rail transit would have limited potential.⁹⁸

Much of the problem with the proponents' approach to both controlling costs and expediting the project was its single-minded focus on highways as the key to the future, leading one commentator to note presciently:

Surely, we want our highways in a hurry and at minimum cost. . . . But speed of construction and low cost may be far less important than the long-range benefits and economies that may be had by devoting a little extra time and money on integrating the highways into other city plans.⁹⁹

Caught in the sights of this clarion call to expedite the highway program at as low a cost as possible were those inner-city Black and low-income neighborhoods in the path of the engineers' bulldozers. Yet, despite what was at stake for them and others affected, as the FHwA account reports, the process of highway building provided little opportunity for their input.¹⁰⁰ Specific to these neighborhoods and in view of the urban riots of 1967, Sen. Jennings Randolph (D-W. Va.) reminded AASHO members that

investigators . . . found that highway construction in the core city was a serious point of complaint. Among those factors which most disturb the residents of the ghetto are urban renewal and freeway construction. The highway portion of this complaint must in part relate to the method by which the public hearings requirement . . . has been met.¹⁰¹

Wondering whether state officials were simply going through the motions of listening to residents' complaints, Senator Randolph admonished: "It is their city through which the highway is to be built. The full range of their interests must be understood and served. . . ."¹⁰²

Despite Senator Randolph's admonition, inner cities and specifically Black neighborhoods continued to bear the burden of urban highway engineering under the 1956 Act. The following examples from three major American cities offer a microcosmic look at the larger burdens that the 1956 Act imposed on Black urban neighborhoods across the country.

A. Harlem Park, Baltimore

Unlike a number of American cities affected by the 1956 Act, Baltimore avoided the construction of an elevated

87. From the document, it is clear that state officials, often members of the American Association of State Highway Officials (AASHO), had much to say about planning the interstate system, encouraging its speedy completion, and protecting its financing mechanism.

88. MERTZ & RITTER, *supra* note 86 (comment by William A. Bugge, president of AASHO, "Can't Tolerate a Two-Year Moratorium to Wait for Urban Planning" (Oct. 1957)).

89. *Id.* (comment by William A. Bugge, president of AASHO, "We Can't Wait If Comprehensive Plans Don't Exist" (Oct. 1957)).

90. *Id.* (comment by J.C. Womack, president of AASHO, "Against Mandatory Urban Planning" (Jan. 1962)).

91. *Id.* (comment from an AASHO report to Congress, *Concern About the New U.S. DOT* (Oct. 1968)).

92. *Id.* (comment by John O. Morton, president of AASHO, "Objects to New Federal Regulations" (Jan. 1969)).

93. *Id.* (comment by Rep. George H. Fallon, chairman, House Public Works Committee, "Inflation" (Jan. 1968)).

94. *Id.* (comment by Rep. George H. Fallon, chairman, House Public Works Committee, "Housing" (Jan. 1962) (concerned that proposals to provide housing for those displaced "would reduce the amount of money available for highways"); comment by Morris L. Shadburn, president of AASHO, "Beautification" (Jan. 1966) (concerned that calls for highway beautification are being made "with no regard to present or future costs")).

95. *Id.* (comment by Rep. George H. Fallon, chairman, House Public Works Committee, "The Urban Problem" (Jan. 1961)). Overall, the FHwA account cites no less than 19 separate references to the concern that public transit might siphon money away from the highway project.

96. *Id.* (comment by J.C. Womack, president of AASHO, "Rail Transit" (Jan. 1962)).

97. *Id.* (comment by Ellis L. Armstrong, president, Better Highways Information Foundation, "AAA on Beltlines" (Apr. 1962) (referencing the view of the American Automobile Association)).

98. *Id.* (comment of J.W. McDonald, engineering manager, Automobile Club of Southern California, "What Is Balanced Transportation?" (Oct. 1960)).

99. *Id.* (comment by Joseph C. Hazen, managing editor, *Architectural Forum*, "Comprehensive Plans Must Precede Highway Construction" (July 1957)).

100. *Id.* (comment by Sen. Jennings Randolph, chairman, Senate Public Works Committee, "Public Hearings Not Adequate" (Jan. 1969)).

101. *Id.* (comment by Sen. Jennings Randolph, chairman, Senate Public Works Committee, "Highways Are a Catalyst" (Jan. 1968) (The use of the word "ghetto" to characterize the Black neighborhood belied the thinking of the day that its residents were isolated and captive.)).

102. *Id.*

interstate running through the downtown core. It was not, however, for lack of trying.¹⁰³ Early plans had advocated an east-west expressway through the city center, but too many proposed alternative routings in competition with one another delayed the selection of a final route.¹⁰⁴ Yet, anxious to move in some direction and claiming economic pressure,¹⁰⁵ city leaders in Baltimore simply assumed a final route and began clearing it. The route cleared, known as the Franklin-Mulberry Corridor, went through the Black neighborhood of Harlem Park in West Baltimore.¹⁰⁶ Essentially, the city gambled at the expense of Black residents that the ultimate route of the east-west expressway would be built through Harlem Park.¹⁰⁷ The gamble proved tragic for Harlem Park's residents.¹⁰⁸

Known as a stable and vibrant neighborhood,¹⁰⁹ Harlem Park was home to a mix of Black residents that included both blue-collar workers and professionals.¹¹⁰ Yet despite its vibrancy, the city was willing to destroy the neighborhood for a roadway whose final route was still undetermined.¹¹¹ In doing so, the city demolished blocks of housing along with business establishments to make way for the road.¹¹² It destroyed close to 1,000 homes, displacing approximately 1,500 people and 62 businesses, all upon a gamble.¹¹³

The tragic irony of the story is that the city's gamble was misplaced at a significant cost to its Black residents. Unable

ultimately to decide on any final routing for the expressway, the city gave up; no east-west expressway was ever built.¹¹⁴ What remained instead after demolition of the 12-block Black neighborhood was a six-lane "highway to nowhere," one that lets the driver off about a mile-and-a-half down the road from where the driver got on.¹¹⁵ The impact of the project was undeniable, an unnecessarily inflicted wound on the Black residents of Harlem Park. Finally, in 2021, recognizing the highway as an injustice from its inception, the mayor of Baltimore identified it as a "poster child" for racial and economic inequities.¹¹⁶

B. Hanford Village, Columbus

Hanford Village, founded in 1909, was a predominantly Black municipality in Franklin County, Ohio.¹¹⁷ Independent from the city of Columbus until 1955,¹¹⁸ Hanford developed during the 1930s and 1940s into a close-knit, well-functioning community.¹¹⁹ Described as "a vertically integrated African American social enclave,"¹²⁰ residents regularly gathered at the two center points of community life: Hanford Park and St. Mark's Missionary Baptist Church.¹²¹

114. Wikberg, *supra* note 103, at 18-19.

115. Walker, *supra* note 109 (describing the highway as a "six-lane ditch of a highway run[ning] through West Baltimore. You can enter it heading east on Mulberry Street or going west on Franklin; then you drive a little less than a mile and a half before you have to get off again. You end up on the same street you entered from, just a bit farther up the road.").

116. Jeff Barker, *Maryland Democrats Hope to Remedy Damage From Decades-Old "Highway to Nowhere"*, BALT. SUN (May 17, 2021, 4:36 PM), <https://www.baltimoresun.com/politics/bs-md-pol-highway-to-nowhere-20210517-kqat5jezfna25cmy3xvzzek4m-story.html>.

117. Erica Thompson, *How Highways Destroyed Black Neighborhoods in the '60s, as Told by Elders Who Were There*, COLUMBUS DISPATCH (Dec. 3, 2020), <https://www.dispatch.com/in-depth/lifestyle/2020/12/03/black-columbus-ohio-homes-impact-highways-east-side/3629685001/> (offering personal reflections on the construction of I-70 through Hanford Village and the destruction it caused).

118. *Id.*

119. National Register of Historic Places Registration Form for Hanford Village George Washington Carver Addition Historic District 18 (Nov. 8, 2013) [hereinafter National Register of Historic Places Registration Form] (on file with U.S. Department of the Interior National Park Service). After receiving the nomination of the Ohio Historic Site Preservation Advisory Board to be placed on the National Register of Historic Places, Columbus Landmarks Foundation filed the registration form for Hanford Village with the National Parks Service. See Rory Krupp, *Hanford Village on Track for National Register*, CORNERSTONE (Columbus Landmarks Foundation, Columbus, Ohio), Dec. 2013, at 4, available at https://columbuslandmarks.org/wp-content/uploads/2014/01/December_2013-Cornerstone.pdf. On December 24, 2013, the Hanford Village George Washington Carver Addition was added to the Register of Historic Places. "The National Register is the official list of properties recognized by the federal government as worthy of preservation for their local, state, or national significance in American history, architecture, archaeology, engineering, or culture." Kris Harrison, *Hanford Village Listed in National Register*, COLUMBUS LANDMARKS (Jan. 3, 2014), <https://www.columbuslandmarks.org/hanford-village-national-register-nomination/>. As noted in the registration form, Hanford's application for historic status is premised on its providing "the religious and social village landscape that gave community support and identity to an emerging black middle class." National Register of Historic Places Registration Form, *supra*, at 15.

120. National Register of Historic Places Registration Form, *supra* note 119, at 18. While initially a small community of 250, Hanford grew in the 1920s as a result of migration of Black southern families north to Ohio. *Id.* at 16.

121. *Id.* at 15.

103. See Terry Wikberg, *The Baltimore City Interstate Highway System*, U. MD. LEGAL HIST. PUBL'NS, Spring 2000, at 1, available at https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1012&context=mlh_pubs (discussing the history and impact of the federal highway system in Baltimore).

104. *Id.* at 3-5. Several competing expressway alternatives for connecting downtown Baltimore with the Baltimore Beltway were proposed between 1960 and 1969. City leaders could never quite agree, however, on any one plan until it was too late, allowing community groups through litigation to stop the downtown expressway altogether. *Id.* at 5-13. See also MOHL, *supra* note 41, at 65 ("MAD [Movement Against Destruction] filed a number of law suits challenging the entire Baltimore expressway system on both procedural and environmental grounds. Baltimore's Freeway Revolt, in short, came to rely on anti-highway litigation in the 1970s . . . Baltimore's interstate history provides a fascinating case study of how not to build expressways.").

105. With the construction of the Baltimore Beltway, a number of businesses were beginning to move out of downtown Baltimore to areas abutting the beltway, causing concern among city leaders for the economic well-being of the city. Wikberg, *supra* note 103, at 4, 9.

106. *Id.* at 10.

107. *Id.*

108. The assumption was more than tragic; it was premeditated. Robert Moses, who consulted in 1944 on Baltimore's expressway planning, recommended an expressway through Harlem Park, describing parts of the neighborhood as a slum and arguing that the more neighborhoods like Harlem Park are wiped out, the better Baltimore would be. Amanda K. Phillips de Lucas, *Producing the "Highway to Nowhere": Social Understandings of Space in Baltimore, 1944-1977*, 6 ENGAGING SCI. TECH. & SOC'Y 351, 358-60 (2020), available at <https://estsjournal.org/index.php/ests/article/view/327/291>.

109. Jesse Walker, *The Wound in West Baltimore: How City Planners Killed a Community*, REASON (May 8, 2015, 2:00 PM), <https://reason.com/2015/05/08/the-wound-in-west-baltimore/> (stating that it was after the highway along the Franklin-Mulberry Corridor was built that the neighborhood became blighted and not before). See also Dan Rodricks, *Reckoning With the Past: The Potential of a Harlem Park Renaissance in Baltimore*, DAN RODRICKS (July 11, 2021), <https://danrodricks.com/2021/07/11/reckoning-with-the-past-the-potential-of-a-harlem-park-renaissance-in-baltimore/> (describing Harlem Park in the 1950s as a "once-thriving neighborhood").

110. Rodricks, *supra* note 109.

111. Wikberg, *supra* note 103.

112. Rodricks, *supra* note 109.

113. Walker, *supra* note 109.

The park was the site of organized summer activities, which included games, concerts by the youth orchestra and jazz band, and other events for children and adults coordinated by the Hanford Community Club.¹²² St. Mark's also played an important role in the life of the community. In addition to being the center for worship in Hanford, the church was a meeting place for new and old residents, both congregants and non-congregants.¹²³ Also, with the mayor of Hanford serving as a deacon at the church and the founder of the Hanford Building Association being a prominent member, the church became a convenient and likely setting for political discussions as well.¹²⁴

Toward the end of the war in the mid-1940s, the Federal Housing Administration (FHA) began planning a subdivision in Hanford Village known as the George Washington Carver Addition.¹²⁵ As conceived and ultimately constructed, the Carver Addition included 146 new Cape Cod-style homes built primarily to house returning Black military personnel.¹²⁶ While there was opposition to the proposal from the Columbus Vanguard League, a Black organization concerned that the project would reinforce racial segregation in housing,¹²⁷ a more resonant and concerted effort to oppose the project was organized by the neighboring white restrictive-covenanted community of Berwick.¹²⁸ Fearful of more Blacks living in Hanford, Berwick residents, joined by others, argued that Hanford's "blight" would spread, thereby leading to a deterioration of their white communities and a reduction in property values.¹²⁹ Nonetheless, because FHA supported the Carver Addition, Berwick's efforts to stop the project did not succeed at the time.¹³⁰

Fast forward to the 1960s and the construction of I-70 in Columbus, and the picture changed. What Berwick unsuccessfully sought 15 years earlier moved closer to fulfillment under the 1956 Act when planners decided to barrel I-70 through the heart of Hanford.¹³¹ Subscribing to the theory

that highways serve to keep blight from spreading,¹³² planners dismembered Hanford, dividing it into three parts by severing St. Mark's from Hanford Park from the Carver Addition.¹³³ In the process, they cut the heart out of Hanford, demolishing 60 homes, reducing Hanford's overall population, and fundamentally destroying the neighborhood.¹³⁴ As reported in 2020 by the *Columbus Dispatch*, the saga of I-70 and Hanford Village is "a tragic story," and "a concrete and colossal example of institutional racism and its harm to Black communities."¹³⁵

C. Rondo, St. Paul

In 1930, one-half of St. Paul's Black population lived in the Rondo neighborhood.¹³⁶ By 1950, that number had grown to more than 80%.¹³⁷ Like Baltimore's West Harlem, Rondo was a flourishing mixed community with a distinctive African-American culture.¹³⁸ That culture was supported by Black-run newspapers, well-established community centers, churches, and social clubs.¹³⁹ Rondo was also home to the St. Paul chapter of the National Association for the Advancement of Colored People (NAACP), with Roy Wilkins, who would later lead the national NAACP, being a member.¹⁴⁰

122. *Id.* at 18. The Hanford Youth Orchestra was originally organized as a program under the auspices of the Works Progress Administration. *Id.*

123. *Id.* at 30.

124. *Id.* at 31.

125. Thompson, *supra* note 117. In advancing the Carver Addition and seeking investment in the project by private enterprise, the FHA worked to dispel any myths about Black homeownership. It referred to other FHA Black housing developments where mortgages were paid on time and the housing was well-maintained. "The message from FHA was simple. Blacks did not equal blight, contrary to previous federal policy and popular belief. And there was the distinct possibility of a profitable investment." National Register of Historic Places Registration Form, *supra* note 119, at 25.

126. National Register of Historic Places Registration Form, *supra* note 119, at 23. The Black military personnel slated to live in the Carver Addition included the Tuskegee Airmen, but there was significant opposition in Columbus to their presence. They were identified in the press as a troublemaking outfit, in some respects based on the airmen's challenge to the segregationist policies of the U.S. military. Don Weaver, editor of the *Columbus Citizen*, led the opposition to their presence, stating at one point, "This is still a white man's country." *Id.* at 27.

127. *Id.* at 21-22.

128. *Id.* at 20-21.

129. *Id.* at 21.

130. *Id.* at 23. While ultimately unsuccessful, Berwick's opposition did result in Wilburn Kerr, one of the builders who had agreed to construct the Carver Addition, backing out of the project. *Id.* at 21.

131. *Id.* at 32.

132. *Id.* at 31.

133. *Id.* at 19. Although planning for highways in Columbus was underway as early as 1949, lack of information disserved Hanford residents. As Senator Randolph cautioned years later, the community hearing process was flawed in that planners made little outreach to the public. For example, during a hearing on proposals related to the route I-70 would take, some Hanford residents learned for the first time that decisions were already made to take their homes. *Id.* at 32.

134. See generally Thompson, *supra* note 117. Along with the destruction of the homes of many Hanford residents came the fear of homelessness. With already overcrowded conditions in the parts of Columbus where Blacks were allowed to live and being surrounded by white restrictive-covenanted communities, the options were limited. National Register of Historic Places Registration Form, *supra* note 119, at 32.

135. Thompson, *supra* note 117.

136. KRISTINA COSTA ET AL., CENTER FOR AMERICAN PROGRESS, WHEN COMMUNITIES DIDN'T HAVE A SAY: HOW FEDERAL INFRASTRUCTURE DOLLARS WERE USED TO BULLDOZE COMMUNITIES OF COLOR (2018), <https://www.americanprogress.org/wp-content/uploads/2018/04/CostaEnvironmental-Review-brief-1.pdf> (focusing on experiences in St. Paul, Orlando, and New Haven, this article makes the point that federal dollars enabled local leaders to evict poor and Black families from their neighborhoods without requiring public engagement and environmental protections).

137. Emma Nelson, *From Ashes to Asphalt: St. Paul's Systematic Destruction of Black Neighborhoods*, MEDIUM (Mar. 1, 2017), <https://medium.com/@nelson009/from-ashes-to-asphalt-st-pauls-systematic-destruction-of-black-neighborhoods-54ea9c0c25f>.

138. Ehsan Alam, *Before It Was Cut in Half by I-94, St. Paul's Rondo Was a Thriving African-American Cultural Center*, MINNPOST (June 19, 2017), <https://www.minnpost.com/mnopedia/2017/06/it-was-cut-half-i-94-st-paul-s-rondo-was-thriving-african-american-cultural-center/>. While Rondo was home to most of St. Paul's Black population, it was a mixed community where the races mixed freely, and worked, socialized, and went to schools together. *Id.*

139. JESSIE AUSTIN ET AL., WILDER RESEARCH, RONDO LAND BRIDGE: HEALTH IMPACT ASSESSMENT (HIA) SUMMARY AND ADDITIONAL COMMUNITY INSIGHTS (2021), <https://reconnectrondo.com/wp-content/uploads/2021/01/Rondo-Health-Impact-Assessment.pdf> (discussing building a potential land bridge over the depressed I-94 highway in Rondo that would improve health and the environment in the neighborhood).

140. Alam, *supra* note 138.

In addition to Rondo's strong mixed social base, there was also a vibrant Black business community.¹⁴¹ That community included grocery stores, restaurants, barber shops, clothiers, and businesses generally that served the daily needs of residents.¹⁴² In turn, these businesses as well as the community as a whole were supported by credit unions, cooperatives, and a strong Black middle and professional class.¹⁴³

In the midst of this vibrancy, even before the passage of the 1956 Act, discussions in St. Paul were underway to build a main road running east to west linking St. Paul to Minneapolis.¹⁴⁴ Those discussions were enhanced and intensified in 1956, when federal funds became available for building the interstate system.¹⁴⁵ However, unlike Baltimore, where the city could never coalesce around a single option for locating the interstate, and Columbus, where seemingly only one plan for the interstate through Hanford Village was proposed and adopted, St. Paul was presented with two clear options for the highway that would become I-94 and connect the Twin Cities.¹⁴⁶ The first was the Rondo-St. Anthony option, which would ram the interstate on a direct line through the center of Rondo.¹⁴⁷ The second was the northern option, which would skirt Rondo to the north, running I-94 adjacent to already existing railroad lines with far less impact on residential neighborhoods.¹⁴⁸

Despite the readily available northern option, however, policymakers selected the more destructive Rondo-St. Anthony route. Arguably, there were several reasons they might have done so. First, Rondo was the less expensive route; because of redlining, Rondo real estate was cheap.¹⁴⁹

Second, because Rondo was a predominantly Black community, it lacked the political clout to oppose effectively the highway.¹⁵⁰ Finally, traffic studies showed the Rondo route as reducing travel times and being more convenient for suburban commuters.¹⁵¹

Sensitive to the destruction of the Rondo neighborhood, however, George Herrold, St. Paul's chief city planner, advocated for the northern route.¹⁵² Herrold argued that the city's civic duty was to protect the interests of its citizens.¹⁵³ While agreeing that the Rondo route would likely carry more vehicles, he asserted presciently that the automobile should not dominate cities, and that the Rondo route would be an unwelcome source for residents of air pollution from vehicular exhaust.¹⁵⁴

Never seriously considering Herrold's plan, however,¹⁵⁵ the city intentionally and unnecessarily cut through the center of Rondo, destroying close to 700 family homes and 300 businesses.¹⁵⁶ In 2020, reflecting on the decision to build the interstate through Rondo, Minnesota's governor commented: "It was an indiscriminate act that said this community doesn't matter, it's invisible."¹⁵⁷

III. The EJM and the Federal Response

The experiences of the residents of Harlem Park, Hanford Village, and Rondo were not unique. The public record is clear that implementation of the 1956 Act wreaked havoc on urban communities of color.¹⁵⁸ The physical destruction of their neighborhoods was compounded by the lack of access elsewhere to quality housing and essential services that resulted from redlining and restrictive covenants, such as those affecting the residents of Hanford.¹⁵⁹

Also, conscious of costs, the federal focus on building the Interstate Highway System deprived cities of funding for public transportation, adversely affecting the ability

141. *Id.*

142. Anna Argyridou et al., *Looking Into Rondo: Environmental Studies Senior Seminar Spring 2006*, E-DEMOCRACY.ORG, <http://forums.e-democracy.org/groups/stpaul-issues/files/f/2610-2008-07-26T025645Z/rondo%20macal-ester%20sr%20seminar.pdf> (investigating the impact of I-94 on the Rondo neighborhood in the context of environmental justice).

143. AUSTIN ET AL., *supra* note 139.

144. Tom Beer, *Neighborhood Resistance to I-94, 1953-1965*, MNopedia, <https://www.mnopedia.org/event/neighborhood-resistance-i-94-1953-1965> (last modified July 16, 2021).

145. As in Baltimore, with the passage of the 1956 Act, political leaders in St. Paul felt pressure to start building highways, ignoring concerns of residents in Rondo and elsewhere. See Nelson, *supra* note 137.

146. Blake MacKenzie, *Race and Housing Series: Rondo and I-94—A Conversation With Nick Khaliq*, TWIN CITIES HABITAT FOR HUMAN. (Feb. 14, 2020), <https://www.tchabitat.org/blog/rondo> (providing a map showing the two potential routes for I-94).

147. George Herrold and His Proposed "Northern Route" for Interstate 94, NEWS-BREAK (July 18, 2021), <https://original.newsbreak.com/@the-streets-of-st-paul-1587459/2897858516230-george-herrold-and-his-proposed-northern-route-for-interstate-94>.

148. Matt Reicher, *The Birth of a Metro Highway (Interstate 94)*, STREETS.MN (Sept. 10, 2013), <https://streets.mn/2013/09/10/the-birth-of-a-metro-highway-interstate-94/> (providing a historical overview of the events leading to the opening of I-94 on December 9, 1968).

149. James Walsh, *Why Was I-94 Built Through St. Paul's Rondo Neighborhood?*, STAR TRIB. (Dec. 18, 2020, 8:49 AM), <https://www.startribune.com/why-did-i-94-get-built-right-through-the-middle-of-st-pauls-rondo-neighborhood/600001544/>. "[P]lanners knew they could get land cheap while facing minimal political opposition." *Id.* See also Katy Read, *When Nation's Freeways Were Built, Black Communities Paid the Price*, STAR TRIB. (Nov. 26, 2021), <https://www.startribune.com/when-nations-freeways-were-built-black-communities-paid-the-price/600121065/> (stating that in many Black neighborhoods, redlining diminished the value of their homes).

150. Walsh, *supra* note 149. See also Read, *supra* note 149 ("Black residents of redlined communities lacked economic and political clout to resist the freeway plans.").

151. Read, *supra* note 149 ("Freeways were promoted to the public as providing easy commutes for families increasingly moving to the suburbs. But suburbs passed zoning laws effectively excluding many residents of color.").

152. George Herrold and His Proposed "Northern Route" for Interstate 94, *supra* note 147.

153. *Id.*

154. *Id.*

155. *Id.*

156. Melissa Turtinen, *Nonprofit Seeks \$6M in State Funds for Land Bridge to Reconnect St. Paul's Rondo Neighborhood*, BRING ME NEWS (Feb. 3, 2021), <https://bringmethenews.com/minnesota-news/nonprofit-seeks-6m-in-state-funds-for-land-bridge-to-reconnect-st-pauls-rondo-neighborhood>. Other sources give similar numbers. *E.g.*, Walsh, *supra* note 149.

157. Read, *supra* note 149.

158. See generally Archer, *supra* note 66, which states:

The passage of the Federal-Aid Highway Act of 1956 facilitated the highway construction and the destruction of Black communities. Federal and state highway builders purposely targeted Black communities to make way for massive highway projects. In states around the country, highways disproportionately displaced and destroyed Black homes, churches, schools, and businesses, sometimes leveling entire communities.

Id. at 2135.

159. *E.g.*, Thompson, *supra* note 117 ("[I]f you look at the old redlining maps of most cities—and Columbus is a good example—you can pretty much trace the highways right through those areas that were redlined.").

of Black and low-income urban residents to access jobs, housing, and essential services.¹⁶⁰ Additionally, as time would show, Black residents and others living near these interstates and other heavily traveled roadways, such as the Peace Bridge, would come to experience higher rates of chronic diseases, including bronchitis and emphysema.¹⁶¹ These and other offensive and destructive consequences of the 1956 Act raised environmental justice concerns soon after construction began.¹⁶²

As these highway-related consequences unfolded, a modest movement for environmental justice grew with a series of isolated protests.¹⁶³ These early protests involved localized underrepresented groups demonstrating against poor working conditions, inadequate sanitation conditions, and the siting of waste management facilities in their neighborhoods.¹⁶⁴ Concerned about these social and environmental inequities, these groups sowed the seeds of what became widely known as the “environmental justice movement.”¹⁶⁵

Initially, many of the early leaders of the more broad-based Civil Rights Movement were slow to incorporate environmental issues into their social justice agendas.¹⁶⁶ Over time, however, they began to see environmental justice as an important component of their cause.¹⁶⁷ During

the early part of the 1970s, the Congressional Black Caucus (CBC) emerged as a strong proponent of major environmental legislation, including the Clean Air Act (CAA) and the Clean Water Act (CWA).¹⁶⁸ In concert with some of the nation’s mainstream environmental groups, the CBC advocated for protection against discriminatory policies and practices that were having a detrimental effect on the health and welfare of communities of color.¹⁶⁹

As recognition of these kinds of environmental injustices began to gain traction, a single event in North Carolina in 1982, known as the Warren County protests,¹⁷⁰ having to do with the siting of a hazardous waste landfill, sparked a national uprising and a thunderous call for justice for the many poor and underrepresented communities of color that had endured environmental racism for decades.¹⁷¹ Although the Warren County protests were unsuccessful in stopping construction of the landfill, they are commonly viewed today as the start of the EJM in the United States.¹⁷²

160. Nancy Jakowitsch & Michelle Ernst, *Just Transportation, in HIGHWAY ROBBERY: TRANSPORTATION RACISM AND NEW ROUTES TO EQUITY* 161 (Robert D. Bullard et al. eds., South End Press 2004).

161. Residents of Black and lower-income communities have historically experienced a disproportionately higher level of pollution and other environmental harms in their places of work and residency. Environmental stressors such as the siting of toxic waste dumps and hazardous landfills along with the construction of chemical facilities in Black and lower-income neighborhoods have contributed to a degradation in the physical and emotional health of underrepresented communities. A principle known as “PIBBY” (place in Blacks’ backyards) has guided decisions of state and local officials to locate undesirable waste facilities and air-polluting industries in Black and low-income communities. See generally ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 1-5 (3d ed. 2000).

162. Jakowitsch & Ernst, *supra* note 160.

163. Renee Skelton & Vernice Miller, *The Environmental Justice Movement*, NAT. RES. DEF. COUNCIL (Mar. 17, 2016), <https://www.nrdc.org/stories/environmental-justice-movement>.

164. For example, Cesar Chavez organized Latino farmworkers in California in the early 1960s to protest against the deleterious health effects of exposure to harmful pesticides. In 1967, Black students in Houston protested against the siting of a garbage dump in their community, and in 1968, residents in New York City’s West Harlem district demonstrated against the siting of a sewage treatment plant in their community. *Id.*

165. *Id.* Emerging alongside the EJM in the 1960s, mainstream environmentalism also began as a grassroots movement. Contrary to the composition of the EJM, however, the mainstream environmental movement was composed mainly of educated, middle- and upper-class white individuals who focused on preservation, conservation, and pollution. Although laudable in its pursuit to protect wildlife and wilderness and to raise the nation’s awareness of the dangers of pollution, mainstream environmentalism failed to embrace the needs of poor, underrepresented communities of color. These communities were regularly suffering from the consequences of hazardous waste landfills in their backyards and from a disproportionately higher amount of industrial pollution. Additionally, a lack of systematic research on the health consequences of toxic dumping and industrial pollution in low-income communities of color compounded the exclusionary practices of mainstream environmentalism. BULLARD, *supra* note 161, at 1-5.

166. BULLARD, *supra* note 161, at 1.

167. *Id.* For example, the Congressional Black Caucus describes the origins of the EJM as one that has its roots in the 1960s’ Civil Rights Movement and in the environmental movement of the 1960s and 1970s. Environmental justice emerged in the 1980s as communities of color protested against the siting of toxic waste dumps and the dumping of toxic chemicals in their neighborhoods. Congressional Black Caucus Foundation, *supra* note 2.

168. Congressional Black Caucus Foundation, *supra* note 2; 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618; 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

169. Congressional Black Caucus Foundation, *supra* note 2.

170. In 1982, the state of North Carolina decided to establish a hazardous waste landfill at a rural site located in Warren County, North Carolina. State officials designated the community of Afton, located in Warren County and populated predominantly by poor Black residents, as the site for a toxic landfill. As the residents of Afton learned that this new landfill would become home to tons of toxic polychlorinated biphenyl (PCB)-contaminated soil, they began a series of nonviolent protests.

Although other locations were available for siting the hazardous waste landfill, state officials decided to locate the landfill within this poor community of color despite the ongoing protests. As truckloads of PCB-contaminated soil began rolling into the newly constructed Afton site, the demonstrations grew larger in size as national media began to cover the Warren County protests. Afton residents and national figures took to the streets and marched in protest for six weeks. Law enforcement officials arrested more than 500 protesters, resulting in a milestone in U.S. history as these were the first known arrests associated with an uprising about the location of a hazardous waste landfill.

While the Afton community residents eventually lost their battle with state officials and the landfill was opened, the Warren County protests ignited a national outcry about discriminatory environmental practices involving communities of color. One can imagine that the Afton residents, who were simply demonstrating to protect their local community from recognized health risks associated with PCB contamination, had no idea that their local protests would result in a national movement. Yet, the galvanization of the early grass-roots civil rights protests of the 1960s, culminating with the Warren County protests of 1982, created a national campaign calling for environmental justice and an end to environmental racism. Skelton & Miller, *supra* note 163. See also Darryl Fears & Brady Dennis, *This Is Environmental Racism: How a Protest in a North Carolina Farming Town Sparked a National Movement*, WASH. POST (Apr. 6, 2021), <https://www.washingtonpost.com/climate-environment/interactive/2021/environmental-justice-race/>.

171. After the Warren County protests, many civil rights leaders saw the decision of state officials to site a toxic waste landfill in the poor, predominately Black community of Afton in Warren County as a new form of racism like the racism they had experienced in education, housing, and employment for many years. Dr. Benjamin Chavis described this new type of racism as a form of “environmental racism,” a term he coined after he was arrested by North Carolina state police officers and placed in jail for driving too slowly on his way to the Warren County protests. Fears & Dennis, *supra* note 170.

172. U.S. Department of Energy Office of Legacy Management, *Environmental Justice History*, <https://www.energy.gov/ln/services/environmental-justice/environmental-justice-history> (last visited Jan. 23, 2023).

A. Title VI of the Civil Rights Act of 1964

As events such as those in Warren County and elsewhere awakened the nation to the environmental plight of Black and other minority communities, Title VI of the previously enacted Civil Rights Act of 1964 took on added significance as a potential “powerful tool to address discrimination and advance environmental justice.”¹⁷³ Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁷⁴ As a precursor to Title VI, President John F. Kennedy had stated cogently that “[s]imple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.”¹⁷⁵ In keeping with President Kennedy’s vision, the reach of Title VI in tackling environmental racism and its related inequities in areas such as transportation,¹⁷⁶ housing, and education has the potential to be significant.¹⁷⁷

To enhance that potential, federal agencies develop policies and procedures to ensure that recipients of federal assistance, both public and private, do not engage in discriminatory practices in their respective projects, programs, and related activities.¹⁷⁸ For example, state highway administrations (SHAs) are required to prepare implementation plans¹⁷⁹ to ensure proper compliance with

Title VI requirements.¹⁸⁰ SHAs use these plans for a variety of purposes,¹⁸¹ including educating the public on how to review and understand federally funded programs and projects and informing the recipients of federal highway funds of their obligations under Title VI.¹⁸² SHAs are also required to prepare Title VI “Goals and Accomplishments” reports¹⁸³ and to submit them annually to their respective FHWA regional offices.¹⁸⁴ These offices review these reports to ensure compliance with Title VI.¹⁸⁵ They are critical in making certain that the requirements of Title VI are met¹⁸⁶ by all parties that receive federal financial assistance.¹⁸⁷

The Civil Rights Restoration Act of 1987 expanded Title VI’s meaning of “programs and activities” to include “all the operations” of a recipient state agency or other instrumentalities of government.¹⁸⁸ For example, when FHWA provides federal funds to an SHA, all of the projects, programs, and activities of that SHA fall under the provisions of Title VI, including those projects that do not actually receive funds.¹⁸⁹

4. Subrecipient Review Procedures
5. Data Collection and Analysis Methods
6. Training Procedures
7. Complaint Procedures
8. Dissemination of Title VI Information
9. Limited English Proficiency
10. Review of STA [State Transportation Agency] Directives
11. Compliance & Enforcement Procedures

FHWA, DOT, TITLE VI IMPLEMENTATION PLANS FACT SHEET, <https://www.fhwa.dot.gov/civilrights/programs/docs/Title%20VI%20Implementation%20Plans%20Factsheet.pdf>.

173. U.S. Department of Justice (DOJ) Civil Rights Division, *Federal Coordination of Title VI and Environmental Justice*, <https://www.justice.gov/crt/fcs/letter/Spring-2015/TitleVIandEJ> (last visited Jan. 23, 2023).

174. Title VI, 42 U.S.C. §§2000d-2000d-7.

175. DOJ Civil Rights Division, *Title VI of the Civil Rights Act of 1964*, <https://www.justice.gov/crt/fcs/TitleVI> (last visited Jan. 23, 2023).

176. For example, on March 8, 2021, FHWA requested that the Texas Department of Transportation (TxDOT) pause a controversial highway project known as the North Houston Highway Improvement Project while FHWA investigated serious Title VI concerns raised by the public and other interested groups. See *infra* note 281 and accompanying text.

177. For example, as part of integrating Title VI and environmental justice into its overall strategy, DOJ observed:

Environmental justice and Title VI are both rooted in the same basic principle that no person should bear an unfair share of harm on account of their race, color or national origin. At its core, Title VI requires recipients of federal funding to ensure that their programs operate in a nondiscriminatory manner. Indeed, the central tenet of environmental justice—that programs benefitting a community as a whole not disproportionately allocate their adverse environmental and health burdens—flows directly from this underlying principle of Title VI.

DOJ Civil Rights Division, *supra* note 173.

178. DOT FHWA, *Civil Rights—Title VI Toolkit*, https://www.fhwa.dot.gov/civilrights/programs/title_vi/toolkit.cfm (last modified Aug. 1, 2022).

179. “Title VI implementation plans” inform the public about how an SHA is governing and managing a highway project relative to Title VI requirements. Because implementation plans are designed for public consumption, they should be readily accessible and written in plain, nontechnical language. Implementation plans typically include the following 11 elements, either reported separately or combined, as required by 23 C.F.R. §200.9, and outlined by FHWA:

1. Standard USDOT Title VI Assurances
2. Organization & Staffing
3. Program Area Review Procedures

180. SHAs submit updated Title VI implementation plans annually to the appropriate regional FHWA administrator. Regional FHWA offices are responsible for reviewing implementation plans and either approving or disapproving them. *Id.*; 23 C.F.R. §200.9(b)(11).

181. See, for example, the TxDOT’s Title VI nondiscrimination plan for fiscal year (FY) 2023, a 60-page document that includes coverage areas such as “Standard DOT Assurances,” “Program Review Procedures,” and “Title VI Considerations for Internal Review.” CIVIL RIGHTS DIVISION, TEXAS DEPARTMENT OF TRANSPORTATION, FY 2023 TITLE VI/NONDISCRIMINATION PLAN (2022), <https://ftp.txdot.gov/pub/txdot-info/civ/title%20vi/title-vi-nondiscrimination-plan.pdf>.

182. FHWA, DOT, *supra* note 179.

183. The “Goals and Accomplishments” report generally includes a detailed list of the Title VI accomplishments for the year in areas such as program area reviews, training, and complaint/dispute resolution. FHWA, DOT, TITLE VI GOALS AND ACCOMPLISHMENTS REPORT, <https://www.fhwa.dot.gov/civilrights/programs/docs/Goals%20and%20Accomplishments%20Reports.pdf>.

184. *Id.*; 23 C.F.R. §200.9(b)(10).

185. FHWA, DOT, ENSURING COMPLIANCE WITH TITLE VI THROUGH REVIEWS, <https://www.fhwa.dot.gov/civilrights/programs/docs/Ensuring%20Compliance%20with%20Title%20VI%20through%20Reviews.pdf>.

186. See, for example, the FY 2022 Title VI Goals and Accomplishments Report of the Southern New Hampshire Planning Commission, New Hampshire Department of Transportation, a 46-page document that includes coverage areas such as (1) “Title VI Policy” (in English and Spanish), (2) “Title VI Program,” (3) “Annual USDOT Title VI/Non-Discrimination Assurances,” (4) “Annual FTA Certifications and Assurances,” (5) “Annual Title VI Goals and Accomplishments Report,” (6) “Title VI Outreach Brochure” (in English and Spanish), and (7) “Regional Transportation Equity Analysis Report.” SOUTHERN NEW HAMPSHIRE PLANNING COMMISSION, FY 2022 TITLE VI GOALS AND ACCOMPLISHMENTS REPORT (2022), https://www.snhpc.org/sites/g/files/vyhli5006/f/uploads/fy2022_title_vi_goals_and_accomplishments_report.pdf.

187. FHWA, DOT, *supra* note 185.

188. FHWA, DOT, WHAT IS TITLE VI BASICS?, <https://www.fhwa.dot.gov/civilrights/programs/docs/Title%20VI%20Basics.pdf>.

189. *Id.*

B. The National Environmental Policy Act of 1969

On January 1, 1970, President Richard Nixon signed into law the National Environmental Policy Act of 1969 (NEPA).¹⁹⁰ NEPA established a uniform national framework for future environmental laws; it represents one of the most significant pieces of environmental legislation in American history.¹⁹¹ It embodies and reflects a congressional decision to establish a national environmental policy that “applies to a wide range of federal actions, including both the government’s own activities and its decisions to allow or to fund other parties’ activities.”¹⁹² NEPA’s potential in helping shape environmental statutes and regulations cannot be overstated, as it is often referred to as the “Magna Carta” of federal environmental laws.¹⁹³ As a general rule, NEPA directs all federal agencies to consider the impact of their actions on the environment before making funding and other major decisions,¹⁹⁴ and it does so both substantively and procedurally.¹⁹⁵

At the substantive policy level, NEPA encourages federal agencies to find ways to promote a harmonious relationship between humankind and the environment.¹⁹⁶ In recognizing the impact that humans have on both the environment and the overall welfare of humankind, Congress charged federal agencies with the goal of

us[ing] all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which [humankind] and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.¹⁹⁷

At the procedural level, NEPA mandates that federal agencies prepare a detailed statement as to when their actions are “major” and when the impact of such actions is “significant.”¹⁹⁸ While NEPA’s statutory language does not define “major action,”¹⁹⁹ both the courts²⁰⁰ and the Council

on Environmental Quality (CEQ)²⁰¹ have over time clarified that definition.²⁰² Major actions²⁰³ may include activities that are both physical, such as a construction project, and nonphysical, such as the issuance of policy statements and regulations.²⁰⁴

1. Whether the National Environmental Policy Act requires federal agencies to include in each environmental impact statement: (a) a fully developed plan to mitigate environmental harm; and (b) a “worst case” analysis of potential environmental harm if relevant information concerning significant environmental effects is unavailable or too costly to obtain. *Id.* at 335-36.

2. Whether the Forest Service may issue a special use permit for recreational use of national forest land in the absence of a fully developed plan to mitigate environmental harm. *Id.* at 336.

In deciding in favor of the Forest Service, the Court concluded that §101 of NEPA requires federal agencies to take a “hard look,” *id.* at 350, at the significance of the environmental impact of a major action, but that agencies need not promote and advance environmental concerns above alternative concerns and purposes as long as the process “provides for broad dissemination of relevant environmental information.” *Id.*

In furtherance of its holding, the Court noted that “it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process,” *id.*, and that “[i]f the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” *Id.* In holding for the Forest Service’s right to issue the special permit, the Court observed:

[I]t would not have violated NEPA if the Forest Service, after complying with the Act’s procedural prerequisites, had decided that the benefits to be derived from downhill skiing at Sandy Butte justified the issuance of a special use permit, notwithstanding the loss of 15 percent, 50 percent, or even 100 percent of the mule deer herd. Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed—rather than unwise—agency action.

Id. at 350-51.

201. The official White House position on CEQ states:

The Council on Environmental Quality (CEQ) within the Executive Office of the President coordinates the federal government’s efforts to improve, preserve, and protect America’s public health and environment. [It] advises the President and develops policies on climate change, environmental justice, federal sustainability, public lands, oceans, and wildlife conservation, among other areas. As the agency responsible for implementing NEPA, CEQ also works to ensure that environmental reviews for infrastructure projects and federal actions are thorough, efficient, and reflect the input of the public and local communities.

White House, *Council on Environmental Quality*, <https://www.whitehouse.gov/ceq> (last visited Jan. 23, 2023). In 1971, CEQ developed an initial set of guidelines to assist federal agencies in their implementation of NEPA requirements. Subsequently, the guidelines were promulgated as NEPA regulations in 1978. After remaining intact for nearly 40 years, CEQ revamped and significantly revised the regulations in 2020. NEPA.Gov, *CEQ NEPA Regulations*, <https://ceq.doe.gov/laws-regulations/regulations.html> (last visited Jan. 23, 2023).

202. HART & TSANG, *supra* note 199.

203. 40 C.F.R. §1508.1(q) (2021).

204. Categorically, there are four types of major actions:

(1) “[a]doption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, 5 U.S.C. 551 et seq. or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency’s policies which will result in or substantially alter agency programs”; (2) “[a]doption of formal plans, such as official documents prepared or approved by Federal agencies, which prescribe alternative uses of Federal resources, upon which future agency actions will be based”; (3) “[a]doption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive”; and (4) “[a]pproval of specific projects, such as construction or management activities located in a defined geographic area.

190. NEPA.Gov, *Home Page*, <https://ceq.doe.gov/> (last visited Jan. 23, 2023); 42 U.S.C. §§4321-4370h, ELR STAT. NEPA §§2-209.

191. *The Origins of the National Environmental Policy Act of 1969*, RICHARD NIXON FOUND. (June 15, 2015), <https://www.nixonfoundation.org/2015/06/the-origins-of-the-national-environmental-policy-act-of-1969/>.

192. NINA M. HART, CONGRESSIONAL RESEARCH SERVICE, JUDICIAL REVIEW AND THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (2022), <https://crsreports.congress.gov/product/pdf/R/R47205>.

193. NEPA.Gov, *supra* note 190.

194. *Id.*

195. *Id.*

196. 42 U.S.C. §4321.

197. *Id.* §4331(a).

198. *Id.* §4332(1)(C).

199. *Id.* §§4321-4370m-12. See generally NINA M. HART & LINDA TSANG, CONGRESSIONAL RESEARCH SERVICE, THE LEGAL FRAMEWORK OF THE NATIONAL ENVIRONMENTAL POLICY ACT (2021 update), <https://crsreports.congress.gov/product/pdf/IF/IF11549>.

200. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 19 ELR 20743 (1989), where the U.S. Supreme Court considered a decision of the Forest Service to issue a special permit to allow the construction and operation of a ski resort on national forest land. A citizens group challenged the decision to issue the special permit based on NEPA. The Court addressed two issues:

Once an action is identified as “major,” the next step is to determine whether it will have a “significant” environmental impact.²⁰⁵ To do so, federal agencies review the action to determine NEPA’s applicability.²⁰⁶ These reviews will result in one of three possible outcomes: (1) the action does not have a significant environmental impact, and therefore is granted a categorical exclusion from further NEPA review²⁰⁷; (2) it is unclear whether the action will have a significant environmental impact, and therefore further environmental assessment (EA) is necessary²⁰⁸; or (3) the action is likely to have a significant environmental impact, and therefore an environmental impact statement (EIS) is required.²⁰⁹

In circumstances where a determination has been made that a proposed action falls short of having a significant effect on the human environment,²¹⁰ a federal agency is allowed to “categorically exclude” the action from a detailed environmental analysis.²¹¹ Each federal agency defines and describes the types of actions that fall into its basket of “categorical exclusions.”²¹² In making a determination of categorical exclusion, the agency concludes that the action in question does not have a significant effect on the human environment²¹³ as defined by the agency’s NEPA policies.²¹⁴ Included in FHWA’s basket of categorical exclusions are actions that

[d]o not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.²¹⁵

Projects include actions approved by permit or other regulatory decision as well as Federal and federally assisted activities.”

Id. §1508.1(q)(3).

205. HART & TSANG, *supra* note 199.

206. *Id.*

207. 40 C.F.R. §1501.3(a)(1) (2021). See 40 C.F.R. §1501.4 (2021), for information about categorically excluded activities from NEPA review.

208. *Id.* §1501.3(a)(2). See 40 C.F.R. §1501.5 (2021), for information about EAs.

209. *Id.* §1501.3(a)(3). See 40 C.F.R. §1502 (2021), for information about EISs.

210. In a NEPA context, the term “human environment” means “the natural and physical environment and the relationship of present and future generations of Americans with that environment.” 42 U.S.C. §1508.1(m).

211. U.S. EPA, *National Environmental Policy Act Review Process*, <https://www.epa.gov/nepa/national-environmental-policy-act-review-process> (last updated Oct. 5, 2022).

212. 40 C.F.R. §1508.1(d) (2021).

213. *Id.*

214. Actions that satisfy these requirements and do not require any further NEPA approvals by FHWA include

[a]ctivities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions that establish classes of highways on the Federal-aid highway system.

23 C.F.R. §771.117(c)(1) (2021).

215. *Id.* §771.117(a).

If a federal agency determines that its proposed action does not warrant a categorical exclusion, it must prepare an EA.²¹⁶ The EA process is designed to investigate further whether the action will have a significant environmental effect.²¹⁷ Depending upon the outcome of the EA, the agency will either confirm a “finding of no significant impact” (FONSI),²¹⁸ which will end the process, or it will conclude that an impact is likely and require an EIS.²¹⁹

The EIS identifies and describes the likely significant environmental effects of the proposed action and discloses reasonable alternatives²²⁰ that, if chosen, would avoid or mitigate²²¹ those effects.²²² Agencies are cautioned to use the EIS to explore and assess the potential environmental impact of proposed actions rather than as a means of justifying a decision to proceed with the action simply because the agency favors it.²²³ Additionally, agencies are advised to avoid committing resources to a particular action prior to examining all the alternatives, for a premature commitment of resources to one alternative over others runs the risk of prejudicing the best option.²²⁴ Generally, therefore, in following NEPA, agencies consider a broad range of environmental outcomes and consequences in choosing the action to be taken.²²⁵

Beyond the federal agencies themselves, the EIS process is used by states; members of the public, including community groups; concerned citizens; and others directly affected by agency actions to determine the benefits and drawbacks of a given project.²²⁶ A typical EIS provides relevant information about a project, including disputed issues, alternative ways of accomplishing the proposed action, the environmental consequences of the action, and most importantly the major conclusions reached by the

216. U.S. EPA, *supra* note 211.

217. *Id.*

218. *Id.* The FONSI explains the rationale underlying an agency’s determination that the project will have no significant environmental impact after the project has been completed. *Id.*

219. *Id.*

220. “Reasonable alternatives” means “a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.” 40 C.F.R. §1508.1(z) (2021).

221. “Mitigation” means “measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects.” *Id.* §1508.1(s).

222. *Id.* §1502.1.

223. *Id.* §1502.2(g).

224. *Id.* §1502.2(f).

225. For example, FHWA is required to

assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following: (1) air, noise, and water pollution; (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services; (3) adverse employment effects, and tax and property value losses; (4) injurious displacement of people, businesses and farms; and (5) disruption of desirable community and regional growth.

23 U.S.C. §109(h).

226. U.S. EPA, *supra* note 211.

process.²²⁷ In practice, therefore, the EIS process is comprehensive, detailed, and rich in data.²²⁸ An important element of that data is environmental justice.

C. FHwA and Environmental Injustice

In roadway construction projects, NEPA requires FHwA to comply with environmental justice principles by identifying and addressing any adverse environmental impacts on minority²²⁹ and low-income populations.²³⁰ To assist in identifying these impacts, FHwA guidelines²³¹ allow for the active participation by all community members who may be affected by the construction.²³² Additionally, because states rather than FHwA lead in the planning and construction of roadway projects and in related community engagement functions, FHwA prods states and other local partners to protect vulnerable populations consistent with environmental justice principles.²³³ These environmental principles seek:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decisionmaking process.

227. *Id.*

228. See, for example, the final environmental impact statement of the North Houston Highway Improvement Project, which is a 380-page document. TEXAS DEPARTMENT OF TRANSPORTATION, FINAL ENVIRONMENTAL IMPACT STATEMENT: NORTH HOUSTON HIGHWAY IMPROVEMENT PROJECT, HOUSTON DISTRICT (2020), <https://www.txdot.gov/content/dam/project-sites/nhhp/docs/nhhp-feis-vol-me-i-2020.pdf> [hereinafter FINAL ENVIRONMENTAL IMPACT STATEMENT].

229. FHwA defines a “minority individual” as a person who is: (1) Black: a person having origins in any of the black racial groups of Africa; (2) Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (3) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent; (4) American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; or (5) Native Hawaiian and Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

FHwA Order No. 6640.23A (2012), <https://www.fhwa.dot.gov/legisregs/directives/orders/664023a.cfm>.

230. FHwA, DOT, FEDERAL HIGHWAY ADMINISTRATION ENVIRONMENTAL JUSTICE REFERENCE GUIDE 1 (2015), https://www.fhwa.dot.gov/environment/environmental_justice/publications/reference_guide_2015/fhwahep15035.pdf.

231. Three primary sources guide FHwA’s decisions, activities, policies, and programs relative to environmental justice: (1) Executive Order No. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations); (2) DOT Order No. 5610.2(a); and (3) FHwA Order No. 6640.23A. *Id.* at 1.

232. *Id.*

233. *Id.*

- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.²³⁴

FHwA staff members, SHAs, and other grant recipients are expected to know these principles and engage in practices that will implement them in a nondiscriminatory manner.²³⁵ However, knowing the principles and even applying them does not always result in outcomes that can be viewed as meeting them, as the following two current interstate highway projects in Charleston and Houston demonstrate.

1. Charleston, South Carolina: I-526 Corridor West Project

The I-526 project is a trifaceted highway project in and around Charleston.²³⁶ Led by the South Carolina Department of Transportation (SCDOT), the project includes a nine-mile extension of I-526 in a southerly direction from its current terminus to James Island,²³⁷ a widening of I-526 in an easterly direction from North Charleston to U.S. highway 17,²³⁸ and a widening in a westerly direction that includes a rebuild of the interchange at I-26.²³⁹ While all three facets of the project will have obvious impacts on land use and the people who live nearby, the reconstruction of the I-526/I-26 interchange, part of what is commonly called the I-526 Corridor West project,²⁴⁰ is a major undertaking that has many of the familiar hallmarks of projects in the 1960s that affected communities of color like Harlem Park, Hanford Village, and Rondo.²⁴¹

As with those projects, there is a stated need to expand the roadway and the interchange to relieve traffic conges-

234. *Id.* at 2.

235. *Id.*

236. SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, PROJECTS AT A GLANCE: A LOOK AT I-526 AREA PROJECTS (2019), https://static1.square-space.com/static/5cd33b95dc04940001fa9563/t/5ee8cfea956cdf006008094e/1592315884034/I-526+Projects+at+a+Glance_2019+08+13_Final.pdf.

237. Chloe Johnson, *Public Comments on I-526 Extension Show Project Is Still Controversial*, POST & COURIER (Jan. 17, 2022), https://www.postandcourier.com/environment/public-comments-on-i-526-extension-show-project-is-still-controversial/article_7727ed1a-73ed-11ec-bdb7-2fff5fe08d47.html.

238. SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, *supra* note 236.

239. *Id.*

240. *Id.*

241. See Darryl Fears & John Muyskens, *Black People Are About to Be Swept Aside for a South Carolina Freeway—Again*, PHILA. TRIB. (Sept. 8, 2021), https://www.phillytrib.com/black-people-are-about-to-be-swept-aside-for-a-south-carolina-freeway-/article_2ec70af0-717f-561e-98d7-0c31a9d26fb4.html. Not only will the reconstruction of the interchange cause the noise and general disruption that comes with road building, but it will also result in destroying communities and taking homes. *Id.* For a discussion of similar impacts of road-building projects on Harlem Park, Hanford Village, and Rondo, see *supra* notes 103-57 and accompanying text.

tion, increase safety,²⁴² and grow the local economy.²⁴³ To do so, SCDOT intends to take surrounding properties and move people out of the way to accomplish the expansion.²⁴⁴ As is usually the case with large roadway projects, there are potentially significant water and air pollution impacts.²⁴⁵

For instance, two Charleston-based nonprofits have raised concerns about increased contaminated water runoff from the expanded roadways that would carry higher levels of bacteria from the interstate into nearby waterways.²⁴⁶ Also critical to residents is the potential harm from increases in noxious particulate matter caused by construction and anticipated roadway traffic. Recognizing this harm, SCDOT is required by the final environmental impact statement (FEIS) to “develop a PM 2.5 [fine particulate matter] monitoring program within the impacted environmental justice communities of Ferndale, Highland Terrace, Liberty Park, and Russelldale,” which geographically surround the interchange, and to publish monitoring results in real time on its website.²⁴⁷

Overall, the FEIS signals “disproportionately high and adverse effects” for Ferndale, Highland Terrace, Liberty Park, and Russelldale.²⁴⁸ These neighborhoods are mostly minority communities with minority populations ranging from 59% to 95%.²⁴⁹ They also have high percentages of low-income residents.²⁵⁰ The housing impacts on these communities are particularly adverse. Construction will result

in the taking of 98 housing units that include apartments, single-family houses, and mobile homes.²⁵¹ The relocation of residents that will result from these takings comprises 73% of all the relocations required for the entire I-526 Corridor West project.²⁵²

While the FEIS sets out a number of actions that SCDOT must take to comply with environmental justice principles,²⁵³ the housing and relocation issues loom particularly large for residents.²⁵⁴ To address them, the FEIS commits SCDOT to mitigate the impacts of those relocations by undertaking a series of actions that include, inter alia, working to secure 45 vacant parcels within the four environmental justice communities in order to implement a Single-Family Affordable Replacement Housing Program²⁵⁵; making these affordable housing units available for occupancy before qualified residents are displaced from their existing housing²⁵⁶; partnering with SC Housing to implement a multifamily housing program supported by a minimum \$1.5-million grant, tax credits, and bonding²⁵⁷; a separate grant program for first-time home buyers in the four environmental justice communities²⁵⁸; and, importantly, the implementation of an Acquisition Fairness Program to address community concerns over the fairness of property appraisals.²⁵⁹

This last FEIS commitment is an attempt to meet the concern that the appraisals of those houses in Russelldale, Highland Terrace, Liberty Park, and Ferndale, which will be acquired by SCDOT, will be below actual value.²⁶⁰ Giving credence to this concern is a 2018 Brookings Institute study that concluded that Black-owned homes are appraised at 23% less than comparable white-owned homes.²⁶¹ In dollars, Brookings estimated that across all Black neighborhoods nationwide, owner-occupied homes are undervalued by \$48,000 per home, amounting to \$156 billion in cumulative losses.²⁶² SCDOT’s commitment to a fair appraisal program has not, however, lowered concerns.

242. SCDOT, INTERSTATE 526 LOWCOUNTRY CORRIDOR WEST FINAL ENVIRONMENTAL IMPACT STATEMENT at ROD2 (2022), https://www.526lowcountrycorridor.com/wp-content/uploads/2022/10/i-526_lcc_west_feis-rod_nocoverandsignaturepages_rev.pdf. The final environmental impact statement (FEIS) identifies decreased roadway mobility and increased congestion and lane deficiencies, and describes the existing unsafe configuration of entrance and exit ramps at the interchanges. *Id.*

243. City Paper Editorial Board, *Our View: Infrastructure Economics No Excuse for Racist Impacts*, CHARLESTON CITY PAPER (Sept. 29, 2021), <https://charlestoncitypaper.com/our-view-infrastructure-economics-no-excuse-for-racist-impacts/> (“Infrastructure projects have long been billed as a method of insuring economic prosperity, even as communities of color disproportionately shouldered negative impacts.”). See generally Thomas F. Keane, *The Economic Importance of the National Highway System*, PUB. RDS. MAG., Spring 1996, available at <https://highways.dot.gov/public-roads/spring-1996/economic-importance-national-highway-system>.

244. City Paper Editorial Board, *supra* note 243.

245. The I-526 Corridor West FEIS lists a wide range of precautions it will take to mitigate potential damage to water resources, air quality, and noise. SCDOT, *supra* note 242, at EC-9 to EC-10.

246. Lauren Quinlan & Dylan Leatherwood, *Charleston-Based Nonprofits Speak on Concerns Over I-526 Widening Project*, WCSC (May 7, 2022, 11:29 PM), <https://www.live5news.com/2022/05/07/charleston-based-nonprofits-speak-concerns-over-i-526-widening-project/>.

247. SCDOT, *supra* note 242, at Ch4-76. The FEIS provides a map of the environmental justice communities in relation to the interchange. *Id.* at Ch4-27, fig.4.10b.

248. *Id.* at Ch4-56, tbl.4.7. “Disproportionately high and adverse effects” are “effects that are predominately borne by a minority and/or low-income population, or will be suffered by the minority/low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority/non-low-income population.” *Id.* at Ch4-55.

249. *Id.* at Ch4-43, tbl.4.4. The minority composition of the populations is as follows: Russelldale 84%, Highland Terrace 91%, Liberty Park 59%, Ferndale 95%. *Id.* The FEIS defines “low income” as “a person whose household income is at or below the Department of Health and Human Services poverty guidelines.” *Id.* at Ch4-43.

250. *Id.* The percentage of low-income residents out of the total populations of these communities is as follows: Russelldale 34%, Highland Terrace 36%, Liberty Park 38%, Ferndale 53%. *Id.*

251. *Id.* at Ch4-67. See also tbl.4.6 at Ch4-51.

252. *Id.* at Ch4-55.

253. *Id.* at EC-1 to EC-18. See also Rickey Ciapha Dennis Jr., *SCDOT Seeks Public Input on Mitigations for \$2.9B I-526 Corridor West Widening Plan*, POST & COURIER (Aug. 25, 2022), https://www.postandcourier.com/news/scdot-seeks-public-input-on-mitigations-for-2-9b-i-526-corridor-west-widening-plan/article_212709fa-23d3-11ed-a1b9-1fababc45816.html.

254. Fears & Muyskens, *supra* note 241.

255. SCDOT, *supra* note 242, at EC-6.

256. *Id.*

257. *Id.*

258. *Id.* at EC-7.

259. *Id.* at EC-8.

260. Fears & Muyskens, *supra* note 241.

261. ANDRE PERRY ET AL., METROPOLITAN POLICY PROGRAM AT BROOKINGS & GALLUP, THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY 3 (2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf. According to Brookings and Gallup, while lower appraisals result in part from higher crime rates, longer commute times, and less access to better schools, these factors account for only 50% of the undervaluation. The other 50% is the result of anti-Black bias. *Id.*

262. *Id.*

As one long-time Highland Terrace resident put it:

What I'm hoping, since they say they're going through with this highway, is that they would give us a fair price and consider the fact that we didn't ask to move and we cannot buy a house and build a house for the price of what we built this for.²⁶³

Time will tell if SCDOT meets this and the other FEIS commitments to the residents of the four affected environmental justice neighborhoods. What is clear now, however, following on the original construction of I-26 and I-526 in the 1960s and 1970s, is that for the second time in their history,²⁶⁴ despite the leverage of federal agencies to promote environmental justice goals, the minority residents of Russelldale, Highland Terrace, Liberty Park, and Ferndale are being forced to get out of the way of a major highway project and start over somewhere else.

2. Houston, Texas: I-45 North Houston Highway Improvement Project

A highway project conceived more than 20 years ago,²⁶⁵ the North Houston Highway Improvement Project (NHHIP), has become one of today's most controversial highway projects.²⁶⁶ Proponents of the project emphasize the need to reduce traffic congestion, improve highway safety, increase roadway capacity, and enhance overall highway mobility and efficiency.²⁶⁷ Proponents also cite the benefits of new bicycle paths and pedestrian walkways, high-occupancy vehicle (HOV) lanes, improved emergency evacuation options, and reduced roadway flooding that are part of the project.²⁶⁸

Opponents of NHHIP²⁶⁹ argue that the project will have "disparate negative impacts on racial minorities" in violation of Title VI.²⁷⁰ Community groups including Stop TxDOT I-45, Air Alliance Houston, and the National Black Environmental Justice Network in their opposition liken NHHIP to the original construction of I-45 in 1967, which cut through Black and low-income communities leaving behind a trail of economic and environmental harms.²⁷¹ History appears to be repeating itself, for a similarly destructive result is unmistakably being forecast by the Texas Department of Transportation's (TxDOT's) NHHIP FEIS.²⁷² The FEIS demonstrates that the project will have a highly disproportionate negative impact on low-income communities and communities of color.²⁷³

To illustrate, the overall project is divided into three geographical segments.²⁷⁴ The profile of Segment 1 shows that 87.0% of the affected population is composed of minorities with the largest minority being Hispanic (65.6%) followed by Black (17.6%).²⁷⁵ Segment 2 shows a similar distribution where 83.5% of the population is minority, of which 69.6% is Hispanic.²⁷⁶ Segment 3 includes a minority population of 73.6% with 42.3% being Black and 24.7% being Hispanic.²⁷⁷ Along the three segments, NHHIP calls for a staggering displacement of more than 1,000 residential units, nearly 350 businesses, five places of worship, two schools, medical care and non-profit facilities, a drug rehabilitation center, and bus stops that serve these minority communities.²⁷⁸

263. Fears & Muyskens, *supra* note 241.

264. SCDOT, *supra* note 242, at 4-53 ("The original construction of I-26 impacted 25 residences and one mobile home in Highland Terrace, and 22 residences, three stores, and one church in Liberty Park. The original construction of I-526 impacted 17 residences, 12 likely residences, two apartments, two mobile homes, one motel, two restaurants, and nine stores.").

265. FINAL ENVIRONMENTAL IMPACT STATEMENT, *supra* note 228, at 1-1.

266. See Oliver Milman, "It's Just More and More Lanes": The Texan Revolt Against Giant New Highways, *GUARDIAN* (Apr. 29, 2022, 5:00 AM), <https://www.theguardian.com/us-news/2022/apr/29/texas-highway-expansions-project-displacements-protests>. See also Lucio Vasquez, *Controversial I-45 Expansion Project Set to Move Forward—For Now*, *HOUS. PUB. MEDIA* (Aug. 31, 2021, 5:46 PM), <https://www.houstonpublicmedia.org/articles/news/transportation/2021/08/31/407437/controversial-i-45-expansion-project-set-to-move-forward-for-now/> (describing how NHHIP would "increase pollution, worsen traffic congestion, and displace more than 1,000 homes located in underserved communities").

267. FINAL ENVIRONMENTAL IMPACT STATEMENT, *supra* note 228. See also Adam Zuvanich, *TxDOT Keeps Controversial I-45 Expansion on Long-Term Slate of Projects*, *HOUS. PUB. MEDIA* (Aug. 31, 2022, 5:15 PM), <https://www.houstonpublicmedia.org/articles/news/transportation/2022/08/31/432075/txdot-keeps-controversial-i-45-expansion-on-long-term-slate-of-projects/> (describing how additional support for the project came from the Greater Houston Partnership (GHP), an organization representing close to 1,000 businesses in the greater Houston area; GHP stated publicly that "it supports the transportation commission's decision to keep the I-45 project . . . to improve traffic flow, hurricane evacuation routes and stormwater drainage while accommodating high-occupancy, electric and self-driving vehicles").

268. FINAL ENVIRONMENTAL IMPACT STATEMENT, *supra* note 228.

269. Anna Kasradze, *Civil Rights Complaints, Lawsuit Put I-45 Highway Expansion on Hold*, *SIERRA CLUB: LONE STAR CHAPTER* (Mar. 23, 2021), <https://www.sierraclub.org/texas/houston/blog/2021/03/civil-rights-complaints-lawsuit-put-i-45-highway-expansion-hold>. Opposition groups, many of which include organizations serving Houston's low-income and minority populations, include Search Homeless Services (assisting homeless individuals to find employment opportunities); AVANCE-Houston training center (offering educational and skills development services); Loaves and Fishes (providing assistance in essential areas of medical care, food, and shelter); and similar kinds of services aimed at low-income and minority populations. *Id.*

270. *Id.*

271. See Letter from Bakeyah S. Nelson, Executive Director, Air Alliance Houston, to James M. Bass, Executive Director, Texas Department of Transportation (Jan. 18, 2021), <https://img1.wsimg.com/blobby/go/86a926a3-fdac-43e2-a0fb-1a8e433f3a8f/downloads/2021-01-18%20Air%20Alliance%20Civil%20Rights%20Complaint.pdf?ver=1615938545212> (responding to TxDOT's release of its FEIS for NHHIP). Among other items mentioned in the letter, Nelson stated:

TxDOT is a recipient of federal financial assistance and submits annual Nondiscrimination Statements and Assurances required by 49 C.F.R. §21.7, to U.S. Department of Transportation, as a condition of its eligibility for federal financial assistance. The NHHIP as proposed in the FEIS will have a severe and disparate impact on generational Black and Hispanic/Latinx neighborhoods and Black and Hispanic/Latinx individuals. TxDOT's own analysis documents these disparities and the negative impacts NHHIP will have on these communities, as well as persons with disabilities, the elderly, and children, and low-income families and communities.

Id. at 2.

272. FINAL ENVIRONMENTAL IMPACT STATEMENT, *supra* note 228, at 3-5 & 3-6.

273. *Id.*

274. *Id.* Executive Summary.

275. *Id.* at 3-5.

276. *Id.*

277. *Id.* at 3-5 & 3-6.

278. The planned displacement of residential units, places of worship, schools, health care facilities, and so forth predominately serve communities of color

While overwhelming, these numbers alone fail to convey adequately the racial impacts of the environmental injustices outlined in the FEIS.²⁷⁹ Not surprisingly, the loud and anxious outcry from the minority and low-income communities affected by the planned displacements was sufficiently thunderous to catch the attention of officials at FHwA.²⁸⁰ In a letter to TxDOT on March 8, 2021, FHwA stated that TxDOT must pause further work on NHHIP to allow FHwA inspectors time to evaluate possible violations of Title VI and NEPA.²⁸¹ Around the time of FHwA's letter, Harris County filed a NEPA lawsuit against TxDOT in an effort to halt the project, arguing, *inter alia*, that "the NHHIP would displace families in more than 1,000 homes, displace businesses and reduce parkland [and that FHwA] can't allow TxDOT to cut corners and fail to live up to their duty to consider environmental impact on this project."²⁸²

Subsequent to Harris County filing its lawsuit, as part of FHwA's investigation, Stephanie Pollack, deputy FHwA administrator, visited Houston in December 2021, and met with Rep. Shelia Jackson Lee (D-Tex.). At a joint press conference, Pollack praised the community for pushing to have their concerns heard.²⁸³ Inspired by the fervor and passion displayed by community members, Pollack added: "This is my job. I get paid to do this, you do not. You are doing this because of how you feel about your community, your family, your schools, your city, your counties."²⁸⁴ Harris County followed Pollack's visit

by placing its lawsuit on hold to afford time for FHwA to complete its investigation.²⁸⁵

Despite FHwA's support for and encouragement of community members, the Texas Transportation Commission (TTC) voted in August 2022 to proceed with the project.²⁸⁶ Additionally, in a move that might be viewed as a thinly veiled threat of political backlash against FHwA for causing any unnecessary delay to the project, TTC's chair gave FHwA a deadline of November 30, 2022, to complete its review of alleged environmental harms and civil rights violations.²⁸⁷ The implication seemed to be that if FHwA missed the deadline, TTC would cancel entirely I-45 NHHIP, letting the blame for cancellation fall on FHwA. Given this seeming threat to cancel and FHwA's record of rarely intervening in highway-related projects based on civil rights grounds, TTC seems to be betting that its threat will deter any further FHwA action with the result that I-45 NHHIP would proceed as planned.²⁸⁸

IV. Conclusion: Where Do We Go From Here?

What is clear from the Charleston I-526 and Houston I-45 experiences is that environmental injustices remain an issue in highway projects. In fact, this reality will be compounded as the entire interstate infrastructure moves closer to the end of its life expectancy,²⁸⁹ and other cities confront issues similar to those that face Charleston and Houston.²⁹⁰ In the midst of it all, however, many see the opportunity to address the environmental injustices of the past caused by the initial construction of the interstate system.²⁹¹ Suggestions for redress range from what might be characterized as immediate infrastructure modifications to a longer-term conceptual rethinking of process.

and low-income communities. For example, the planned displacement of the Texas Department of Health and Human Services will affect low-income communities. The planned displacement of medical facilities will primarily affect low-income and high-minority communities. The planned displacement of residential units will adversely impact minority and low-income individuals and families, and the likely relocation of bus stops will be felt primarily by high-minority communities. *Id.* at 3-12 & 3-13.

279. Caroline Love, *The Federal Highway Administration Visited Houston Amid a Civil Rights Investigation Into the State's Controversial I-45 Expansion Project*, HOUS. PUB. MEDIA (Dec. 7, 2021, 11:29 AM), <https://www.houstonpublicmedia.org/articles/news/transportation/2021/12/07/414882/federal-highway-administration-investigating-i-45-project-for-federal-civil-rights-violations/> (displacement of historically Black communities reverberated loudly enough to be heard in the nation's capital, triggering an investigation by FHwA).

280. *Id.*

281. Paul DeBenedetto, *Federal Highway Administration Asks Texas to Halt I-45 Expansion, as Harris County Sues TxDOT*, HOUS. PUB. MEDIA (Mar. 11, 2021, 4:06 PM), <https://www.houstonpublicmedia.org/articles/news/transportation/2021/03/11/393410/federal-highway-administration-asks-texas-to-halt-i-45-expansion-as-harris-county-sues-txdot/>. As reported in FHwA's March 2021 letter to TxDOT, FHwA received three letters expressing concerns about possible Title VI violations and related environmental justice concerns. The letters were from Rep. Sheila Jackson Lee (D-Tex.), Air Alliance Houston, and the community organization Texas Housers. *Id.* FHwA's investigation also includes possible violations of NEPA by NHHIP. Love, *supra* note 279.

282. DeBenedetto, *supra* note 281. Harris County Judge Lina Hidalgo at a press conference said that, like the failed widening of the Katy Freeway that increased commute times, this expansion would not solve traffic problems. She added, "For years, our community's been fighting this. And as leaders in our community, we are determined to use any lever of government we can to change the trajectory of this project and advocate for the future of this county." *Id.*

283. Love, *supra* note 279.

284. *Id.*

285. *Id.* Separately, Texas State Representative Christina Morales stated that "the proposed I-45 project is repeating the history of highway expansion displacing Black and brown communities." *Id.*

286. Vasquez, *supra* note 266.

287. *Id.*

288. A review of FHwA's Case Decisions file reveals limited Title VI intervention activity: 4 letters of finding (2015-2017); 4 voluntary agreements (2015-2021); and 27 case dismissals (2017-2020). DOT FHwA, *Civil Rights—Case Decisions*, https://www.fhwa.dot.gov/civilrights/programs/title_vi/case_decisions.cfm (last modified Apr. 11, 2019). Reinforcing this observation is a quote by Theodore Shaw, director of the Center for Civil Rights at the University of North Carolina: "Federal transportation department monitoring and intervention on civil rights grounds is rare [and] the courts have not done much about it." Millman, *supra* note 266.

289. The National Cooperative Highway Research Program estimates that the average life cycle of bridges (which are a key element of the interstate system in urban areas) is 50-60 years. TRANSPORTATION RESEARCH BOARD OF THE NATIONAL ACADEMIES, ESTIMATING LIFE EXPECTANCIES OF HIGHWAY ASSETS—VOLUME 1: GUIDEBOOK 68 (2012), https://nacto.org/docs/usdg/nchrp_rpt_713_thompson.pdf.

290. For instance, I-81 in Syracuse, New York, which displaced more than 1,300 families when originally built in the early days of interstate construction, is failing and needs a remedy. See Jay A. Fernandez, *Divided Highways*, ACLU MAG., Spring 2022, at 10, 12, available at https://www.aclu.org/sites/default/files/field_document/aclu_spring22_singles-compressed.pdf.

291. *E.g.*, *A Policy Proposal to Undo the Damage of "Urban Renewal"*, TRANSP. FOR AM. (Dec. 7, 2020), <https://t4america.org/2020/12/07/four-recommendations-to-undo-the-damage-of-urban-renewal/>.

Suggestions for immediate modifications often include outright removal of existing interstates and other urban highways that run through environmental justice neighborhoods, or reconfiguring them so as to lessen their negative impacts. Examples of such modifications can be found in Portland, Oregon, which removed Harbor Drive and replaced it with a park²⁹²; Greenville, South Carolina, which replaced a four-lane highway viaduct with a pedestrian bridge and community green space²⁹³; and Boston, which simply (or not so simply) buried I-93 through downtown.²⁹⁴

Currently, Minnesota is faced with taking action to address the aging portion of I-94 that runs through Rondo.²⁹⁵ Some Rondo residents are advocating for a land bridge over the depressed interstate to reconnect the northern and southern parts of their neighborhood, which I-94 split when it was built.²⁹⁶ The bridge, running several city blocks, would cover I-94 with green space, trees, and walking tracks.²⁹⁷ Others in Rondo are calling for the total removal of I-94 from their neighborhood.²⁹⁸

While such short-term infrastructure changes may mitigate some of the egregious failings of the original interstate designs, some argue that longer-term resolutions require a conceptual rethinking of the process used by states and builders to actualize urban roadways.²⁹⁹ In this regard, Transportation for America (T4A) has made several recommendations.³⁰⁰ For instance, T4A recommends the creation by the federal government of a competitive grant program to solicit long-term strategies for how best to deconstruct or redesign infrastructure going forward.³⁰¹ It also recommends the creation of land trusts to assure that the neighborhoods around interstates receive the benefits of their removal or modification and the updating of travel modeling tools to evaluate accurately traffic patterns and community impacts so that infrastructure projects address a range of community needs beyond just vehicular traffic flow.³⁰²

Others have suggested even greater systemic change as part of a conceptual rethinking.³⁰³ For example, to assure that when agencies plan projects that affect a community's environmental well-being, the public process should be community-driven rather than agency-driven.³⁰⁴ In the current agency-driven scenario, the state transportation agency takes the lead in identifying the project, soliciting input from affected residents through notices and updates, conducting meetings with set agendas, and selecting the community members to sit on advisory committees.³⁰⁵

Advocates for reform argue that this standard pro forma approach of soliciting input is unlikely to affect the final agency decision.³⁰⁶ Alternatively, the community-driven approach would revise the roles of the agency and the community so that social organizations and individual residents, working with and on behalf of disadvantaged members of the community, would join state agencies as equal partners to set project goals, approve demand models, and measure outcomes.³⁰⁷ This community-driven approach could be furthered if states created "community-based transportation boards," with policymaking authority over the regional transportation authority's budgetary, planning, and operational functions.³⁰⁸

While the failings of the interstate planners of the 1950s and 1960s continue to haunt communities like Harlem Park, Charleston, and Houston, and while the calls for significant and even fundamental reform are justified and necessary, it is fair to recognize that the federal government has attempted over time to respond to the calls of the EJM.³⁰⁹ As shown, the passage of NEPA and the application of Title VI to combat racial injustices in infrastructure planning and construction have required SHAs to become more accountable for the effects of their activities on environmental justice communities. Nonetheless, to enhance justice for communities of color as our aging interstate infrastructure is assessed and handled requires a public that understands the magnitude of the challenge, and a government that continues to evaluate and recreate processes that move the nation closer to achieving the goals of true environmental justice.

292. See Joseph Rose, *Ghost of Harbor Drive*, OREGONIAN (July 9, 2009, 11:45 AM), https://www.oregonlive.com/commuting/2009/07/ghost_of_harbor_drive.html.

293. See Eric Connor, *Liberty Bridge, Falls Park Transformed Downtown*, GREENVILLE NEWS (Oct. 6, 2014, 4:50 PM), <https://www.greenvilleonline.com/story/news/local/2014/10/04/liberty-bridge-falls-park-transformed-downtown/16751269/>.

294. See Massachusetts Department of Transportation, *The Big Dig: Project Background*, <https://www.mass.gov/info-details/the-big-dig-project-background> (last visited Jan. 23, 2023).

295. See H. Jiahong Pan, *MnDOT to Rebuild I-94 Through Twin Cities—Or Not*, MINN. SPOKESMAN RECORDER (Sept. 22, 2022), <https://spokesman-recorder.com/2022/09/22/mndot-to-rebuild-i-94-through-twin-cities-or-not/>.

296. See Nina Moini, *As State Considers Repairs to I-94, Rondo Residents Look for Reconnection*, MPR NEWS (Mar. 16, 2022, 4:00 AM), <https://www.mprnews.org/story/2022/03/16/as-state-considers-repairs-to-i94-rondo-residents-look-for-reconnection>.

297. *Id.*

298. *Id.*

299. See, e.g., Laura Pulido et al., *State Regulation and Environmental Justice: The Need for Strategy Reassessment*, 27 CAPITALISM NATURE SOCIALISM 12 (2016), available at <https://doi.org/10.1080/10455752.2016.1146782> (arguing that environmental justice activists' reliance on state regulation has inhibited their ability to achieve their goals).

300. *A Policy Proposal to Undo the Damage of "Urban Renewal," supra note 291.*

301. *Id.*

302. *Id.*

303. See Alex Karner et al., *From Transportation Equity to Transportation Justice: Within, Through, and Beyond the State*, 35 J. PLAN. LITERATURE 440 (2020), available at <https://doi.org/10.1177/0885412220927691> (summarizing a wide range of opinion and proposals regarding changes to the current roadway planning process that would promote environmental justice objectives for minority and low-income neighborhoods). See also DAVID AIMEN & ANNE MORRIS, PRACTICAL APPROACHES FOR INVOLVING TRADITIONALLY UNDERSERVED POPULATIONS IN TRANSPORTATION DECISIONMAKING (2012) (providing governmental organizations with practical tools for connecting with populations underrepresented in transportation); Pulido et al., *supra* note 299.

304. Karner et al., *supra* note 303, at 442-44.

305. *Id.* at 445, 447.

306. *Id.* at 440.

307. *Id.* at 442.

308. *Id.* at 443.

309. For an overview of FHWA's incorporation of environmental justice into its decisionmaking processes, see Brenda C. Kragh et al., *Environmental Justice: The New Normal for Transportation*, PUB. RDS. MAG., Mar./Apr. 2016, available at <https://highways.dot.gov/public-roads/marchapril-2016/environmental-justice-new-normal-transportation>.