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The Costs and Consequences of Suburban Sprawl: The Case of Metro Atlanta

Robert Bullard
Glenn Johnson
Angel Torres

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Symposium on Urban Sprawl:
Local and Comparative Perspectives on
Managing Atlanta’s Growth

THE COSTS AND CONSEQUENCES OF
SUBURBAN SPRAWL: THE CASE OF
METRO ATLANTA

Robert D. Bullard†
Glenn S. Johnson††
Angel O. Torres†††

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† Ware Professor of Sociology and Director of the Environmental Justice Resource
  Center, Clark Atlanta University. Dr. Bullard is the author of ten books. His most recent
  book, co-edited with Glenn S. Johnson and Angel O. Torres, is entitled Sprawl City:
  Race, Politics, and Planning in Atlanta (Island Press, 2000).
†† Assistant Professor of Sociology and Research Associate in the Environmental
  Justice Resource Center, Clark Atlanta University. Ph.D., University of Tennessee,
  Knoxville.
††† GIS Training Specialist, Environmental Justice Resource Center, Clark Atlanta
  University. M.C.P., Georgia Institute of Technology.
INTRODUCTION

Sprawl is a fact of life in urban America. Ask ten people to define sprawl, and you will probably get ten different definitions. Sprawl is random, unplanned growth characterized by inadequate accessibility to essential land uses such as housing, jobs, and public services like schools, hospitals, and mass transit. Sprawl-driven development has "literally sucked the population of jobs, investment capital, and tax base from the urban core."

TYPICALLY, STRIP MALLS, LOW-DENSITY RESIDENTIAL HOUSING, AND OTHER ISOLATED, SCATTERED DEVELOPMENTS LEAPFROG OVER THE LANDSCAPE WITHOUT ANY RHYME OR REASON. HOWEVER, TO ACCESS THESE NEW SUBURBAN DEVELOPMENTS, ONE MUST HAVE ACCESS TO AN AUTOMOBILE BECAUSE PUBLIC TRANSIT IS USUALLY INADEQUATE OR NONEXISTENT. THE RESULT IS A CAR-DEPENDENT CITIZENRY. URBAN SPRAWL IS CONSUMING LAND FASTER THAN THE POPULATION IS GROWING IN MANY CITIES ACROSS THE COUNTRY. FOR THE PAST FIVE DECADES, SUBURBAN SPRAWL HAS DictATED THE DOMINANT GROWTH PATTERN FOR NEARLY ALL METROPOLITAN AREAS IN THE UNITED STATES.²

Historically, the decentralization of employment centers had a major role in shaping metropolitan growth patterns. Government policies buttressed, and tax dollars subsidized, this decentralization with new roads and highways at the expense of public transit.³ Tax subsidies made it possible for new suburban employment centers to dominate outside of cities and to extract middle-income workers and homeowners from the urban core.⁴

Sprawl need not accompany metropolitan growth. An increasing number of Americans are challenging the wisdom of sprawl-driven development with its attendant environmental and public health threats. Planners are now questioning the costs and benefits of allowing central city core areas to deteriorate, while pushing urban and suburban pollution farther into rural areas, farmlands, and “greenfields.”⁵ In the end, all Americans pay for sprawl with increased health and safety risks, worsening air and water pollution, urban decline, disappearing farmland and wildlife habitat, racial polarization, city and

² See Myron Orfield, Metropolitics: A Regional Agenda for Community and Stability 2 (1997).
³ See Robert D. Bullard & Glenn S. Johnson, Just Transportation, in Just Transportation: Dismantling Race and Class Barriers to Mobility 7-21 (Robert D. Bullard & Glenn S. Johnson eds., 1997); see also Conservation Law Found., City Routes, City Rights: Building Livable Neighborhoods and Environmental Justice by Fixing Transportation 5 (1998); James J. MacKenzie et al., The Going Rate: What It Really Costs to Drive, at vii (1992); Mark E. Hanson, Automobile Subsidies and Land Use, 58 J.avigate PLANNING 60, 60-61 (1992).
suburban disparities in public education, lack of affordable housing, and the erosion of community.⁶

I. SPRAWL AND RESIDENTIAL HOUSING PATTERNS

All communities are not created equal. Apartheid-type employment, housing, and development policies have resulted in limited mobility, reduced neighborhood options, decreased residential choices, and diminished job opportunities for African Americans and other people of color. American cities continue to be racially separate and unequal. Residential apartheid is the dominant housing pattern for most African Americans—the most racially segregated group in America.⁷ Nowhere is this separate society contrast more apparent than in the nation's large metropolitan areas.

Residential apartheid did not result from some impersonal super-structural process. It is part of the national heritage.⁸ Some three decades ago, the National Advisory Commission on Civil Disorders implicated white racism by creating and maintaining the black ghetto and the drift toward two "separate and unequal societies."⁹ These same conditions exist today.¹⁰ Black communities are kept isolated and contained from the larger white society as a result of well-defined institutional practices, private actions, and government policies.¹¹

The drift toward racially segmented metropolitan areas is most pronounced in public education. Author Myron Orfield contends that "schools are the first victims and the most powerful perpetrator of metropolitan polarization."¹² Most urban

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¹² Orfield, supra note 2, at 3.
public schools are more segregated today than they were in the 1970s. Nationally, over a third of black children attend schools with ninety to one hundred percent minority enrollment.\textsuperscript{13} Urban and suburban schools are not created equal. Huge disparities exist between affluent suburban schools and their poor inner-city counterparts. These disparities are generated by the archaic school financing method: property taxes. Our current taxing system encourages speculation, creates artificial land scarcity, rewards infrastructure abandonment, fosters scattered development, and promotes urban sprawl.\textsuperscript{14}

Most of the literature on race and cities focuses on the underclass and the underlying theoretical underpinning akin to a type of market-centered economics.\textsuperscript{15} Racial issues are thus reduced to economic issues. But race must be treated as an independent variable because the modern American city has its roots in racism.\textsuperscript{16} Racism can be seen in its basic ecological form. For example, racial segregation in housing, as well as schools and jobs, is fundamental to the geography of the modern American city.\textsuperscript{17} Spatial mobility and social mobility are interrelated. Sociologists Douglas Massey and Nancy Denton contend that “segregation constitutes a powerful impediment to black socioeconomic progress.”\textsuperscript{18} Racial segregation results from continuing discrimination.\textsuperscript{19} As a result, newly arrived immigrants to the United States are more readily accepted in white neighborhoods than African Americans who have been here since the 1600s.\textsuperscript{20}

Housing discrimination is still rampant in America.\textsuperscript{21} Fair housing testing is the most widely used tool for gathering

\begin{itemize}
  \item \textsuperscript{13} See James S. Kien, \textit{The End of Integration}, \textit{TTLA}, Apr. 29, 1983, at 38.
  \item \textsuperscript{14} See JAMES HOWARD KUNSTLER, \textit{HOME FROM NOWHERE: RECLAIMING OUR EVERYDAY WORLD FOR THE TWENTY-FIRST CENTURY} 27 (1988).
  \item \textsuperscript{16} See generally Robert D. Bullard \& Joe R. Feagin, \textit{Racism and the City, In URBAN LIFE IN TRANSITION} 55-78 (M. Gottliener \& Chris G. Pickvance eds., 1991).
  \item \textsuperscript{17} See \textit{id.}
  \item \textsuperscript{18} MASSEY \& DENTON, supra note 7, at 14.
  \item \textsuperscript{20} See HACKER, supra note 10, at 35.
  \item \textsuperscript{21} See Feagin, supra note 18, at 79-91.
\end{itemize}
evidence of housing discrimination. Test audits conducted in two dozen large metropolitan areas reveal that black testers seeking to rent apartments face discrimination by landlords 53% of the time, while black testers seeking to buy a home face discriminatory treatment by real estate persons 59% of the time.

According to a survey conducted by Research Atlanta, 90% of whites surveyed in metropolitan Atlanta expressed a willingness to move into an area with one black household. As the number of black households increased to eight, however, the percentage of whites willing to move into such a neighborhood decreased to 26%. Many whites see nothing wrong with these attitudes, and most deny their existence. Moreover, most whites in the country do not believe that housing discrimination exists.

Many real estate and insurance agents respond to the fears and biases of whites. The result is a discrimination “tax.” Syracuse University Professor John Yinger describes the consequences of this “tax” on black and Latino households:

The base-case results reveal that when an event, such as a new child or an increase in income, induces a Black or Hispanic household to search for a house or to buy, it must pay, on average, a discrimination “tax” of roughly $3,700. A cost of this magnitude implies that the total cost of current discrimination amounts to about $3 billion per year for all Black households, owners and renters, and to almost $2 billion per year for Hispanic households.

Discrimination lowers the nation’s gross national product by almost two percent a year. A large share of this loss is a result

27. Id. at 97.
28. See Walter L. Updegrave et al., Race and Money: Our Investigation Documents How Racial Discrimination Is Eroding the Black Middle Class and Costing All of Us
of housing discrimination. Sociologists Melvin Oliver and Thomas Shapiro estimate that the current generation of blacks has lost $82 billion due to discrimination. Of this total, $58 billion was lost as a result of lack of housing appreciation, $10.5 billion from paying higher mortgage rates, and $13.5 billion from the denial of mortgages. Real estate agents, brokers, and mortgage lenders cater to the racist attitudes of some of their clients and, in effect, cultivate racially divided neighborhoods, cities, suburbs, and metropolitan regions. Housing discrimination has changed over the past three decades. No overt signs are posted indicating “white only” or “blacks need not apply.” Nevertheless, discrimination is undeniable. In 1999, former Senator Charles Mathias and housing consultant Marion Morris summarized this point:

Discrimination has become more subtle—a fine art, some would say. The terms and conditions of the mortgage one applies for may be a point or two higher, with a greater downpayment requirement than if one were White. The security deposit on a rental may be for [two] months, where everyone else’s is for [one] month. Available apartments may only be at the back of the building with a view of the parking lot, rather than the front view of the nature preserve.

Ownership of property, land, and business is still a central part of the American dream of success—a dream that has eluded millions of Americans. Discrimination denies a substantial segment of the African American community a basic form of wealth accumulation and investment through home ownership. Only about 59% of the nation’s middle-class African Americans own their homes, compared with 74% of whites. Furthermore, about 50 to 90 billion dollars a year in tax

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Bullard et al.: The Costs and Consequences of Suburban Sprawl: The Case of Metro

30. See id.
31. Charles Mathias, Jr., & Marion Morris, Fair Housing Legislation: Not an Easy Row To Hoe, 4 Cityscape: J. Pol'y Dev. & Res. 21, 29 (1999).
33. See Bullard, supra note 7, at 447.
subsidies underwrite suburban homeowners. This middle-class entitlement is by far "the broadest and most expensive welfare program in the [United States]."

Clearly, housing and sprawl development policies flow from production forces and are often subsidized by state actors. Numerous examples abound in which state actors target regions for infrastructure improvements and amenities, such as water irrigation systems, ship channels, road and bridge projects, mass transit systems, and even shopping malls. For example, the Georgia Department of Transportation committed $46 million of taxpayer money to build Gwinnett County's Mall of Georgia, a giant mall located in Atlanta's northern suburbs.

On the other hand, state actors have done a miserable job of thwarting economic disinvestment taking place in the nation's urban centers. The absence of a coherent urban agenda in the 1990s allowed cities to become essentially "invisible" locales. The quality of life for millions of urban Americans is worse today than it was during the turbulent 1960s. A 1999 USA Today survey of experts singled out "wealth disparity" as the biggest issue in cities' development for the next fifty years. The growing economic disparity between racial and ethnic groups directly correlates to institutional barriers in housing, lending, employment, education, health, and transportation.

II. THE SPRAWL POSTER CHILD: METROPOLITAN ATLANTA

Geographically, Atlanta is basically flat and landlocked, with no major bodies of water or mountains to constrain outward growth. The city has come a long way since its humble beginning as a Native American village named Standing Peachtree, located at the confluence of Peachtree Creek and the Chattahoochee River. During the Civil War, Union forces

34. See Douglas Kelbaugh, CommonPlace: Toward Neighborhood and Regional Design 30-31 (1997).
35. Id. at 31.
burned Atlanta to the ground. By the 1880s, however, city officials successfully promoted Atlanta as the “Gateway to the South,” and by 1895, Atlanta celebrated its rebirth as the “Capital of the New South.”

A century later, Atlanta and its suburban neighbors are still capitalizing on the region’s “growth machine” imagery. Atlanta has become the “Mecca” of the southeast. In fact, metropolitan Atlanta has emerged as the commercial and financial center of the southeastern United States. The region is a center for federal operations, communications, and transportation. From its Atlanta home base, CNN is beamed around the world. Atlanta’s Hartsfield International Airport is the busiest airport in the nation.

Metropolitan Atlanta has experienced constant growth since the 1900s. The region grew in population at an annual rate of 2.9% since 1950. The 1960s were considered the boom years during which Atlanta established its regional dominance. By the 1970s and 1980s, the city became increasingly black, but during this same period, Atlanta experienced a steady decrease in its share of the metropolitan population. Metropolitan Atlanta continued to grow at a breakneck pace in the 1990s with an average of 69,100 people moving into the area each year, compared to 61,788 in the 1980s. The ten-county metropolitan area (Cherokee, Cobb, Douglas, Clayton, Fayette, Fulton, Henry, Gwinnett, DeKalb, and Rockdale) currently has a population of over three million persons.

The boundaries of the Atlanta metropolitan region doubled in the 1990s. The region measured 65 miles from north to south in 1990; today, Atlanta’s economic dominance reaches well beyond...
110 miles from north to south. Much of the region's growth in the 1990s was characterized by suburban sprawl and economic disinvestment in Atlanta's central city. In 1998, the Sierra Club rated Atlanta as the "most sprawl threatened" large city (over one million people) in the nation. Other sprawl-threatened big cities that made the Sierra Club's "top ten" list include St. Louis, MO, Washington, D.C., Cincinnati, OH, Kansas City, MO, Denver, CO, Seattle, WA, Minneapolis-St. Paul, MN, Fort Lauderdale, FL, and Chicago, IL. The criteria for the ranking included such factors as population trends and land use, traffic congestion, and open space.

Between 1990 and 1997, the metropolitan Atlanta region added 475,600 persons. Population growth was slow in the city of Atlanta, increasing by only 2647, or less than 1% of the total population gain. On the other hand, the northern portion of the region gained 325,939 residents, or 68.5% of the region's population growth; the southern part of the region gained 147,014 persons, or 30.9% of the population gain between 1990 and 1997.

Although the Atlanta Regional Commission (ARC) predicted a population slowdown in the late 1990s, the large counties (i.e., Gwinnett, Cobb, and Fulton) are still adding large numbers of people. Gwinnett County added over 20,300 people (6.6% increase) to its 499,200 population during the 1997-98 period; Cobb County added 15,100 persons (2.7% increase) to its 550,000 population; and Fulton County added 13,200 individuals (1.7% increase) to its 773,000 population during the 1997-98 period.

47. See David Goldberg, Regional Growing Pains, Atlanta J. & Const., Mar. 10, 1997, at 5E.
49. See id.
50. See id.
51. Atlanta Regional Comm'n, supra note 41, at 43 tbl.3.
52. See id. at 44 chart 1, 46 fig.4.
53. See id.
54. See id. at 9-10.
55. See id. at 45 tbl.4.
The Atlanta regional economy boomed in the 1990s. It gained both people and jobs as newcomers flocked to fill newly-created positions. Between 1990 and 1997, over 348,000 jobs were added to the region. However, most new jobs and newcomers settled outside the city. The city captured about 40% of the region’s jobs in 1980, but Atlanta’s share slipped to 28.3% in 1990 and 19.08% in 1997.

Atlanta’s northern suburbs reaped the lion’s share of the new jobs. From 1990 to 1997, Atlanta’s northern suburbs added 272,915 jobs, and this accounted for 78.4% of all jobs added in the region. Another 70,582 jobs (20.3%) were added in the southern part of the region. Only 4,503 jobs were added in the region’s central core of Atlanta, representing only 1.3% of all jobs created during the height of the region’s booming economy.

The flight of jobs and white middle-income families to the suburbs contributed to and exacerbated both economic and racial polarization in housing and schools. Central Atlanta has become increasingly black and poor. The region’s middle-income suburbs that encircle the city are largely white.

A. Uneven Growth and Unequal Housing

New housing subdivisions mushroomed in Atlanta’s suburbs, forests, and rural farmland. Eight of every ten new units built during the 1990-98 period were single family units. The ten-county Atlanta metropolitan region added 228,573 housing units between 1990 and 1998, a whopping 21.7% increase. The bulk of the housing was concentrated in northern Atlanta’s suburbs, north of Interstate 285. One of every four housing units built in

56. See id. at 68 fig.7.
57. See id. at 69 tbl.15.
58. See id. at 68 fig.7.
59. See id.
60. See id.
61. While suburbanization largely signified the “out-migration” of whites, some middle-income and poor black Atlantans also made the move to the suburbs. Middle-income blacks discovered expanded home ownership opportunities in some Atlanta suburbs, while low-income blacks resided in suburban rental units in the post-1993 Olympic apartment glut period.
62. See ATLANTA REGIONAL COMM’N, supra note 41, at 55 tbl.11.
63. See id. at 54 tbl.10.
the region in the 1990s was in Gwinnett County. To
together, Gwinnett, Fulton, and Cobb accounted for nearly two-thirds of the
region’s net increase in housing during the 1990s. The
housing inventory in north Fulton County more than doubled

However, much of the housing boom passed over the city of
Atlanta. The city added only 3,552 new housing units between
1990 and 1998 (1.9% increase), compared to 58,995 units in
Gwinnett County (42.9% increase), 43,216 units in Fulton County
outside Atlanta (30.5% increase), and 40,917 units in Cobb
County (21.5% increase). These growth trends point to clear
disparities between the mostly black city of Atlanta and the
mostly white suburbs.

Black expansion into Atlanta’s suburbs quite often reflected
the segregated housing pattern typical of central city
neighborhoods. Segregated middle-income black suburban
neighborhoods became a common residential pattern. For
example, south DeKalb rivals Prince George County, Maryland,
as one of the most affluent African American communities in
the nation. Nevertheless, many obstacles still keep many blacks,
rich and poor, out of the newer suburban developments,
including low income, housing discrimination, restrictive zoning
practices, inadequate public transportation, and fear.

During a seven-year period from 1991 to 1997, the Atlanta
Metro Fair Housing Agency received a total of 1355 housing
discrimination complaints. The vast majority (94.5%) of the
complaints involved rental property. The greatest complaint
activity occurred in the years preceding the 1996 Atlanta
Olympic Games. For example, 285 housing discrimination
complaints were registered with Metro Fair Housing in 1995,
accounting for 21% of all complaints filed during the seven-year
period. Complaint activity leveled off in 1996 and 1997, perhaps
due to the overbuilding and apartment “glut” spawned in the
post-Olympic years.

Consistent with national trends, Black Atlantans face the
stiffest barriers in housing of all racial and ethnic groups.

64. See id.
65. See id.
66. See id.
67. See id.
Seventy percent of the complaints filed came from blacks, with whites only accounting for only 23% of the complaints. Hispanics filed nearly 5% of the complaints, while Asians and American Indians accounted for less than 1% each. Although a complaint does not necessarily translate into a proven case of discrimination, complaint activity is a good indicator of trends and general practices in the housing market.

The 1355 complaints fell into four distinct categories: (1) refusal to sell, lease, or rent; (2) terms and conditions; (3) differential treatment; and (4) dispute in pricing and financing. The most frequently voiced allegation was refusal to sell, lease, or rent (34.1%), followed closely by differential treatment (33.1%). Nearly one fourth (23.5%) of the complaints involved terms and conditions. Less than ten percent (9.1%) of the complaints involved a dispute in pricing and financing.

In addition, complaint activity varied by geographic location. Most complaint properties were located north of Interstate 20 (70.6%) and outside of the city of Atlanta (76.2%). A closer examination of the fair housing data shows that the complaints were clustered in ten “problem” zip codes. These ten zip codes account for 30% of all complaints filed during the 1991-97 period. The two zip codes that registered the most complaints were both located in Cobb County. DeKalb County and Fulton County accounted for seven of the top ten problem zip codes. Finally, Gwinnett County had one zip code to make the top ten list.

B. The Price of Redlining

Studies over the past three decades have clearly documented the relationship between redlining and disinvestment decisions and neighborhood decline. Redlining exists when a mortgage application, typifying a particular type of applicant possessing certain property and loan characteristics, is more likely to be turned down in a minority neighborhood as opposed to a white neighborhood. Redlining “hits the poor where they live.”

70. Mark Feldstein, Hitting the Poor Where They Live: Insurance Redlining, NATION, Apr. 4, 1994, at 450.
accelerates the flight of banks, food stores, restaurants, and shopping centers from inner-city neighborhoods.\textsuperscript{71}

Many inner-city home and business owners are hurt by redlining practices of banks, savings and loans establishments, mortgage firms, and insurance companies.\textsuperscript{72} The federal government recognized this problem when it passed the Community Reinvestment Act (CRA)\textsuperscript{73} in 1977, a law designed to combat discriminatory practices in poor and minority neighborhoods. The CRA requires banks and thrifts to lend within the areas where their depositors live.\textsuperscript{74} The CRA states that “regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.”\textsuperscript{75} Nonetheless, race is an important factor in urban credit and insurance markets.\textsuperscript{76} The insurance industry, like its housing industry counterpart, “has long utilized race as a factor in appraising and underwriting property.”\textsuperscript{77} As a result, many inner-city neighborhoods are left with check-cashing stations, pawn shops, storefront grocery stores, liquor stores, and fast-food operations—all clothed in wire mesh and bullet-proof glass.\textsuperscript{78}

Many white insurance companies routinely redline black neighborhoods. A 1997 Urban Institute insurance study found widespread racial barriers for people of color.\textsuperscript{79} The study used black, Latino, and white testers who presented themselves as homeowners seeking insurance.\textsuperscript{80} The black and Latino testers were discriminated against 53\% of the time in such areas as

\textsuperscript{71} See Gregory Squires, \textit{Forgoing a Tradition of Redlining for a Future of Reinvestment}, 15 BUS. J. (Milwaukee), July 24, 1998, at 50.

\textsuperscript{72} See \textit{id.} at 4.


\textsuperscript{74} See \textit{id.}

\textsuperscript{75} Id.


\textsuperscript{78} See BULLARD ET AL., supra note 7, at 3.


\textsuperscript{80} See \textit{id.}
coverage and premium rates.81 Four major insurance companies, American Family, Allstate, State Farm, and Nationwide, launched initiatives to end the longstanding tradition of redlining. These companies fall in the minority, however, as many companies change their practices only when they are caught.

A 1996 Atlanta Journal and Constitution survey discovered stark disparities in property insurance rates between black and white Atlanta neighborhoods.82 The redlining issue prompted newspaper reporter Shelley Emling to ask the question: “Insurance: Is it still a white man’s game?”83 The answer was as follows: “Insurance companies create pricing zones that are mostly white or mostly black, and homeowners in the black zones are paying top dollar.”84

Insurance redlining is not isolated to an individual insurance agent. The practice is widespread among big and small companies alike. The largest insurance companies in Georgia (i.e., State Farm, Allstate, Cotton States, Cincinnati Insurance, and USAA) routinely charge consumers 40% to 90% more to insure homes in Atlanta’s predominately black neighborhoods than for similar or identical houses in mostly white suburbs.85 The premium disparity holds true whether blacks live in the low-income neighborhood of Vine City or the wealthy Cascade neighborhood that houses Atlanta’s black elite. As the racial composition of a neighborhood becomes mostly black, the price of homeowner insurance rises dramatically.86

Using the state rates for a hypothetical $125,000 brick house, with a $250 deductible, the Atlanta Journal and Constitution study concluded that “State Farm and Allstate, Georgia’s largest insurers, tend to charge their highest rates in zip codes that also contain the highest proportion of black residents.”87 The premium differentials become apparent when one compares the

81. See id.
84. Emling, supra note 82.
85. See id.
86. See id.
87. Id.
hypothetical $125,000 brick house in different locations in metropolitan Atlanta. Shelley Emling writes: "To insure that house with State Farm in black sections of the city of Atlanta would cost about $612 a year; in Buckhead, the rate falls to $459. In Cobb, Gwinnett and north Fulton, all more than 80 percent white, the price falls to $363 a year." These premium differentials between black and white neighborhoods cannot be explained solely by loss data, i.e., theft, vandalism, fire, and larceny crimes. In reality, the highest loss ratios are not in black areas. The loss ratio in mostly black Atlanta, Zone 2 (Central Atlanta), is 79%, yet the average insured there pays a whopping $705 in annual premiums. On the other hand, the loss ratio in mostly white Atlanta, Zone 18 (North Fulton, Northwest DeKalb), is 92%, yet the homeowners pay $349 in annual premiums—less than half of what is paid by residents in Zone 2. As a result, it can be inferred that the mostly white suburban communities with the highest loss ratios are not paying their fair share. These premium disparities further illustrate the benefits suburban whites derive from discrimination.

88. Id.
89. A loss ratio is the sum an insurance company pays in claims versus the amount it collects in premiums. For example, a loss ratio of 68% denotes that a company paid out 68¢ for each $1 it collected. In general, a company that has a loss ratio of 65% realizes a healthy profit. See id.
90. See Table 1.
91. See id.
### TABLE 1. Insurance Premiums of Allstate and State Farm Zones and Race

<table>
<thead>
<tr>
<th>Insurance Zone</th>
<th>Average Premium</th>
<th>Black Population</th>
<th>1990 Total Premiums</th>
<th>Loss Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allstate Zone 2</td>
<td>$705</td>
<td>81%</td>
<td>$2,509,250</td>
<td>79%</td>
</tr>
<tr>
<td>Central Atlanta</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allstate Zone 6</td>
<td>$518</td>
<td>29%</td>
<td>$2,819,330</td>
<td>76%</td>
</tr>
<tr>
<td>N.E. Atlanta, Decatur</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allstate Zone 17</td>
<td>$573</td>
<td>38%</td>
<td>$1,025,407</td>
<td>112%</td>
</tr>
<tr>
<td>Western DeKalb</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allstate Zone 18</td>
<td>$349</td>
<td>9%</td>
<td>$12,165,975</td>
<td>92%</td>
</tr>
<tr>
<td>N. Fulton, N.W. DeKalb</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Farm Zone 7</td>
<td>$612</td>
<td>62%</td>
<td>N/A</td>
<td>63%</td>
</tr>
<tr>
<td>Central Atlanta</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Farm Zone 35</td>
<td>$453</td>
<td>11%</td>
<td>N/A</td>
<td>92%</td>
</tr>
<tr>
<td>N. Fulton, N.W. DeKalb</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Farm Zone 37</td>
<td>$363</td>
<td>10%</td>
<td>N/A</td>
<td>73%</td>
</tr>
<tr>
<td>Gwinnett, N. Fulton, N. DeKalb, Central and E. Cobb, portion of Cherokee</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. This table examines selected metro Atlanta zones covered by State Farm and Allstate, the leading homeowners' insurance companies in Georgia. Source: Shelley Eting, The Price of Protection—Insurance and Race: Black Areas in City Pay Steep Rates, ATLANTA J. & CONST., June 30, 1996, at A16.

2. Average premium: Shows what a homeowner would pay on a $125,000 brick home given these conditions: The area has a fire protection rating of 1 to 3 (based on a scale of 1-10, with lower being better; the city of Atlanta, for example, has a 2 rating, and suburban areas tend to have higher ratings). The Policy is “HO-3,” standard in the industry and carries a $250 deductible.

3. Total premiums (for Allstate only): From a 1993 filing by Allstate. These amounts show how much business the company wrote in a given zone in 1990.

4. Loss ratio: A loss ratio of 79% means the company paid out 79¢ in claims for each $1 it collected in premiums. State Farm data is from 1991; Allstate data is from 1990.
III. ENVIRONMENTAL COSTS OF SPRAWL

Traditionally, air quality issues were handled primarily by state and local governments. However, state and local governments did a poor job, thus prompting the federal government to establish national clean air standards. As a result, Congress enacted the Clean Air Act (CAA) in 1970 and mandated that the United States Environmental Protection Agency (EPA) enforce this law. Congress subsequently amended the CAA in 1977 and 1990 to form the current federal program. The CAA was a response to states unwillingness to protect air quality. In fact, many states used their lax enforcement of environmental laws and regulations to lure business and economic development.

Despite the progress achieved by the CAA, African Americans and Latinos continue to be more likely to live in areas with poorer air quality than whites. For example, National Argonne Laboratory researchers discovered that 437 of the 3109 counties and independent cities failed to meet at least one of the EPA ambient air quality standards. Specifically, 57% of whites, 65% of African Americans, and 80% of Hispanics live in 437 counties with substandard air quality. Nationwide, 33% of whites, 50% of African Americans, and 60% of Hispanics live in the 136 counties in which two or more air pollutants exceed federal standards. Similar patterns were discovered for the 29 counties designated as nonattainment areas for three or more pollutants. Again, 12% of whites, 20% of African Americans, and 31% of Hispanics reside in these nonattainment areas.

The Atlanta metropolitan region is a nonattainment area for ozone, one of the six criteria pollutants listed under the National Ambient Air Quality Standards (NAAQS). Among the costs

95. See id.
96. See id. at 16-17.
97. See id. at 17.
98. See id.
99. See RESEARCH ATLANTA, INC., THE COSTS OF NONATTAINMENT: ATLANTA'S OZONE
associated with nonattainment are cuts in future federal funding assistance (i.e., federal transportation funds given to states conforming with requirements of Clean Air Act) and growing public health concerns (i.e., rising asthma and other respiratory illnesses). In the Atlanta nonattainment area, motor vehicles are the primary source of both volatile organic compounds (VOCs) and nitrogen oxides (NOx), the components of ozone.

A. Asthma: A Case Study of Sprawl-Related Health Concerns

Asthma is an emerging epidemic in the United States. The annual age-adjusted death rate from asthma increased by 40% between 1982 and 1991, from 1.34 to 1.88 per 100,000 population, with the highest rates reported consistently among blacks fifteen to twenty-four years of age. In 1993, among persons aged fifteen to twenty-four years, blacks were six times more likely than whites to die from asthma. Thus, poverty and minority status are important risk factors for asthma mortality.

Just as children are at special risk from ozone, they also represent a considerable share of the asthma burden. Asthma is the most common chronic disease of childhood, affecting almost five million children under eighteen years of age. Although the overall annual age-adjusted hospital discharge rate for asthma among children under fifteen decreased slightly from 184 to 179 per 100,000 between 1982 and 1992, the decrease was slower than that among other childhood diseases, resulting in

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100. See id.
101. See id. at 20.
104. See id. at 351.
106. See Centers for Disease Control and Prevention, supra note 103, at 350.
a 70% increase in the proportion of hospital admissions related to asthma during the 1980s.\textsuperscript{107} Rates of asthma prevalence, hospitalization, and mortality are highest for inner-city children.\textsuperscript{108} In the United States, asthma is the fourth leading cause of disability among children who are seventeen years of age or younger.\textsuperscript{109}

Despite the insufficiency of information available to the public health community regarding air pollution-related health problems, it is conceded that persons suffering from asthma are particularly sensitive to the effects of carbon monoxide, sulfur dioxide, particulate matter, ozone, and nitrogen oxides.\textsuperscript{110} Ground-level ozone may exacerbate health problems such as asthma, nasal congestion, throat irritation, respiratory tract inflammation, reduced resistance to infection, changes in cell function, loss of lung elasticity, chest pains, lung scarring, formation of lesions within the lungs, and premature aging of lung tissues.\textsuperscript{111}

Although air pollution is not thought to cause asthma and related respiratory illnesses, it is a major trigger of the disease. A 1999 study implemented by the Clean the Air Task Force, a coalition of environmental and consumer groups, linked asthma and respiratory problems and smog.\textsuperscript{112} Elevated smog levels are associated with rising respiratory-related hospital admissions.

\begin{itemize}
  \item \textsuperscript{107} See NAT'L CTR. FOR HEALTH STAT., HEALTH, UNITED STATES, 1994, tbls. 83, 84, 86, 87 (DHHS Pub. No. (PHS) 95-1232, 1995).
  \item \textsuperscript{108} See Centers for Disease Control and Prevention, supra note 102, at 953-54; H.P. Mak et al., Prevalence of Asthma and Health Service Utilization of Asthmatic Children in an Inner City, 70 J. ALLERGY & CLINICAL IMMUNOLOGY 367, 367-72 (1982).
  \item \textsuperscript{110} See MANN, supra note 105, at 11.
  \item \textsuperscript{111} See generally AMERICAN LUNG ASS'N, OUT OF BREATH: POPULATIONS-AT-RISK TO ALTERNATIVE OZONE LEVELS (1995); OFFICE OF AIR QUALITY PLANNING & STANDARDS, EPA, REVIEW OF NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE: ASSESSMENT OF SCIENTIFIC AND TECHNICAL INFORMATION (Staff Paper, 1998); Haluk Ozkaynak et al., Ambient Ozone Exposure and Emergency Hospital Admissions and Emergency Room Visits for Respiratory Problems in Thirteen U.S. Cities, in AMERICAN LUNG ASS'N, BREATLESS: AIR POLLUTION AND HOSPITAL ADMISSIONS/Emergency Room Visits in 13 Cities (1990).
  \item \textsuperscript{112} See ABT ASSOCIATES INC. & CLEAN THE AIR, OUT OF BREATH: HEALTH EFFECTS FROM OZONE IN THE EASTERN UNITED STATES (1999), available at http://www.cleanair.net/resources/outofbreath.htm.
\end{itemize}
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and emergency room visits in cities across the nation.\textsuperscript{113} For example, metropolitan Atlanta experienced sixty-nine days of unhealthy air in the summer of 1999.\textsuperscript{114}

A 1996 report from the Centers for Disease Control and Prevention (CDC) shows hospitalization and death rates from asthma increasing for persons twenty-four years of age or younger in the United States.\textsuperscript{115} The greatest increases occurred among African Americans.\textsuperscript{116} Thus, African Americans are four to six times more likely than whites to die from asthma.\textsuperscript{117} The hospitalization rate for African Americans is 3.4 times the rate experienced by whites.\textsuperscript{118}

\begin{footnotesize}
\begin{enumerate}
\item See Table 2.
\item See Lucy Soto, \textit{Take It from Kids: Bad Air Hurts}, \textit{Atlanta J. & Const.}, Oct. 6, 1999, at B1, B4.
\item See Centers for Disease Control and Prevention, \textit{supra} note 103, at 350.
\item See \textit{id}. at 350-51.
\item See \textit{id}. at 351.
\end{enumerate}
\end{footnotesize}
### TABLE 2. Ozone-Related Adverse Effects by City (April-October 1997)

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>Respiratory Hospital Admissions</th>
<th>Respiratory Emergency Room Visits</th>
<th>Asthma Attacks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta</td>
<td>580</td>
<td>1,740</td>
<td>100,000</td>
</tr>
<tr>
<td>Baltimore</td>
<td>630</td>
<td>1,890</td>
<td>86,000</td>
</tr>
<tr>
<td>Chicago</td>
<td>1,500</td>
<td>4,500</td>
<td>200,000</td>
</tr>
<tr>
<td>Cincinnati</td>
<td>390</td>
<td>1,170</td>
<td>57,000</td>
</tr>
<tr>
<td>Cleveland</td>
<td>760</td>
<td>2,280</td>
<td>89,000</td>
</tr>
<tr>
<td>Detroit</td>
<td>930</td>
<td>2,790</td>
<td>100,000</td>
</tr>
<tr>
<td>Hartford</td>
<td>660</td>
<td>1,980</td>
<td>75,000</td>
</tr>
<tr>
<td>Miami/Ft. Lauderdale</td>
<td>1,200</td>
<td>3,600</td>
<td>110,000</td>
</tr>
<tr>
<td>Minneapolis/St. Paul</td>
<td>470</td>
<td>1,410</td>
<td>66,000</td>
</tr>
<tr>
<td>New York</td>
<td>4,100</td>
<td>12,300</td>
<td>520,000</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>1,600</td>
<td>4,800</td>
<td>200,000</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>730</td>
<td>2,190</td>
<td>79,000</td>
</tr>
<tr>
<td>St. Louis</td>
<td>610</td>
<td>1,830</td>
<td>100,000</td>
</tr>
<tr>
<td>Tampa/St. Petersburg</td>
<td>780</td>
<td>2,340</td>
<td>68,000</td>
</tr>
<tr>
<td>Washington</td>
<td>800</td>
<td>2,400</td>
<td>130,000</td>
</tr>
</tbody>
</table>

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Atlanta area residents are paying for sprawl with their hard-earned dollars as well as with their health. A 1994 CDC-sponsored study showed that pediatric emergency department visits at Atlanta’s Grady Memorial Hospital increased by one third following peak ozone levels.119 The study also found that the asthma rate among African American children, particularly children from lower income families, is 26% higher than the asthma rate among whites.120 Since children with asthma in Atlanta might not have visited the emergency department for their care, the true prevalence of asthma in the community is likely to be higher.121 It is also important to note that a disproportionately large share of the childhood asthma cases (90.1%) in the Atlanta region occur in Fulton and DeKalb counties—two counties with the largest share of people of color.

Given the heavy dependence on the automobile and the limited role of public transit in the Atlanta metropolitan area, it is doubtful that emission control technologies adopted under the 1990 Clean Air Act amendments are adequate to ensure that transportation fairly contributes to attainment of healthful air quality in the region.

B. Toxic Neighborhoods

Toxic waste sites and other polluting facilities are not randomly scattered across the urban landscape. These facilities are often located in communities that contain high percentages of residents who are poor, elderly, young, or people of color.122 For example, nearly 83% of Atlanta’s African American population, compared to 60% of whites, live in areas which contain an uncontrolled hazardous waste site.

119. See Mary C. White et al., Exacerbations of Childhood Asthma and Ozone Pollution in Atlanta, 65 ENVTL. RES. 56, 62 (1994).
120. See id. at 56, 66.
121. Four counties in the Atlanta metropolitan region (DeKalb, Douglas, Fulton, and Rockdale) exceed national ozone standards. The incidence of childhood asthma by county reveals the following: Fulton (11,234), DeKalb (9,509), Douglas (1272), and Rockdale (989).
According to the EPA's toxic release inventory data, African Americans and other people of color are disproportionately represented in the Atlanta region's "dirtiest" zip codes. While people of color comprise 29.8% of the population in the five largest counties contiguous to Atlanta (Fulton, DeKalb, Cobb, Gwinnett, and Clayton counties), they represent the majority of residents in five of the ten "dirtiest" zip codes in these large counties.

Atlanta metro residents living in predominantly white areas are exposed to an average of 38.2 pounds of toxic releases per person annually, compared to an average of 208.6 pounds of toxic releases per person in majority minority locales. The "dirtiest" area (i.e., zip code 30354) in the five-county area is located in Fulton County and receives over 1.55 million pounds of toxic releases annually. Over 69% of the population of this area is composed of people of color. Another area which is predominantly black (98.2%), zip code 30336, is subjected to 873.9 pounds of toxic releases per person annually.

The EPA Office of Prevention, Pesticides, and Toxic Substances maintains the Toxic Release Inventory (TRI) database that contains information submitted from the industries it regulates. The TRI information released by EPA in 1996 indicated that 12,345,950 pounds of toxic chemicals were released within the forty zip codes which are partially or completely encompassed within the five-county study area. Fulton County ranked the highest with 4,689,876 pounds in twelve zip codes, covering an area of 343.67 square miles. Over sixty percent (60.54%) of the residents within those zip codes belong to a minority, and over twenty percent (20.41%) are poor. DeKalb County recorded the second highest total releases with 4,141,726 pounds, with an average of 43.33%

124. See id.
125. One limitation of TRI data is that it is self-reported by the industry. Similarly, many toxic agents are not regulated by the EPA and, therefore, are not included in this data. The companies that meet the above specifications must submit a report to the EPA.
127. See id.
128. See Table 3.
minority residents and 9.24% poor residents in fourteen zip codes, covering an area of 221.42 square miles.\textsuperscript{123} Clayton County ranked third with 1,528,675 pounds, averaging 20.22% minority and 9.36% poor in three zip codes, covering an area of 74.49 square miles.\textsuperscript{123} Cobb County ranked fourth with 1,019,464 pounds, averaging 14.09% minority and 6.73% poor, covering an area of 126.1 square miles.\textsuperscript{131} Gwinnett County ranked last with 290,930 pounds, averaging 10.85% minority and 5.46% poor, and covering an area of 261.83 square miles.\textsuperscript{132}

**TABLE 3. Total Toxic Releases in the Five-County Area—Atlanta, GA**

<table>
<thead>
<tr>
<th>County</th>
<th>Population</th>
<th>Total Releases (lbs)</th>
<th>Lbs/Person</th>
<th>% Minority</th>
<th>% Below Poverty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulton</td>
<td>648,951</td>
<td>4,689,876</td>
<td>7.23</td>
<td>60.5%</td>
<td>20.4%</td>
</tr>
<tr>
<td>DeKalb</td>
<td>545,837</td>
<td>4,141,726</td>
<td>7.59</td>
<td>43.3%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Clayton</td>
<td>182,052</td>
<td>1,528,675</td>
<td>8.40</td>
<td>20.2%</td>
<td>9.4%</td>
</tr>
<tr>
<td>Cobb</td>
<td>447,745</td>
<td>1,019,464</td>
<td>2.28</td>
<td>14.1%</td>
<td>6.7%</td>
</tr>
<tr>
<td>Gwinnett</td>
<td>352,910</td>
<td>290,930</td>
<td>0.82</td>
<td>10.9%</td>
<td>5.5%</td>
</tr>
<tr>
<td>Totals</td>
<td>2,177,495</td>
<td>11,670,671</td>
<td>5.36</td>
<td>29.8%</td>
<td>10.2%</td>
</tr>
</tbody>
</table>

Areas, percent minority, and poor population were calculated using zip code boundaries, so disparities will be present. Sources: BUREAU OF THE CENSUS, U.S. DEP’T OF COLL, 1990 CENSUS OF POPULATION; ENVTL. PROT. AGENCY, 1996 TOXICS RELEASE INVENTORY.

Four zip codes recorded releases larger than one million pounds of toxic chemicals, two of which were found in Fulton County.\textsuperscript{133} The largest recorded releases and most polluted zip code in the five-county area is zip code 30354, in Fulton County with 1,555,730 pounds.\textsuperscript{134} Zip code 30354 is composed of 69.12% minority residents and 26.9% poor residents.\textsuperscript{135} The residents of

\textsuperscript{123} See id.
\textsuperscript{124} See id.
\textsuperscript{125} See id.
\textsuperscript{126} See id.
\textsuperscript{127} See ENVTL. PROT. AGENCY, supra note 126.
\textsuperscript{128} See id.
\textsuperscript{129} See BUREAU OF THE CENSUS, U.S. DEP’T OF COLL, 1880 CENSUS OF POPULATION.
this zip code are faced with 95.1 pounds of toxic chemicals per person, the second highest toxic output of the top ten “dirtiest” zip codes. The second largest recorded releases are found in zip code 30058 in DeKalb County with 1,504,596 pounds of toxic chemicals released for a total of 39.85 pounds per person.\(^\text{136}\) Zip code 30058 is composed of 38% minority residents.\(^\text{137}\) The third largest release was found in zip code 30260, located in Clayton County with 1,195,422 pounds of toxic chemicals and 58.08 pounds per resident.\(^\text{138}\) Zip code 30260 is 17.1% minority residents and 8.29% poor residents.\(^\text{139}\) The other zip code with releases over one million (1,051,314) is located in Fulton County: zip code 30336 is comprised of 98.17% minority residents and 59.02% poor residents.\(^\text{140}\) Releases within this area average 873.91 pounds per person.

Overall, the zip codes with the highest percent minority population also had the highest total outputs of pollution per resident. The five-county area has a total of 150 TRI facilities.\(^\text{141}\) Over two-fifths (42.7%) of the TRI facilities were located in zip codes where people of color made up the majority of residents.\(^\text{142}\) More important, this large concentration of polluting facilities is situated in an area that covers only 13.6% of the total land area for the five counties.\(^\text{143}\) On the contrary, polluting facilities in mostly white areas are more dispersed. For example, one-fifth of the TRI facilities were located in zip codes that had less than a 10% minority population.\(^\text{144}\) These facilities were spread out over an area that covers 58.7% of the total land area in the five counties.\(^\text{145}\)

\(^{136}\) See EnvTL Prot. Agency, supra note 126.
\(^{137}\) See Bureau of the Census, supra note 135.
\(^{138}\) See EnvTL Prot. Agency, supra note 126.
\(^{139}\) See Bureau of the Census, supra note 135.
\(^{140}\) See Bureau of the Census, supra note 135; EnvTL Prot. Agency, supra note 126.
\(^{141}\) See EnvTL Prot. Agency, supra note 126.
\(^{142}\) See Bureau of the Census, supra note 135; EnvTL Prot. Agency, supra note 126.
\(^{143}\) See EnvTL Prot. Agency, supra note 126.
\(^{144}\) See Bureau of the Census, supra note 135; EnvTL Prot. Agency, supra note 126.
\(^{145}\) See EnvTL Prot. Agency, supra note 126.
IV. TRANSPORTATION EQUITY

Americans spend more money on transportation than any other household expense, aside from housing. For example, the average American household spends one fifth of its income—or about $6000 a year—for each car that it owns and operates. In addition, Americans spend over two billion hours a year in their cars. It is estimated that over $53 billion a year is attributed to traffic gridlock. Further, congested roads cost metropolitan Atlantas an estimated $2.1 billion in lost time and gasoline. A report by David Schrank and Tim Lomax, Texas A&M University researchers, suggests that Atlanta's highway lane miles grew by an average of 5.8% between 1992 and 1996. This compares with 0.08% in San Diego, 1.3% in Phoenix, 1.9% in Miami, 2.4% in Dallas, and 2.6% in Houston.

According to figures published in the Federal Highway Administration report *Highway Statistics*, total vehicle miles traveled (VMT) in the United States increased by 59% from 1980 to 1995. During the past seventy-five years, automobile production and highway construction multiplied, while urban mass transit systems dismantled or fell into disrepair. The American automobile culture is spurred on by massive government investments in roads (3,000,000 miles) and interstate highways (45,000 miles). Just 20% of gasoline tax revenue is allotted to mass transit, while 80% is credited toward highways. The end result is more pollution, congestion, wasted energy, residential segregation, and sprawl.

Federal tax dollars help build and subsidize the roads, freeways, and public transit systems in our nation. In fact, two

146. See BOLLIER, supra note 6, at 8.
147. See id.
148. See id.
151. See id.
152. See Schmidt, supra note 4, at 275.
primary governmental objectives are building highways to and from the suburbs and subsidizing the construction of suburban homes.\textsuperscript{154} However, many of these transportation activities resulted in the unintended consequences of dividing, isolating, disrupting, and imposing different economic, environmental, and health burdens on some communities. Commenting on the segregating tendencies of modern development trends, longtime civil rights activist and Georgia Congressman, John Lewis commented that:

Even in a city like Atlanta, Georgia—a vibrant city with a modern rail and public transit system—thousands of people have been left out and left behind because of discrimination. Like most other major American cities, Atlanta's urban center is worlds apart from its suburbs. The gulf between rich and poor, minorities and whites, the “haves” and “have-nots” continues to widen.\textsuperscript{155}

Some communities accrue benefits from transportation development projects, while others bear a disproportionate burden and pay the costs via diminished quality of health. Generally, benefits are more dispersed, while costs or burdens are more localized. For example, having a seven-lane freeway next door may not be a benefit to someone who does not even own a car. Low-income communities are severely impacted by road construction and other transportation projects due to the incidence of tailpipe pollutants. Thus, suburban-serving freeways have significant negative impacts on inner-city neighborhoods, while offering little benefit in return.\textsuperscript{156}

Transportation decision making—whether at the federal, regional, state, or local level—often mirrors the power arrangements of the dominant society and its institutions. Some transportation policies distribute the costs in a regressive manner while providing disproportionate benefits for individuals who lay at the upper end of the education and

\textsuperscript{154} See CONSERVATION LAW FOUND., supra note 3, at 18.

\textsuperscript{155} John Lewis, Foreword to JUST TRANSPORTATION: DISMANTLING RACE AND CLASS BARRIERS TO MOBILITY, supra note 3, at xi-xii.

\textsuperscript{156} See id.; Goldstein & Weinstein, supra note 118, at 332-45; Mak et al., supra note 108, at 387-72; Schwartz et al., supra note 118, at 555-62; see also JUST TRANSPORTATION: DISMANTLING RACE AND CLASS BARRIERS TO MOBILITY, supra note 3, at 173-77 (epilogue).
income scale. All transportation modes are not created equal. Federal transportation policies, taxing structure, and funding schemes have contributed to the inequity between the various transportation modes (e.g., private automobile, rail, buses, and air). Most state departments of transportation (DOTs) have become de facto road building programs that support the asphalt and construction industry. On the other hand, funding for efficient, clean, regional mass transportation systems has been spotty at best.

For more than a century, people of color have struggled to end transportation discrimination, linking unequal treatment on buses and trains with violation of constitutionally guaranteed civil rights. History has revealed that the stakes are high. For example, in Plessy v. Ferguson,\textsuperscript{157} the U.S. Supreme Court upheld Louisiana’s segregated “white” and “colored” seating on railroad cars, ushering in the infamous “separate but equal” doctrine. Until it was overturned by the 1955 Supreme Court decision of Brown v. Board of Education of Topeka,\textsuperscript{158} Plessy not only codified apartheid on transportation facilities but also served as the legal basis for racial segregation in education.

Todd Litman, a researcher with the Canadian-based Victoria Transport Policy Institute, contends that transportation is about opportunity and equity.\textsuperscript{159} Moreover, how transportation is defined and measured can often determine how equity is evaluated. Litman delineates three general types of transportation equity: (1) horizontal equity—this focuses on fairness of cost and benefit allocation between individuals and groups who are considered comparable in wealth and ability; (2) vertical equity with regard to income and social class—this refers to allocation of costs between income and social classes; and (3) vertical equity with regard to mobility need and ability—this concentrates on how well an individual’s transportation needs are met compared with others in their community.\textsuperscript{160}

\textsuperscript{157} 183 U.S. 537 (1896).
\textsuperscript{158} 349 U.S. 294 (1955).
\textsuperscript{160} See id.
Transportation equity is neither a new concept nor a new goal. It has long been a goal of the modern civil rights movement. In recent years, social justice advocates reintroduced transportation equity onto the political radar screens. The issues are couched in social and economic justice contexts. For example, many poor people and people of color, who are concentrated in central cities, are demanding better transportation that will take them to the job-rich suburbs.\footnote{See Eric Mann, A New Vision for Urban Transportation: The Bus Riders Union Makes History at the Intersection of Mass Transit, Civil Rights, and the Environment 1-3 (1996).} It would be ideal if jobs were closer to the inner-city residents’ homes; however, few urban core neighborhoods have experienced an economic revitalization that can rival the current job markets found in the suburbs.

Transportation equity concerns extend to disparate outcomes in planning, operation and maintenance, and infrastructure development. Given that transportation is a key component in addressing poverty, unemployment, equal opportunity goals, and in ensuring equal access to education, employment, and other public services, transportation equity is concerned with factors that may ameliorate or exacerbate inequities. Similarly, environmental justice focuses on measures to prevent or correct disparities in benefits and costs.

For the purposes of this discussion, disparate transportation outcomes can be subsumed under three broad categories of inequity: procedural, geographic, and social.\footnote{For an in-depth discussion of equity, see Bullard & Johnson, supra note 3, at 1-6.} Procedural inequity addresses the question of whether the rules apply equally to everyone. It examines the process by which transportation decisions may or may not be carried out in a uniform, fair, and consistent manner with involvement of diverse public stakeholders. Geographic inequity addresses the positive and negative geographical and spacial distributive impacts of transportation decisions.\footnote{For example, the distributive impacts of transportation decisions on rural communities may be compared to the impacts on urban or central city communities.} Some communities are physically located on the “wrong side of the tracks” and thus receive substandard services. Environmental justice concerns revolve around the extent that transportation systems address outcomes (i.e., diversity and quality of services, resources and
investments, facilities and infrastructure, and access to primary employment centers) that disproportionately favor one geographic area or spatial location over another. Social inequity focuses on the distribution of transportation benefits and burdens across population groups. Generally, transportation amenities (benefits) accrue to the wealthier and more educated segment of society, while transportation burdens fall disproportionately on individuals at the lower end of the socioeconomic spectrum. Intergenerational equity issues are also subsumed under this category. For example, the impacts and consequences of some transportation decisions may reach into several generations. Such negative impacts include: transportation infrastructures that physically isolate communities; inequitable distribution of environmental "nuisances," such as maintenance and refueling facilities (air quality) and airports (noise); and a lack of sufficient mitigation measures to correct inequitable distribution of negative impacts, such as noise or displacement of homes, parks, and cultural landmarks. Furthermore, inequities may be present in the following areas: diversity of modal choices available to access key economic activity and employment centers; location of transit headways and age and condition of the transit fleet; availability and condition of facilities and services at transit stations, such as information kiosks, seating, cleanliness, and restrooms; condition of the roadways that service lower-income and minority communities; and major transportation investment projects and community economic development "spillover" effects.

The air quality repercussions of transportation are especially significant to low-income persons who are more likely to live in urban areas with reduced air quality than affluent individuals. Clean, energy efficient public transportation could afford millions of Americans who live in polluted cities a healthier environment and possibly prolong their lives.

Transportation is basic to many other quality of life indicators such as health, education, employment, economic development, access to municipal services, residential mobility, and environmental quality. The continued residential segregation of people of color away from emerging suburban job centers (where public transit is inadequate or nonexistent) may signal
a new urban crisis and a new form of "residential apartheid." Inequities result when transportation decision making involving transportation investments, enhancements, and financial resources provides advantages for some communities, while at the same time harming other communities.

Researchers at the University of Iowa point to the limited material available to those seeking to determine environmental justice effects of transportation investments. To remedy this situation, the authors call for increased research in the following areas: development of improved baseline assessments that estimate current levels of inaccessibility and adverse impacts; improved mobility assessment methods; air pollution and noise models that are more capable of micro-scale (neighborhood analysis); more effective methods of reaching affected populations and gauging neighborhood-level priorities regarding elements needing preservation or enhancement; better predictive approaches for estimating trip geography and travel desires of low-income populations and minority populations in specific situations; location analysis of public and private facilities that take into account protected populations' abilities to conduct their daily activities; and improved techniques for communicating probable impact, positive and negative, of contemplated transportation system changes.

A. Confronting Transportation Racism

Racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intentionally or unintentionally) individuals, groups, or communities based on race or color. Racism combines with public policies and industry practices to provide benefits for whites while shifting costs to people of color. Racism is reinforced by government, legal,
economic, political, and military institutions. In a sense, “every state institution is a racial institution.”

Historically, transportation development policies did not emerge in a race and class neutral society. Institutional racism influences local land use, allocation of funds, enforcement of environmental regulations, facility siting, and the location where people of color live, work, and play. Discrimination is a manifestation of institutional racism and results in very different experiences for whites and people of color. Transportation racism is not an invention of radical social justice activists. Instead, it is just as real as the racism that is found in the housing industry, educational institutions, the employment arena, and the judicial system.

In 1955, nearly four decades after the landmark U.S. Supreme Court decision, *Plessy v. Ferguson*, which relegated blacks to the back of the bus, African Americans in Baton Rouge, Louisiana, staged the nation’s first successful bus boycott. Two years later, on December 1, 1955, Rosa Parks refused to give up her seat at the front of a Montgomery, Alabama, city bus to a white man, igniting the modern civil rights movement. By the early 1960s, young “Freedom Riders” were riding Greyhound buses into the deep South, fighting segregation in interstate travel at risk of death. Today, transportation is no less a civil rights issue. Nationwide, grassroots groups are demanding an end to unjust, unfair, and unequal transportation. For example, transit racism killed seventeen-year-old Cynthia Wiggins of Buffalo, New York. The black teenager was crushed by a
dump truck while crossing a seven-lane highway because an inner-city bus, used mostly by African Americans, was not allowed to stop at the suburban Walden Galleria Mall. Cynthia could not find a job in Buffalo, but was able to secure work at a fast-food restaurant in the suburban mall. The bus stopped about three hundred yards short of the mall. Don Chen, a planner with the Surface Transportation Policy Project, summed up the Cynthia Wiggins tragedy:

Cynthia's story tells us much about ways in which racism continues to manifest itself in America's metropolitan areas—through geographic separation and concealed discrimination by private institutions. With little public accountability or scrutiny, mall officials found it easy to shut out inner-city bus riders.

This practice is not unique to Buffalo. For example, residents in Los Angeles led a successful frontal assault on transit racism by challenging the inequitable funding and operation of bus transportation used primarily by low-income people and people of color. In a class action lawsuit filed on behalf of 350,000 low-income bus riders (who were mostly people of color), the plaintiffs argued that the Los Angeles Metropolitan Transportation Authority (MTA) used federal funds to pursue a policy of raising costs for bus riders and reducing the quality of service in order to fund projects in predominately white, suburban areas.

In September 1996, the plaintiffs won a historic out-of-court settlement against the MTA. As part of the settlement, the MTA granted major fare and bus pass concessions. The MTA also agreed to spend $89 million on 278 new, clean, compressed natural gas buses. The struggle, led by the Los Angeles Bus Riders Union, epitomizes grassroots challenges to transit

174. See id.
175. See id.
176. Id.
177. See MANN, supra note 161, at 1-3.
178. The plaintiffs were represented by the Labor/Community Strategy Center, the Bus Riders Union, Southern Christian Leadership Conference, Korean Immigrant Workers Advocates, and individual bus riders. See id.
179. See id.
racism. In 1998 the Bus Riders Union began a "no seat, no fare" campaign against crowded buses and second-class treatment by the MTA. Eric Mann, who directs the Labor/Community Strategy Center, writes:

There is a causal relationship between mobility and a potential escape from poverty. The MTA bus system is a critical link in ameliorating or exacerbating that situation. For many years, the city's previous "two-tiered" transit system was divided between private transportation (cars) and public transportation (buses) . . . . Even within the bus system . . . racial discrimination was reflected in policy. Lessons learned from the Labor/Community Strategy Center and Bus Riders Union show that Title VI can be a useful tool in attacking transportation polices, at least where legal strategies and grassroots organizing are used together in a unified campaign.

Transit racism is also under siege in Macon, Georgia—a city whose population is evenly divided between blacks and whites. African Americans in Macon filed a class action lawsuit challenging Macon and Bibb County's use of federal funds under the Intermodal Surface Transportation Efficiency Act (ISTEA). David Oedel, a law professor at Mercer University, reports that a disproportionate share of transportation dollars in Macon and Bibb County go to road construction and maintenance at the expense of the bus system. In 1993 Macon and Bibb County devoted over $33.65 million of federal, state, and local funds for roads, streets, and highways, with $10 million derived from federal funds.
During the same year, local officials refused to accept any federal funds for the Macon-Bibb County Transit Authority and budgeted only $1.4 million for public transportation. Overall, the bulk of federal transportation monies received by Macon and Bibb County were accepted to support road construction in mostly white suburban areas outside the reach of many African Americans.

B. Metro Atlanta’s Transportation Quagmire

Atlanta’s regional transportation policies helped to foster its land use patterns, unhealthy air, and sprawl. Traffic and air pollution have made Atlanta the sprawl poster-child. The effect of sprawl downgraded the region’s ranking as a favored corporate location. Initially, sprawl represented progress, with the automobile as the undisputed king of the road. The Atlanta Regional Commission views highways both as a mixed blessing and a key factor in the region’s success:

The Atlanta region’s highway system has been a primary catalyst of economic growth and development for the past two decades. Suburban development has followed the freeway system as shopping centers, hotels, and office and industrial parks have risen at exits and major intersections. While transportation improvements have served and continue to serve as a generator of growth in this region, related problems have emerged. The dependency of the region’s population on the automobile to access home and job played a large role in the region’s failure to meet federal air quality standards under the Clean Air Act. This failure jeopardizes our ability to continue to secure the federal funding needed to build and maintain infrastructure needed to serve projected growth.

Until confronted with the realities of the federal Clean Air Act, Atlantans considered sprawl a fact of life. The Atlanta metropolitan area has been in violation of the Clean Air Act for

188. See id.
189. See id. at 100.
190. JUST TRANSPORTATION: DISMANTLING RACE AND CLASS BARRIERS TO MOBILITY, supra note 3, at 4-5.
THE COSTS AND CONSEQUENCES OF SUBURBAN SPRAWL

some time now and is a nonattainment area for ground level ozone with cars, trucks, and buses as the largest source of this pollution.\footnote{See Schmidt, supra note 4, at 276. Ozone is formed by the reaction of oxygen radicals with precursors, such as volatile organic compounds and nitrogen oxides, common components of car exhaust.}

Transportation and land use plans have also contributed to and exacerbated social and economic inequities. Freeway congestion tells the story. Building more roads is the problem, not the solution. Despite decades of transportation investments, residents of the region face severe congestion, drive farther, breathe unhealthy air, and are more automobile-dependent than ever before. For many Atlantans, their cars have become their home away from home.

Sprawl is the reason why Atlanta residents drive long distances to get to work or school, or to shop, or to play. It is forecasted that between 1990 and 2020 Atlantans will travel an average of 15,000 miles per year. On average, people in the region drive thirty-four miles per day—more than anyone else on the face of the planet (even fifty percent farther than Los Angeles area residents).\footnote{Atlanta leads the nation in miles driven per day (over 100 million miles per day). See Goldberg, supra note 191, at 13.}

Traffic gridlock and polluted air help make Atlanta the “most sprawl-threatened large city” in the United States.\footnote{See Sierra Club, supra note 48, at 5.} Over 2.5 million vehicles were registered in the Atlanta region in 1995, an increase of six million registered vehicles since 1986. The largest increase in registered vehicles during this period was found in Gwinnett and Cobb counties.\footnote{See Growing a New Atlanta, ATLANTA J. & CONST., June 8, 1897, at G5. The number of Gwinnett County vehicles jumped from 261,074 to 412,885 between 1985 and 1995. Similarly, the number of Cobb County vehicles grew from 360,514 in 1985 to 476,987 in 1995.} These two northern suburban counties alone accounted for more than 261,000 vehicles on the region’s crowded roads during the ten-year period.

Most Atlantans drive to their jobs because they are predominantly located in the region’s established and emerging economic activity centers which are concentrated in the northern suburbs. Fifteen of the eighteen established activity centers are located north of the I-20 freeway, a freeway that historically divided the region racially and geographically. Only
one of the five emerging activity centers is located south of the I-20 freeway.\textsuperscript{196}

The region’s transportation dilemma is complicated by the state’s motor fuel tax. Georgia’s motor fuel tax is one of the lowest in the nation. At 7.5¢ per gallon, the tax hardly discourages driving. Conversely, the state taxing structure has no built-in incentives to support mass transportation. In fact, the proceeds from the state motor fuel tax currently can only be used for roads and bridges. The end result is a state transportation agency that only pays lip service to mass transit, while the real money goes to maintaining sprawl-driven roads and building more roads.

Atlantans are growing weary of traffic gridlock, long commutes, and polluted air. Atlanta’s smog is also hurting its image as an attractive business climate. Amid signs that federal highway dollars would be frozen, Georgia’s Environmental Protection Division (EPD) helped to create the Partnership for a Smog-Free Georgia (PSG).\textsuperscript{197} The PSG operates from the workplace and marks the beginning of policies aimed at changing Atlantans’ commuting habits. Since its inception in 1998, PSG recruited over 160 “partners” into its program.\textsuperscript{198} The program also has a dozen public sector partners and links to eighty-five state agencies and universities and twenty-five federal agencies.\textsuperscript{199} Some of the large corporate partners include the Coca-Cola Company, Delta Airlines, Turner Broadcasting Systems, BellSouth, and IBM.\textsuperscript{200}

After making some progress in reducing nitrogen-oxide emissions in the early 1990s by using cleaner-running cars and tighter emission inspections, the region is now experiencing reversals in air quality. In the summer of 1999, the Atlanta region experienced thirty-seven consecutive ozone alerts days. The region exceeds the National Ambient Air Quality Standards for ozone by 33% to 50%.

The Atlanta Regional Commission (ARC) is the metropolitan planning organization responsible for land use and

\begin{thebibliography}
\item \textsuperscript{196} See ATLANTA REGIONAL COMM’N, supra note 41.
\item \textsuperscript{197} See Gita M. Smith, Atlanta’s Working Solution to Smog, ATLANTA J. & CONST., Aug. 30, 1999, at E1, E5.
\item \textsuperscript{198} See id.
\item \textsuperscript{199} See id.
\item \textsuperscript{200} See id.
\end{thebibliography}
transportation planning in the region. In order to receive federal transportation funds, ARC was required to develop a Transportation Improvement Plan (TIP) that would conform to federal standards. ARC developed an Interim Transportation Improvement Plan (ITIP). Because of the severe ozone nonattainment, the federal government criticized ARC's plan which concentrated too heavily on road development and failed to describe plans of improvement in the region's poor air quality. Federal officials also identified public participation as a major problem in ARC's planning and decision making.

In 1998 two separate coalitions of citizens groups challenged ARC's leadership, planning, and decision making as being tilted toward only building new roads. A group of environmental organizations and a coalition of mainly African American environmental justice, neighborhood, and civic groups filed a notice to sue under the Clean Air Act. The notice was directed at ARC, the Georgia DOT, and the U.S. Department of Transportation for approving sixty-one "grandfathered" new road projects, funded under the ITIP, which they felt would exacerbate the region's already severe air quality problem. In addition to challenging the exemption of grandfathered road projects, the environmental justice coalition raised equity concerns attributed to the grandfathered roads and the region's $700 million transportation spending plan. The groups asserted that highway-dominated plans would disproportionally and adversely affect the health and safety of African Americans and other people of color.

203. On November 10, 1998, three environmental groups, Georgians for Transportation Alternatives, the Georgia Conservancy, and the Georgia Chapter of the Sierra Club, filed a sixty-day notice to sue local, state, and federal transportation agencies under the Clean Air Act.
204. On December 16, 1998, a coalition of social justice and environmental groups filed a "Notice of Intent to Sue to Remedy Violations of the Clean Air Act," with local, state, and federal transportation agencies. The groups that signed the letter included the Environmental Defense Fund, Southern Organizing Committee for Economic and Social Justice, Rainbow/PUSH Southern Region, Save Atlanta's Fragile Environment, North Georgia African American Environmental Justice Network, Southwest Atlanta Community Roundtable, Center for Democratic Renewal, Rebel Forest Neighborhood Task Force, and Georgia Coalition for People's Agenda.
The parties reached a settlement, which eliminated forty-four of the sixty-one grandfathered road projects. The remaining seventeen projects were allowed to proceed because the Georgia DOT had already awarded contracts to construct the roads. The settlement freed up millions of dollars for transportation alternatives that are expected to improve air quality and mobility in the region. In addition, the settlement restricts projects from proceeding until the state includes them in a regional transportation plan that meets federal clean air standards. The settlement has several requirements: (1) it requires ARC to make its computer traffic modeling public; (2) it requires the Georgia DOT to conduct a major study of transportation and congestion in the northern suburbs; and (3) it requires the DOT to study the social equity impacts of transportation investments in the region.

Shortly after the June 1999 settlement, the Environmental Justice Coalition entered into informal negotiations with the U.S. DOT, the state, and local agencies, including ARC, to begin addressing transportation equity, environmental justice, and Title VI concerns of the affected groups. Equity concerns revolve around three broad areas: (1) environmental justice in the planning process; (2) distribution of transportation benefits; and (3) distribution of transportation burdens.

Preliminary negotiations called for a two-phase analysis of transportation equity in the Atlanta region. Phase One consists primarily of addressing the "procedural aspect of the planning process, focusing on how public participation of low income and minority communities can be enhanced and how the concerns of these communities can be better identified and addressed in the planning process." Phase Two will focus on the "substantive outcomes of the planning process, examining the distribution of transportation burdens and benefits to low

207. See id.
income and minority communities and expanding effective participation by low income and minority communities in the planning process."\textsuperscript{210}

\textbf{C. Transit Apartheid Atlanta Style}

Nationally, only about 5.3\% of all Americans use public transportation to get to work, and only 11.1\% of the nation's commuters use car pools.\textsuperscript{211} Most American workers opt for the private automobile, which provides them speed and convenience. Generally, people who commute using public transit spend twice as much time traveling as those who use their cars. The average commute takes about 20 minutes in a car, 38 minutes on a bus, and 45 minutes on a train.\textsuperscript{212} Nationally, 79.6\% of the commuters drive alone to work.\textsuperscript{213} People of color are twice as likely to use non-auto modes of travel (\textit{i.e.}, public transit, walk, bicycle) to get to work than their white counterparts.\textsuperscript{214}

The percentage of Atlanta's commuters using public transit to get to work, 4.7\%, is lower than the national average.\textsuperscript{215} Overall, African American Atlantan commuters are more likely to use public transit than are whites. In Atlanta, 28.2\% of black males and 35\% of black females take public transit to work as compared to 4.4\% of white males and 6.7\% of white females.\textsuperscript{216}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{210} \textit{Id.} at 2.
\item \textsuperscript{211} See \textsc{Bureau of the Census, U.S. Dept of Coll., Social and Economic Characteristics} tbls. 64, 66-68, 125 (1990 Census of Population, 1993).
\item \textsuperscript{212} See \textsc{Scott Bowles, Daily Jams Don't Keep Commuters from Cars}, \textit{USA Today}, Apr. 4, 1999, at 17A.
\item \textsuperscript{213} See id.
\item \textsuperscript{214} See Table 4.
\item \textsuperscript{215} For example, other cities' public transit commuter averages include: Boston (14.2\%), Chicago (17.1\%), San Francisco Bay Area (19.5\%), and New York/Tri State (47.3\%). Detroit fell below Atlanta with only 2.4\% commuters taking public transit. See \textsc{Sidney Davis, Transportation and Black Atlanta, in The Status of Black Atlanta 70} (Bob Holmes ed., 1994).
\item \textsuperscript{216} See \textit{id.}
\end{itemize}
\end{footnotesize}
TABLE 4. How People Get to Work in the United States

<table>
<thead>
<tr>
<th></th>
<th>People of Color in Cities</th>
<th>Whites (Non-Hispanic) in Cities</th>
<th>Entire U.S. Population</th>
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<td>Walk</td>
<td>5.8%</td>
<td>5.4%</td>
<td>3.9%</td>
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<td>0.5%</td>
<td>0.7%</td>
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<tr>
<td>Total Non-Auto</td>
<td>26.6%</td>
<td>13.4%</td>
<td>9.6%</td>
</tr>
</tbody>
</table>


V. MARTA’S DISPARATE TREATMENT

The ten-county Atlanta metropolitan area has a regional public transit system only in name. The Metropolitan Atlanta Rapid Transit Authority (MARTA) serves just two counties, Fulton and DeKalb. In the 1960s, MARTA was hailed as the solution to the region’s growing traffic and pollution problems. The first referendum to create a five-county rapid rail system failed in 1968. However, in 1971, the city of Atlanta, Fulton County, and DeKalb County approved a referendum for a one percent sales tax to support a rapid rail and feeder bus system. Cobb County and Gwinnett County voters rejected the MARTA system.

MARTA has grown from thirteen rail stations in 1979 to thirty-eight rail stations in 2001. The newest rail stations (Sandy Springs and North Springs) along the north line opened in December 2000. With its $300 million annual budget, MARTA operates 700 buses and 240 rail cars. The system handles over 534,000 passengers on an average weekday. It operates 154 bus routes that cover 1531 miles and carry 275,000 passengers on an average weekday. MARTA’s rail lines cover one hundred miles with cars carrying 259,000 passengers on an average weekday. The location of the next MARTA station is an issue hotly debated by diverse neighborhood constituents in Atlanta, Fulton County, and DeKalb County. Competition between
MARTA's service area "haves" and "have-nots" will likely intensify in the future.\textsuperscript{217}

Just how far MARTA lines extend has proved to be a thorny issue. Most metro Atlanta counties opted decades ago not to join MARTA, and those decisions were tinged with racial overtones. Today, local Fulton and DeKalb taxpayers are still questioning where MARTA lines go and where they do not go. There is no agreement where MARTA should go next.\textsuperscript{213} Talk of expanding the MARTA system into the suburbs raises a red flag among many suburbanites. A proposed 4.5 mile light-rail line, extending from the Lindbergh station into the Emory University area and to Northlake Mall, angered residents in the neighborhoods north of Decatur.\textsuperscript{219} However, discussion of rail without using MARTA has generated some agreement among suburban homeowners.\textsuperscript{220}

Only Fulton and DeKalb county residents pay for the upkeep and expansion of the system with a one-cent MARTA sales tax. Revenues from bus fares generated $5 million more revenue than was collected by rail in 1997.\textsuperscript{221} In 1999 the regular one-way fare on MARTA was $1.50, up from $1.00 in 1992. MARTA provides nearly 25,000 parking spaces at twenty-five of its thirty-eight transit stations. It is becoming increasingly difficult to find a parking space in some MARTA lots. A recent license tag survey, "Who Parks-and-Rides," covering the period 1988 to 1997, revealed that 44% of the cars parked in MARTA lots were from outside the Fulton and DeKalb county service areas.\textsuperscript{222}

\textsuperscript{217} See Bill Torpy, \textit{Haves, Have-Not s Battle over MARTA Access, ATLANTA J. & CONST., May 25, 1998, at E1.}

\textsuperscript{218} Several proposals are under consideration to extend MARTA lines: one further north along GA 400, one west from the H.E. Holmes station to Fulton Industrial Boulevard, and another southeast, near Hapeville, to serve a fifth runway at Hartsfield Atlanta International Airport. Politics will likely play a role in determining where the next MARTA lines are located since Fulton County has thirty-four miles of track as compared to fifteen miles in DeKalb County. See Bill Torpy, \textit{MARTA Proposal Spurs Anger, ATLANTA J. & CONST., Oct. 30, 1998, at F2.}


\textsuperscript{220} See Goldberg, \textit{supra} note 191, at 14.

\textsuperscript{221} See Metro. Atlanta Rapid Transit Auth., Div. of Plan. & Pol'y Dev., \textit{Transit Research and Analysis, CHRONOLOGY (June 1988).}

\textsuperscript{222} See METRO. ATLANTA RAPID TRANSIT AUTH., DIV. OF PLAN. & POL'Y DEV., ATAG SURVEY 1888-1987 (Dept of Res. Analysis, 1999); Goro O. Mitchell, \textit{Transportation, Air Pollution, and Social Equity in Atlanta, in THE STATUS OF BLACK ATLANTA 120 (Eob
Thus, it appears that Fulton and DeKalb county taxpayers are subsidizing people who live in outlying counties.

Many urban neighborhoods have waited decades for the economic benefits associated with MARTA stations. A 1997 study revealed that MARTA had no significant impact in shaping the region's development pattern. On the other hand, sprawl development and highways were cited as the dominant players. These factors have also hindered transit-oriented development (TOD) around many MARTA stations. Of particular concern is the significant decline in employment in central city neighborhoods. In recent years, MARTA has begun to take a more active role in encouraging development around its stations. MARTA and the Atlanta Development Authority (ADA) have identified nine sites for mixed-use developments.

A good example of transit-oriented development lies in BellSouth’s plans. In 1999 BellSouth (one of the area’s largest employers) announced that it was moving 13,000 of its employees to new offices to be built near the MARTA Lindbergh station. BellSouth’s plan would also consolidate much of its suburban operations in offices near MARTA’s North Springs station, Doraville station, and College Park station. Still, most of MARTA’s transit-oriented developments are north of I-20.

In November 2000, the Metropolitan Atlanta Transportation Equity Coalition (MATEC), a coalition of eleven Atlanta organizations, filed an administrative complaint with the U.S.

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223. See Research Atlanta, Inc., The Impact of MARTA on Station Area Development 17 (1997).


228. The coalition includes a broad array of groups, including some well known civil rights organizations (SCLC, NAACP, and Rainbow/PUSH Coalition), neighborhood organizations (Rebel Forest Neighborhood Task Force, Campbellton Road Coalition,
Department of Transportation on behalf of their minority and
disabled members. The MATEC organizations charge MARTA
with racial discrimination under Title VI of the Civil Rights Act
of 1964. They also accuse MARTA of failing to comply with the
federally-mandated Americans with Disabilities Act (ADA).

The coalition claims that MARTA’s services to minority
communities are not of the same quality as those services
provided to white communities. MATEC asserts that a
disproportionate number of MARTA’s overcrowded bus lines are
located in minority communities and that these neighborhoods
do not receive a proportionate share of clean compressed
natural gas (CNG) buses and adequate bus shelters. The
coalition also contends that MARTA rail stations located in
minority neighborhoods are poorly maintained and have fewer
amenities in comparison to those located in white communities.
Finally, MATEC charges that inadequate security is provided at
the MARTA rail stations serving minority riders.

The coalition has insisted that MARTA’s decision to raise its
fares will have a negative, disproportionate, and discriminatory
effect on the system’s largely minority, transit-dependent
riders, and will cause them irreparable harm. In May 2000,
MARTA’s board rejected a 25¢ fare increase. Nevertheless, the
fare increase passed a month later and went into effect on

Second Chance Community Services, Inc., a disabled persons advocacy group (Santa
Fe Villa Tenant’s Association), an environmental organization (Center for
Environmental Public Awareness), a youth group (Youth Task Force), and a labor union
that represents MARTA drivers (Amalgamated Transit Union Local 732).
228. See Complaint Letter from the Metropolitan Atlanta Transportation Equity
Coalition (MATEC) to Ron Strom, Director of Civil Rights, U.S. Dept of Transp.,
and Nuria Fernandez, Administrator, Fed. Transit Admin. (Nov. 28, 2000) (on file with the
Georgia State University Law Review).

230. See id.

231. See id.; see also Ernie Suggs, Complaint: MARTA Hike Based on Blns, ATLANTA

232. It is estimated that approximately 75% of MARTA’s riders are African Americans
and other people of color.

233. See John McCosh, As MARTA Grows, So May One-Way Fares, to $1.75, ATLANTA

234. See John McCosh, MARTA Fare Increase Stalled by One Vote, ATLANTA J. &

235. See David Pendered, MARTA To Start 2001 with Fare Hike, ATLANTA J. & CONST.,
June 20, 2000, at A1.
The groups contest MARTA’s need to raise its fares, citing independent studies conducted by transportation experts at Clark Atlanta University. The coalition and its allies have pleaded with the MARTA board not to raise its fares at a time when its ridership is showing an upward trend. The groups refer to MARTA’s failure to arrive at real budget alternatives to the fare hike, such as charging for parking, raising the parking fee at its overnight lots, increasing advertising, and seeking state funds. MARTA is the only major regional transit agency in the country that does not receive state funds.

The coalition alleges that MARTA has denied disabled riders equal access to public buses, entitling them to relief under Title II of the ADA and section 504 of the Rehabilitation Act. The groups also claim that disabled riders have not been accommodated in a timely manner and are disadvantaged due to malfunctioning equipment. For example, alternate transportation has not been provided promptly to persons who require lift equipment, often requiring them to wait several hours wait for lift-equipped buses.

MATEC members also accuse MARTA with failing to provide comparable paratransit services. The disabled individuals utilizing MARTA’s paratransit services are subjected to long delays and excessively long trips before reaching their destinations. Additionally, MARTA has failed to assure that its personnel is trained to properly assist disabled patrons and to offer their services in a respectful and courteous manner as required by the ADA.

A. Routing Diesel Buses Through Minority Communities

MARTA’s bus fleet is comprised of approximately 698 buses, 118 of which are clean fuel compressed natural gas (CNG) buses. The bus fleet is housed at three bus garages: Laredo (249), Perry

236. See Memorandum from Robert D. Bullard to William Mosley, MARTA Board Chairman (Apr. 17, 2000) (on file with authors) (commenting on the impact of the proposed fare hike on low-income, transit dependent, and minority riders).
238. See id. MARTA officials appear to be more concerned about negatively impacting MARTA customers who have cars and park for free (who may not even live within the Fulton and DeKalb MARTA district) than they do about MARTA customers who are careless.
(239), and Hamilton (210). Equity concerns are raised by MARTA's bus fleet distribution with regard to the Hamilton garage, which serves a predominately black south Atlanta. The Hamilton garage is allocated the smallest bus fleet, which results in overcrowding. Thus, minority routes suffer disproportionately. Of the three MARTA garages, the Hamilton facility serves by far the largest concentration of minority bus routes. All of MARTA's bus routes in the Hamilton garage service area are minority routes. In addition, all of the buses housed at the Hamilton garage are diesel buses, which are the oldest, most dilapidated, and most pollution-generating buses. MARTA has no plans for several years to bring clean-burning CNG buses to its mostly black areas served by the Hamilton garage. This means that MARTA customers on bus routes with the largest concentration of blacks will have to wait the longest for newer, clean-burning CNG buses.

On the other hand, the two MARTA garages with the largest concentration of non-minority bus routes are either currently served by a full fleet of CNG buses (Perry garage), or plans are currently underway to accommodate CNG buses (Laredo garage). The Laredo garage, located in Decatur, is currently being retrofitted to accommodate CNG buses. On average, the CNG fleet represents the newest and cleanest buses and is equipped with the latest technology.

The benefits and the burdens of MARTA's bus fleet are not equally distributed across MARTA's service area. The benefits of CNG buses (i.e., newer, cleaner equipment and the latest technology) disproportionately accrue to MARTA service areas with the greatest concentration of non-minority bus routes. Additionally, bus routes serving disproportionate numbers of white passengers, such as the Emory University route, are serviced by new buses only. Conversely, residents in predominately black south Atlanta are disproportionately burdened by the environmental hazards and potential health effects created by MARTA's diesel-only bus fleet, which are both housed in and travel through their communities.

The unequal distribution of benefits and burdens of MARTA's bus fleet is also exemplified by MARTA's operation of a shuttle service for the Atlanta Braves baseball games. MARTA pulls thirty-six buses from its regular route bus service to provide overwhelmingly white Braves fans with shuttle service to and
from the games. The shuttle service is provided free of charge, and the predominate white riders are also provided free bus-to-rail transfers when boarding the shuttle. Poor, transit-dependent African American riders are often left stranded at MARTA's rail stations because buses that generally service the routes to their homes have been pulled to provide shuttle service for the Braves fans.

The clustering of pollution-generating diesel buses combined with other polluting industries pose a potential health hazard to minority populations who may already be at greater risk for asthma and other respiratory diseases than the general population. This is especially the case in the mostly African American south Fulton County. Persons suffering from asthma are particularly sensitive to the effects of carbon monoxide, sulfur dioxides, particulate matter, ozone, and nitrogen oxides. MARTA's allocation of CNG buses and its plans to retrofit the depots to accommodate CNG buses, with the all-minority bus routes in south Atlanta served last, elicits a pattern and practice of discriminating against minorities on the basis of race in violation of Title VI of the Civil Rights Act of 1964.

B. Bus Line Crowding

The coalition was also concerned about the quality of service provided to minority as opposed to non-minority MARTA customers and the distribution of crowded bus lines. In February 2000, MARTA provided a listing of overcrowded bus lines to the Atlanta Regional Commission (ARC) technical advisory committee on congestion management. MARTA has a total of 126 bus routes, 53 of which were classified as crowded. Minority bus routes makeup 68% of the total bus routes and 72% of the crowded bus routes. On the other hand, non-minority bus routes make up 33% of the total bus routes and 28% of the crowded bus routes. Thus, MARTA bus riders on minority routes are more likely to experience overcrowding than the MARTA riders on non-minority bus routes. MARTA has failed to increase its bus fleet over the past decade to relieve this overcrowding.

239. See ATLANTA REGIONAL COMM'N, CONGESTION MANAGEMENT SYSTEM UPDATE (Technical Advisory Comm., Feb. 21, 2000).
C. Distribution of Bus Shelters

MARTA's distribution of bus shelters in minority communities also raises Title VI concerns. According to the Title VI Compliance Program240 submitted by MARTA to the U.S. Department of Transportation's Office of Equal Opportunity, there were 576 bus shelters located inside the MARTA service zone. The bus routes were classified as minority or non-minority according to Federal Transit Administration guidelines. MARTA reported 267 (46.4%) non-minority and 309 (53.6%) minority shelters. An analysis was conducted on the shelters using MARTA's own bus routes. There were 125 routes represented in the data. The majority of the routes were minority (81), while only 44 were non-minority. Based on the data, minority routes averaged 8.45 miles in length while non-minority routes averaged 3.99 miles. Minority routes averaged 3.68 shelters per route and a ratio of 0.46 shelters per mile, while non-minority routes averaged 6.14 shelters per route and a ratio of 0.70 shelters per mile. When studying the individual routes, there is one majority route without shelters (route 65) with a length of 4.26 miles. On the other hand, there are six minority routes (53, 59, 64, 67, 68, and 69) without any shelters and an average length of 5.66 miles, ranging from 2.87 to 6.98 miles. The longest non-minority route, route 125, which extends for 20.89 miles, has fifteen shelters, while the longest minority route, route 180, which extends for 17.32 miles, has only one shelter. Additionally, MARTA's placement of used bus shelters in minority communities as compared with the placement of new bus shelters in white communities raises Title VI concerns.

D. Inadequate Maintenance, Amenities, and Security in MARTA Rail Stations Located in Minority Communities

The complaint further alleges that minorities are shortchanged by MARTA when it comes to maintenance, amenities, and security in MARTA rail stations in their communities. The northern-tier MARTA rail stations located in predominately white communities are well maintained and have an abundance of visible security personnel (i.e., station

240. OFFICE OF EQUAL OPPORTUNITY, MARTA TITLE VI PROGRAM (Aug. 1997).
managers) at all times. In contrast, the southern-tier and west-end MARTA rail stations located in predominately black communities are poorly maintained, and security personnel either have low visibility or are entirely absent. For example, rats have been reported at the Ashby station, which is located in a predominately black neighborhood in southwest Atlanta. The rats invaded the station due to MARTA's failure to properly maintain the station and promptly repair holes that developed in the station walls. Also at the Ashby station, as well as other stations serving predominately black MARTA rail passengers, security personnel is conspicuously absent.

Another case in point is the poor repair and flooding that occurs at the Hightower station, located in a predominately black community on MARTA's west line. This rail station floods when it rains, resulting in passengers having to wade through water to reach their destinations. Both the West End and West Lake stations, located in African American communities, are dirty and in gross disrepair. MARTA's recalcitrance in addressing poor maintenance and security issues at these and other rail stations located in minority communities constitutes disparate treatment based on race under Title VI.

Racial disparities also exist in the provision of amenities at MARTA's rail stations. According to MARTA's latest Title VI compliance report to the FTA, Schedule Information Telephones (SITs) are located at twenty-six MARTA rail stations with the exception of the following: Civic Center, Midtown, Garnett, Oakland, East Point, East Lake, Inman Park, King Memorial, Airport, Bankhead, and West Lake. Of the twelve rail stations without SITs, nine are located in mostly minority areas. SITs have direct access to MARTA's Customer Information Center.

There are also disparities in the provision of TraveLink kiosks at the rail stations. TraveLink kiosks are informational computers accessed by touching a screen. The kiosks provide travelers with information about bus and rail carriers, airlines, state highways, weather, and hotels. MARTA provides information concerning bus schedules, fares, itinerary planning, and the next bus available to the user. There are twenty-five rail
stations equipped with TraveLink kiosks and thirteen without. Of those thirteen rail stations without kiosks, eleven are located in predominantly minority areas. Additionally, there are racial disparities in the provision of covered parking, weather protection on rail platforms and walkways, informational displays, and atmospheric comforts such as art and music. MARTA's failure to equalize the amenities provided at its rail stations constitutes disparate treatment of minorities in violation of Title VI.

E. Disparate Treatment of Latinos in MARTA's Public Participation Process

The public participation process used by MARTA to determine the fare increase is also a cause for concern. The fare increase process did not comply with Title VI nondiscrimination provisions or with the October 1999 memo from Gordon Linton, FTA Administrator, and FHWA administrators regarding the implementation of Title VI requirements in metropolitan and statewide planning. MARTA also failed to follow the public participation process that the U.S. DOT has adopted for assessing transportation equity issues in the Atlanta area. The standards adopted by the DOT require a public participation process that includes low-income communities and communities of color in transportation decision making. In addition, the standards set by the DOT require MARTA to assure full and fair participation by all communities in the fare restructuring process. These standards include timely and effective notification of public meetings and measures to assure equal opportunity to participate at public meetings. MARTA failed in this very basic public participation standard by not providing timely and effective notification of the public hearings on the fare increase to all impacted communities. Likewise, MARTA failed to assure equal opportunity for participation at the hearings.

242. See Memorandum from Gordon Linton, Administrator, FTA, and Kenneth R. Wykle, Administrator, FHWA, to FTA Regional Administrators and FHWA Division Administrators (Oct. 1999)(on file with authors)(Subject Action: Implementing Title VI Requirements in Metropolitan and Statewide Planning).
243. See U.S. DEPT OF TRANSP., supra note 208, at i-vi.
Announcement of the public hearings on the proposed fare increase was conspicuously absent from MARTA’s Web site until the Environmental Justice Resource Center (EJRC) staff brought it to their attention. Similarly, MARTA failed to provide notice in its publication, *Rider’s Digest*, the usual means by which MARTA alerts the public of upcoming public meetings. MARTA’s failure to notify the Latino community of the public hearings for the proposed fare increase violates Title VI. Ads about the proposed fare increase ran in the *Atlanta Journal and Constitution* in English only, and were likewise posted on MARTA’s Web site in English only. MARTA did not make any effort to alert Latinos in Atlanta of proposed changes. Public notices and announcements were not placed in local Spanish language media, such as newspapers and radio. The result was an alarming lack of participation by Latinos in the public hearing process. During the three public hearings held on the proposed fare increase, not a single member of the Latino community testified, even though one of the largest Latino communities in the city of Atlanta is located within feet of the MARTA headquarters. Additionally, MARTA failed to make English-Spanish translation services available at the public hearings even though MARTA received considerable advance notice that a segment of the Latino community would need translation services for meaningful participation.

**F. MARTA’s Fare Increase**

The recent MARTA fare increase follows a pattern of decision making that largely benefits affluent white suburban residents, while disproportionately and adversely affecting low-income, transit-dependent, minority, and urban core residents. On June 19, 2000, the MARTA board approved a $307 million operating budget that raised its one-way cash fare from $1.50 to $1.75—a 16.7% increase. The weekly transit pass jumped from $12 to $13 (8.3% increase); monthly passes increased from $45 to $52.50 (16.7% increase); and half-price senior citizens fares from 75¢ to 85¢ (13.3% increase). The fare increase will have a negative, disproportionate, discriminatory effect on MARTA’s largely minority, transit-dependent riders, and will cause irreparable harm.

After learning of the proposed MARTA fare hike, MATEC began to investigate the potential impact that such a fare
increase would have on MARTA's low-income and minority riders. The fare increase reportedly will raise approximately $12 million per year for MARTA to support the opening of two new suburban train stations on the North line. These two new suburban stations add just two miles of track at the cost of $464 million in construction and $4 million annually to operate. However, any benefit to the agency is likely to be outweighed by the substantial losses of income and mobility for the transit-dependent that will result in the loss of employment and housing and the inability to reach medical care, food sources, educational opportunities, and other basic needs of life.

In April 2000, the Environmental Justice Resource Center (EJRC) at Clark Atlanta University conducted a preliminary analysis of the MARTA fare structure. The EJRC concluded that moving from $1.50 to $1.75 one-way cash fare would make MARTA's fare the most expensive one-way cash fare in the country. While MARTA's fare hike may not seem like a lot at first glance, it could do irreparable harm to low-wage and transit dependent MARTA riders. According to 1998 Bureau of Labor Statistics data, Atlanta's median hourly wage was $13.31—lower than similar high-cost cities such as New York ($16.72), Boston ($15.06), Washington, D.C. ($14.73), Chicago ($14.61), and Los Angeles ($13.96).

On average, a 10% increase in bus fare would result in a 4% decrease in ridership. The fare increase would fall heaviest on the transit-dependent, low-income, minority riders that make up the vast majority of MARTA customers. MARTA's transit-dependent population, which would be disproportionately burdened by the fare increase, differs significantly from riders who use the system's northern-tier stations.

MARTA's transit-dependent riders are typically children, elderly, lower-income individuals, individuals without cars, individuals from larger households, individuals located near transit stations, and generally nonwhite. In 1995, 45% of MARTA customers were black females, and 32% were black males. In 1999, black females (39%) and black males (34%) comprised the largest group of MARTA riders.

245. See id.
9%, and white male riders made up 15% of MARTA's total customers in 1999.246

Whites comprised over 89% and blacks 9% of the populations living within a one-mile radius of MARTA's five north rail stations. This compares to 35% of whites and 62% of blacks who live within a one-mile radius of MARTA's stations system-wide.247 A 1995 report prepared by Georgia Tech professors concluded that the residents who travel on MARTA's northern-tier rail lines are “more working ages, typically male, of higher income and typically white (by more than two to one)” than passengers who travel on the southern-tier rail lines.248 They also are more likely to own more cars, drive alone, travel long distances to MARTA stations, and pay cash or tokens than all other MARTA riders.249 More importantly, MARTA's northern-tier customers are “more sensitive to MARTA service than to fares.”250 The survey concludes that as MARTA expands, northern-tier ridership will likely increase regardless of fare hikes.251

MARTA's own rider surveys show that African Americans made up 77% of its customers in 1995 and 73% in 1999.252 On the other hand, white MARTA riders increased from 22% in 1995 to 24% in 1999.253 On average, African Americans in the Atlanta region who ride MARTA have lower incomes, spend more per capita on transportation, and are more likely to be car-less than their white counterparts. Only 6.3% of whites compared to 26.5% of blacks who live in the MARTA service area are car-less. Black Atlantans earn only 60% of the income earned by whites in the region. The black-white income discrepancy holds true in the two counties served by MARTA. For example, blacks in Fulton County earn only 47% of the income earned by whites. Blacks in DeKalb earn 71% of the income white DeKalb County residents earn.

246. See id.
249. See id.
250. Id.
251. See id.
252. See METRO. ATLANTA RAPID TRANSIT AUTH., supra note 244.
253. See id.
While MARTA plans and cooperates in the development of a regional transit system, it should not discriminate against its low-income, transit-dependent, mostly African American customers. The state of Georgia has invested billions of dollars in roads, particularly in the mostly white, northern suburbs. MARTA is the only metropolitan transit agency in the country that receives no funding from the state government.\textsuperscript{254} A 2000 Brookings Institution report on metro Atlanta concluded that "[p]ublic transit, overwhelmingly relied upon by minorities and low-income people who tend to live in the southern parts of the city and the region, is relatively underfunded and constrained by suburban resistance."\textsuperscript{255}

MARTA’s northern-tier ridership will likely increase regardless of the fare hikes. MARTA should encourage affluent white suburbanites to get out of their cars and use its system. At the same time, it should not balance this initiative on the backs of those customers who can least afford to pay—MARTA’s minority transit-dependent riders.

The MATEC coalition entered into alliances with transportation experts who worked on the \textit{Labor/Community Strategy Center Bus Riders Union et al. v. Los Angeles MTA} case in federal court in California.\textsuperscript{256} The EJRC retained an independent transportation consultant, Thomas A. Rubin (who worked on the Los Angeles MTA case), to review MARTA’s budget figures.

Representatives from MATEC presented oral testimony and submitted written comments at the May 3, 2000, MARTA public hearing during the morning session held at the MARTA headquarters and during the evening session held at City Hall. After the May 25, 2000, MARTA board meeting, Rubin completed and submitted a budget analysis. Rubin’s preliminary analysis and findings on MARTA’s fare structure are consistent with those presented by Clark Atlanta University researchers. Rubin compared the fares of twenty-six of the thirty largest transit agencies in the United States, as identified

\begin{footnotesize}
\footnotetext{254}{THE BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY, MOVING BEYOND SPRAWL: THE CHALLENGE FOR METROPOLITAN ATLANTA 22 (2000).}
\footnotetext{255}{Id.}
\footnotetext{256}{See Mann, supra note 181, at 68-83; see also supranotes 177-83 and accompanying text.}
\end{footnotesize}