

Discussion

Nashville I-40 Steering Committee, Etc., et al., Plaintiffs-appellants, v. Buford Ellington, Governor, et al., Defendants-appellees, 387 F.2d 179 (6th Cir. 1968)

U.S. Court of Appeals for the Sixth Circuit - 387 F.2d 179 (6th Cir. 1968) December 18, 1967

**As Amended December 26, 1967
Certiorari Denied January 29, 1968**

See 88 S. Ct. 857.

Jack Greenberg, New York City, and Avon N. Williams, Jr., Nashville, Tenn., for appellants, Avon N. Williams, Jr., Nashville, Tenn., James M. Nabrit, III, Michael Davidson, Charles H. Jones, Jr., New York City, on the brief.

Before PHILLIPS, PECK and COMBS, Circuit Judges.

PER CURIAM.

This is an appeal pursuant to 28 U.S.C. § 1292(a) (1) from the order of the District Court denying a preliminary injunction to restrain officials of the State of Tennessee from constructing a section of Interstate Highway I-40 along its planned route in North Nashville, which is a predominantly Negro area of Nashville, Tennessee. Appellants are thirty Negro and white businessmen, teachers, ministers, civic and professional leaders, and residents of North Nashville. The named appellants include faculty members of four Nashville universities and colleges, including Fisk University, Meharry Medical College, Scarritt College and Vanderbilt University.

The complaint charges that construction of the highway segment as planned will cause substantial damage to the North Nashville community, erecting a physical barrier between this predominantly Negro area and other parts of Nashville.

Two basic issues are raised by the complaint:

(1) That State officials failed to hold a public hearing with proper notice and failed to consider the economic effects of the proposed route as required by Section 116(c) of the Federal-Aid Highway Act of 1956, (2) that the selection of the route in question was made arbitrarily or with the purpose of discriminating against the Negro or low socio-economic segments of Nashville's population so as to damage and in part destroy the Negro business community of Nashville, injure predominantly Negro educational institutions, and impose other irreparable harm upon the North Nashville community.

The District Judge filed a memorandum opinion on November 2, 1967, resolving both issues of fact against plaintiffs, holding:

(1) That a public hearing, in conformity with § 116(c) of the Federal-Aid Highway Act of 1956, was held by State Highway officials; and

(2) That "[m]ost of the evidence presented by plaintiffs goes to the wisdom and not to the legality of the highway department's decision;" that acquisition of rights of way has been under way for more than two years and substantially all the rights of way have been acquired; that plaintiffs have not shown that the selection of the proposed route amounts to a denial of due process of law or equal protection of the law; and that no adequate basis has been laid for the use of the injunctive power of the Court.

Public Hearing

Notice was posted at the main post office and four branches. We consider this to be an unsatisfactory way to give notice of a public hearing, especially when for some unexplained reason the notice announced the hearing for May 14, and it was held the following day, on May 15. Nevertheless, we cannot say that the District Court abused its discretion in denying a preliminary injunction on the ground that no public hearing was held in compliance with at least the minimum requirements of Section 116(c) of the Federal-Aid Highway Act of 1956.

Consideration of economic effects

Appellants assert that State highway officials failed to comply with the statute in that they did not consider the economic effects of the proposed route as required by the statute.

The attorney for the State highway department made the following certification:

I further certify that said Department has considered the economic effects of the location of said project and that it is of the opinion that said project is properly located and should be constructed as located."

Under these circumstances we hold that justification existed for reliance upon the presumption of regularity of public records and compliance by public officials with duties imposed upon them by statute. *Halpern v. McMorrان*, 50 Misc.2d 134, 270 N.Y.S.2d 656.

U.S. Supreme Court
Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)
Citizens to Preserve Overton Park v. Volpe
401 U.S. 402

The case concerned the decision by the Secretary of Transportation John A. Volpe to approve the construction of Interstate 40 through Overton Park in Memphis, Tennessee pursuant to his powers under the Department of Transportation Act of 1966 and the Federal-Aid Highway Act of 1968. These acts prohibited the Secretary from financing interstate construction through public parks if a "feasible and prudent" alternative route existed. Further, if no alternative route was found by the secretary, the secretary could only allow the construction through the park if "all possible planning to minimize harm" had been conducted.^[1]

Procedural history

After Secretary Volpe approved the Tennessee Department of Highways proposal to construct the highway through Overton Park, a group called Citizens to Preserve Overton Park brought suit against him in the Western District of Tennessee for violation of § 4(f) of the Department of Transportation Act. The Secretary responded by filing a motion for summary judgment, which was granted by the District Court. On appeal, the 6th Circuit affirmed the grant of summary judgment. At the Supreme Court, the case was "decided on an expedited timetable".

Decision

On March 3, 1971, the U.S. Supreme Court reversed the Circuit Court and held that that summary judgment was improperly granted. While the Secretary was not required to make formal findings, the Secretary's sole reliance on litigation affidavits was insufficient in light of the "feasible and prudent" clause of § 4(f). The Court held that the Secretary's decision did not fall into the Administrative Procedure Act's Section 701(a)(2) exception from judicial review for action "committed to agency discretion. The Court stated that the exception was "very narrow" and that it was applicable when statutes were "drawn in such broad terms that in a given case there is no law to apply. This marked the Court's first general explanation of Section 701(a)(2). Because the agency's decision was classified as informal adjudication, the Court found that it would be reviewed under the "arbitrary or capricious" standard of review under Section 706.

Justice Thurgood Marshall, writing for the Court, held § 4(f) "is a plain and explicit bar to the use of federal funds for construction of highways through parks; only the most unusual situations are exempted." The Court rejected the Secretary's

proposed understanding of "prudent" as a grant of discretion to weigh costs and benefits to determine whether alternatives exist. Because the costs of building through parks were demonstrably low, as construction before 1966 had shown, the Court held that the 1966 enactment of the "feasible and prudent" clause "indicates that protection of parkland was to be given paramount importance.

Impact

Overton Park is one of "the most important cases in the administrative law repertoire". It marked a shift in how lawyers attacked federal regulation, and is considered a landmark case. Besides being the first interpretation of Section 701(a)(2) of the APA, it provided scholars with a "great deal" of information on Section 706 of the APA. Its conclusion that courts must examine the entire record of an agency's decision established the "hard look" doctrine further expanded upon by *State Farm Mutual Automobile Insurance Co. v. Campbell* (1983).

National Environmental Policy Act of 1969 (NEPA)

NEPA, sometimes referred to as the Magna Carta of environmental legislation, was the vanguard of a collection of legislation enacted in the 1970s in response to increasing public pressure on the federal government to address pollution, air quality, and other signs of environmental degradation. NEPA requires all federal agencies to assess the environmental impacts of any major federal agency action before the action is undertaken. Because all projects funded with federal tax dollars fall under NEPA, it has a broad reach and its mandates apply to many state and local government projects, including highway development projects. At the heart of the NEPA assessment process is the requirement that agencies complete detailed environmental impact statements ("EISs"). EISs are required whenever a major federal action is proposed that would significantly alter the quality of "the human environment. The analysis in the EIS must include the environmental effects of the proposed action, of reasonable alternatives to the proposed action. Nothing in the statute, however, prevents the agency from taking the desired action, even when a disparate impact is identified.

Because NEPA requires all federal agencies to identify and evaluate environmental impacts of major agency actions during their planning and decision-making process this has raised hope that although not exclusively tied to infrastructure development projects, environmental impact studies under NEPA can be a useful

tool to help inject racial equity considerations as new highways are built and aging highways are repaired.

NEPA's regulations make clear that the effects on the human environment that must be considered "include ecological, . . . aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. As further clarified in the regulations, "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all these effects on the human environment. "Although race is not explicitly included in the list of considerations, there is support for the conclusion that examining "social" effects requires "explicit consideration of potential effects on minority and low-income populations."

Social justice advocates have seized on this potential and have deployed NEPA to challenge the indirect social justice impacts of infrastructure projects to mixed success as regards the societal impacts of highway development projects. NEPA and its implementing regulations could provide a mechanism for multidimensional analysis and affirmative engagement on the racially disparate impact of highway and infrastructure projects.

The Supreme Court's interpretations of NEPA have not been so expansive. Instead, the Court has repeatedly interpreted NEPA in a way that has maintained the statute's vast reach but limited its substantive power going so far as holding that the role of the court is "simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary and capricious"); *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227–28 (1980) (per curiam) Once an agency has conducted a NEPA assessment process, the agency's substantive decisions are rarely, if ever, overturned. Indeed, largely due to the Supreme Court's narrow interpretations, NEPA has been called "the most successful environmental law in the world and the most disappointing."

Archer, Deborah N. (2020). "White Men's Roads Through Black Men's Homes': Advancing Racial Equity Through Highway Reconstruction". *Vanderbilt Law Review*. 73: 1259.

In this Article, the author reviews the period between 1962 and 1970, when Congress enacted legislation to slow the devastation wrought by highway

development by protecting parks, historic districts, and other environmentally sensitive places during transportation projects and, significantly, by requiring relocation housing for people displaced before the construction of any roads.

Part I provides a brief overview of the ways in which highway development following adoption of the 1956 Interstate Highway Act deliberately destroyed or isolated Black communities around the country in the name of progress, using examples from Georgia, Florida, and Alabama.

Part II explores the lasting impacts of interstate highway construction on Black communities and other communities of color, focusing on entrenching racial segregation, concentrating poverty, and walling off opportunity for those targeted communities.

Part III briefly discusses the opportunities presented by the country's renewed focus on highway development, as well as the practical challenges this focus creates.

Part IV explores and critiques some of the legal and public policy tools adopted following the "highway revolts" of the late 1950s and early 1960s that were intended to protect individuals and communities from this depth of harm in the future. There is also a focus on the limits of traditional civil rights law and the National Environmental Policy Act (NEPA) to ensure racial equity in highway development projects.

Finally, **Part V** proposes a different way forward: Current laws are insufficient to fully redress the potential harms of highway development. They lack strategies to harness the opportunity to invest in these often resource-starved communities and fail to ensure that racial equity and civil rights remain central to policymaking as development projects move forward. Her conclusion: Jurisdictions exploring infrastructure projects should be required to complete comprehensive racial equity impact studies prior to commencing construction. Racial equity impact studies have been used or proposed in various contexts. States have used impact statements to analyze the effect 1) proposed criminal legislation and Guideline amendments", 2) the social costs of mass incarceration and the efforts some states have made 3) to "investigate" why Black and Latinx people are disproportionately imprisoned. Given its history of enormous devastation and lingering damage, it is past time for highways and other infrastructure development projects to join the growing list.





Interstate Exit Numbers

The States typically use one of two methods of numbering the Interstate interchange exits.

- The *Consecutive* numbering system -- Starting at the most westerly or southerly point on each Interstate route, interchanges are numbered consecutively. Thus, the first interchange becomes Interchange #1. Each succeeding interchange is numbered consecutively as #2, 3, 4, etc.
- The *Milepost* numbering system -- All Interstate routes are mile posted beginning at the most westerly or southerly point. The beginning point is milepost '0'. If the first interchange on the route is located between milepost 4.0 and 5.0, it is numbered as Interchange #4. The next interchange, if located at milepost 8.7, would be numbered as Interchange #8, etc. With this system the motorist can easily determine the location and distance to a desired interchange.

Fun Facts

Cost

- As reported to Congress in the 1991 Interstate Cost Estimate, the cost to construct the Interstate System (including preliminary engineering, right-of-way acquisition, and construction) was \$128.9 billion, of which \$114.3 billion was the Federal share.
- The System cost can be broken down into:

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|--------------------------------|--------------------------------|
| Preliminary Engineering | \$ 5.619 billion (4.5%) |
| Right of Way | 16.246 billion (13.1%) |
| <u>Construction</u> | <u>102.391 billion (82.4%)</u> |
| Subtotal | \$124.256 billion (100.0%) |
| FHWA Admin, planning, research | <u>4.644 billion</u> |
| Total | \$128.900 billion |

- Most Costly Routes (Eligible for Interstate Construction Funds Based on 1991 Cost Estimate):

| | |
|---|---------------|
| I-95, Miami, FL to Houlton, ME | \$8.0 billion |
| I-90, Seattle, WA to Boston, MA | \$7.5 billion |
| I-75, Miami, FL to Sault Ste Marie, MI | \$5.1 billion |
| I-10, Los Angeles, CA to Jacksonville, FL | \$5.0 billion |

Mileage

- Longest Interstate Routes:

| | |
|---|----------------|
| I-90, Seattle, WA to Boston, MA | 3,085.27 miles |
| I-80, San Francisco, CA to Teaneck, NJ | 2,906.77 miles |
| I-40, Barstow, CA to Wilmington, NC | 2,554.29 miles |
| I-10, Los Angeles, CA to Jacksonville, FL | 2,459.96 miles |
| I-70, Cove Fort, UT to Baltimore, MD | 2,175.46 miles |

- Shortest (2-Digit) Interstate Routes:

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|----------------------------------|---------------|
| I-97, Annapolis to Baltimore, MD | 17.57 miles |
| I-99, Bedford to Bald Eagle, PA | 53.00 miles * |
| I-73, Emery to Greensboro, NC | 56.70 miles * |
| I-86, I-84 to Pocatello, ID | 63.18 miles |
| I-19, Nogales to Tucson, AZ | 63.35 miles |

(* Additional miles of I-99 in PA and I-73 in NC are expected to be built)

- East-West Transcontinental Routes:

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|---|----------------|
| I-10, Los Angeles, CA to Jacksonville, FL | 2,459.96 miles |
| I-80, San Francisco, CA to Teaneck, NJ | 2,906.77 miles |
| I-90, Seattle, WA to Boston, MA | 3,085.27 miles |

- North-South Transcontinental Routes:

| | |
|--|----------------|
| I-5, San Diego to Blaine, WA | 1,382.04 miles |
| I-15, San Diego, CA to Sweetgrass, MT | 1,436.89 miles |
| I-35/35E/35W, Laredo, TX to Duluth, MN | 1,831.43 miles |
| I-55, New Orleans, LA to Chicago, IL | 943.69 miles |
| I-65, Mobile, AL to Gary, IN | 888.08 miles |
| I-75, Miami, FL to Sault Ste Marie, MI | 1,787.49 miles |
| I-95, Miami, FL to Houlton, ME | 1,892.76 miles |

- States with Most Interstate Mileage:

| | | |
|--------------|-----------|----------------|
| Texas | 17 routes | 3,232.04 miles |
| California | 25 routes | 2,453.31 miles |
| Illinois | 23 routes | 2,160.13 miles |
| Pennsylvania | 21 routes | 1,754.55 miles |
| Ohio | 21 routes | 1,565.39 miles |

- States with Most Interstate Routes:

| | | |
|--------------|----------------|-----------|
| New York | 1,496.79 miles | 28 routes |
| California | 2,453.31 miles | 25 routes |
| Illinois | 2,160.13 miles | 23 routes |
| Pennsylvania | 1,754.55 miles | 21 routes |
| Ohio | 1,565.39 miles | 21 routes |

- Interstate Routes Which Traverse the Most States:

| | |
|--|-----------|
| I-95 - FL,GA,SC,NC,VA,DC,MD,DE,PA,NJ,NY,CT,RI,MA,NH,ME | 16 States |
| I-90 - WA,ID,MT,WY,SD,MN,WI,IL,IN,OH,PA,NY,PA | 13 States |
| I-80 - CA,NV,UT,WY,NE,IA,IL,IN,OH,PA,NJ | 11 States |
| I-70 - UT,CO,KS,MO,IL,IN,OH,WV,PA,MD | 10 States |
| I-10 - CA,AZ,NM,TX,LA,MS,AL,FL | 8 States |