



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Digital Commons @ Touro Law
Center

Scholarly Works

Faculty Scholarship

2000

Suburban Sprawl: Not Just An Environmental Issue

Michael Lewyn

Touro Law Center, mlewyn@tourolaw.edu

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>



Part of the [Other Law Commons](#)

Recommended Citation

84 Marq. L. Rev. 301 (2000)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

SUBURBAN SPRAWL: NOT JUST AN ENVIRONMENTAL ISSUE

MICHAEL E. LEWYN¹

I. INTRODUCTION: WHAT THE ARGUMENT IS ABOUT

Once upon a time, "city" was not a dirty word in America. Between 1900 and 1950, every American city with over 500,000 people gained population.² But over the past several decades, metropolitan America has been transformed by suburban sprawl—the movement of people (especially middle-class families) and jobs from older urban cores to newer, less densely populated, more automobile-dependent communities generally referred to as suburbs.³

At the end of World War II, roughly 70% of metropolitan Americans lived in central cities.⁴ But by 1990, only about 40% of metropolitan Americans, and only 31.3% of all Americans, lived in central cities.⁵ Some central cities have been devastated by sprawl: for example, St. Louis has lost 60% of its people since 1950, while Buffalo

1. Associate Professor, John Marshall Law School. Former law clerk for Eighth Circuit Judges Morris Arnold and Theodore McMillian. I would like to thank Dean Robert D'Agostino, James Howard Kunstler, Michael Lynch, Demetra Pappas and Alan Weinstein for reviewing this article and for their comments. Any errors of fact or logic, however, are mine alone.

2. See INFORMATION PLEASE ALMANAC 1955, at 215-18 (Dan Golenpaul ed., 1954).

3. See *Home Builders & Contractors Ass'n of Brevard v. Dep't of Cmty. Affairs*, 585 So. 2d 965, 968 (Fla. Dist. Ct. App. 1991) (defining sprawl as "extension of [urban] development into rural, agricultural or other undeveloped or sparsely [populated land]"); Lee R. Epstein, *Where Yards are Wide: Have Land Use Planning and Law Gone Astray?*, 21 WM. & MARY ENVTL. L. & POL'Y REV. 345, 347 (1997) ("recognizable sprawl takes the form of large expanses of low-density, single-use development, married with strip and auto-oriented commercial land uses, at the very edges or beyond the fringe of existing urbanization").

4. See DAVID RUSK, *CITIES WITHOUT SUBURBS* 5 (2d ed. 1995); F. KAID BENFIELD ET. AL., *ONCE THERE WERE GREENFIELDS* 120 (1999).

5. See Shelby D. Green, *The Search For A National Land Use Policy: For The Cities' Sake*, 26 FORDHAM URB. L.J. 69, 73 (1998) (citing 1990 census statistics). Cf. *Dixon v. Hassler*, 412 F. Supp. 1036, 1045 (W.D. Tenn. 1976) (stating that by the 1960s, "[m]ost cities in the United States lost population . . . except for gains in the suburban surrounding areas by way of annexation"), *aff'd*, 429 U.S. 934 (1976).

and Cleveland have lost over 45% of their people.⁶ The cities that have gained population have grown either by being hubs for immigration from other countries (like New York and Los Angeles) or by annexing newly developed areas that would be considered suburbs in other cities (like Little Rock, Indianapolis and Albuquerque).⁷ As cities have become smaller, they have become poorer.⁸ In 1960, central cities contained one-third of America's poor people; by 1990, the central city share had climbed to one-half,⁹ and thirty-one of America's thirty-seven largest cities had poverty rates above the national average.¹⁰ Jobs as well as people have fled to suburbia:¹¹ About 95% of the 15 million new office jobs created in the 1980s were in suburbs,¹² and suburbs captured 120% of net job growth in manufacturing.¹³ Today, two-thirds of all new jobs are created in suburbs.¹⁴

In recent years, Vice President Gore and numerous other commentators (especially within the environmental movement) have criticized suburban sprawl.¹⁵ For example, Vice President Gore describes sprawl this way:

6. See THE WORLD ALMANAC AND BOOK OF FACTS 2000, at 390 (Robert Famighetti ed., 1999); *c.f.*, *infra* note 396. (showing that Cleveland's remaining population is disproportionately poor).

7. See *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 778 F.2d 404, 412 n.6 (8th Cir. 1985) (noting that white population of city of Little Rock declined from 1950 to 1980 if annexed territory excluded, but increased by over 30% if annexed territory included); *Dixon*, 412 F. Supp. at 1045; RUSK, *supra* note 4, at 8-10, 14.

8. See *Parents Ass'n of Andrew Jackson Sch. v. Ambach*, 451 F. Supp. 1056, 1060 (E.D.N.Y. 1978) (describing an "exodus of principally white middle income families . . . to the suburbs"); *Mapp v. Bd. of Educ. of Chattanooga*, 366 F. Supp. 1257, 1266 (E.D. Tenn. 1973) ("the affluence of the City of Chattanooga, like other cities, has been constantly receding to the suburbs"); *infra* notes 9-10, and accompanying text.

9. See BENFIELD, *supra* note 4, at 123.

10. See Michael E. Lewyn, *The Urban Crisis: Made in Washington*, 4 J. L. & POL'Y 513, 515 (1996).

11. See *Parents Ass'n*, 451 F. Supp. at 1060 ("[B]usinesses have left the City, sometimes [to] the suburbs to which their middle-income 'white collar' workers have preceded them").

12. See BENFIELD, *supra* note 4, at 14.

13. *Id.* This number exceeds 100% because cities were losing manufacturing jobs while suburbs were gaining such jobs. *Id.* See also *Southern Burlington Cty. NAACP v. Mt. Laurel*, 336 A.2d 713, 742 (N.J. 1975) (noting shift of industrial jobs to suburbs), *cert. denied*, 423 U.S. 808 (1975).

14. See Anne Gearan, *Clinton to Help Needy Own Car*, ATLANTA CONST., Feb. 24, 2000, at C1.

15. See, e.g., Judith Havemann, *Gore Calls For Smart Growth; Sprawl's Threat To Farmland Cited*, WASH. POST, Sept. 3, 1998, at A17; Sierra Club, *Sierra Club Stop Sprawl Campaign*, at <http://www.sierraclub.org/sprawl> (last visited Dec. 5, 1999).

Acre upon acre of asphalt have transformed what were once mountain clearings and congenial villages into little more than massive parking lots. The ill-thought-out sprawl hastily developed around our nations cities has turned what used to be friendly, easy suburbs into lonely cul-de-sacs, so distant from the city center that if a family wants to buy an affordable house they have to drive so far that a parent gets home too late to read a bedtime story.¹⁶

Gore complains that sprawl "has left 'a vacuum in the cities and suburbs which sucks away jobs . . . homes and hope; as people stop walking in downtown areas, the vacuum is filled up fast with crime, drugs and danger.'" ¹⁷ A book published by the Natural Resources Defense Council blames sprawl for landscapes lost, traffic congested, air and water polluted, public health endangered, and a potential energy crisis that could make those of the 1970s look mild by comparison.¹⁸ A Sierra Club website asserts that sprawl increases traffic; pollutes our air and water; worsens flood damage; destroys parks; farms and open space; wastes our tax money, and crowds our children's schools.¹⁹ Such concerns are not new. Decades ago, a California city's zoning ordinance blamed sprawl for "air, noise and water pollution, traffic congestion, destruction of scenic beauty [and, thus,] disturbance of the ecology and environment."²⁰

In the political arena, environmentalists are the leading opponents of sprawl,²¹ while conservatives tend to be skeptical of anti-sprawl policies.²² Environmentalists typically focus on the environmental costs of sprawl,²³ and endorse more extensive government regulation of land

16. Virginia Postrel, *The Pleasantville Solution*, REASON, March 1999, at 4 (quoting Gore).

17. Havemann, *supra* note 15.

18. BENFIELD *supra* note 4, at 1.

19. Sierra Club, *Sprawl Factsheet*, at <http://www.sierraclub.org/sprawl/factsheet.asp> (last visited Feb. 6, 2000).

20. *Agins v. City of Tiburon*, 447 U.S. 255, 261 n.8 (1980) (citing TIBURON, CAL. ORDINANCE No. 124, § 1(c)).

21. See Paul Boudreaux, *E Pluribus Unum Urbs: An Exploration of the Potential Benefits of Metropolitan Government in Efforts to Assist Poor Persons*, 5 VA. J. SOC. POL'Y. & L. 471, 501 (1998) ("the environmentalists . . . decry the development of metropolitan 'sprawl' over areas that were once farms, forests, and open fields and deplore the resultant increase in automobiles, energy consumption, and air pollution.").

22. See *infra* notes 25-28, and accompanying text.

23. See, e.g., *Sprawl Factsheet*, *supra* note 19; BENFIELD, *supra* note 4, at 55-72 (pointing out that sprawl causes the development of farmland and wilderness areas and increases

use.²⁴ Some conservatives and libertarians, by contrast, deny that sprawl is a problem at all, and suggest that sprawl merely reflects the desires of affluent consumers. For example, Steven Hayward of the Pacific Research Institute writes in *National Review* that "the threat of sprawl is vastly overblown"²⁵ and accuses sprawl opponents of believing that "commuting suburbanites are making unenlightened lifestyle choices because they lack the expert supervision that only their betters in government can provide."²⁶ Similarly, conservative columnist Thomas Sowell describes sprawl as "today's contrived crisis"²⁷ and asserts that "[t]he real objection [to sprawl] may be that all this is going on without the guiding hand of Big Brother."²⁸ Thus, the conventional conservative wisdom, as of early 2000, seems to be that: (1) sprawl is merely the result of the free market at work; (2) even if sprawl has negative effects, it cannot be limited without implementation of the liberal/environmentalist agenda of larger and more intrusive government; therefore, (3) conservatives should do nothing to fight sprawl. This article rejects all three propositions. Specifically, I argue that: (1) sprawl is in large part a result of runaway statism rather than the free market; (2) sprawl threatens conservative values such as consumer choice, the work ethic, and social stability, and (3) free-market, anti-spending solutions can limit sprawl and revitalize cities.

II. BACKGROUND: HOW STATISM CREATED SPRAWL

As noted above, many conservatives believe that sprawl is merely the free market at work.²⁹ But, in fact, sprawl is in large part an unintended consequence of governmental blundering.

driving, thus, increasing pollution).

24. See, e.g., BENFIELD, *supra* note 4, at 152-54, 156-58 (describing favorably land use regulation in Portland, Or. and Europe).

25. Steven Hayward, *Suburban Legends*, NATIONAL REVIEW, March 22, 1999 at 35.

26. *Id.* at 38. See also *Home Builders & Contractors Ass'n of Brevard v. Dep't of Cmty. Affairs*, 585 So. 2d 965, 968 (Fla. Dist. Ct. App. 1991) (equating sprawl with "market driven development").

27. Thomas Sowell, *Urban Sprawl: Today's Contrived Crisis*, ARIZ. REPUBLIC, July 19, 1999, at B7.

28. *Id.* See also Peter Gordon & Harry W. Richardson, *Defending Suburban Sprawl*, THE PUBLIC INTEREST, Spring 2000, at 65, 67 (claiming "the antisprawl agenda—more bureaucratic planning, limited growth—conflicts with the preferences of the vast majority of American homeowners . . .").

29. See *supra* notes 25-28, and accompanying text.

Government's pro-suburban bias has been especially blatant in three areas: housing policy, transportation policy, and education policy. In addition, government land use policy has made city and suburb alike more sprawling and auto-dependent than a free market would dictate.

A. Housing: Turning America Into Sprawl Land

Federal housing policy has moved middle-class families out of cities both by subsidizing migration to suburbs, and by turning cities into dumping grounds for the poor.

1. Paying Americans To Move To Suburbs

The federal war against urban America began in the New Deal era, when the federal government inflicted the Federal Housing Administration (FHA) mortgage insurance program upon American cities.

Before the New Deal, mortgages were typically granted for no more than two-thirds of the appraised value of a home, so buyers needed to acquire at least 33% of the value of a property in order to make a down payment, and usually 50%.³⁰ Most loans had five to ten year terms.³¹ During the 1930s, this system broke down, as "financial instability caused many American homeowners to default [on their mortgages]."³² To protect homeowners and home sellers, the FHA has insured long-term, low-down payment mortgages against default since 1934.³³ Specifically, the FHA guaranteed over 90% of the value of collateral so that down payments of only 10% of home value became the norm.³⁴ The FHA also extended repayment periods to twenty-five or thirty years, resulting in lower monthly payments.³⁵ These loan guarantees dramatically reduced bankers' risk from mortgage lending, which in turn caused banks to lower interest rates to borrowers.³⁶ By 1974, the FHA

30. See Victor A. Bolden, *Where Does New York City Go From Here: Chaos or Community?*, 23 FORDHAM URB. L.J. 1031, 1052 n.26 (1996).

31. See Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1308 (1995).

32. *Id.*

33. National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934); see also *United States v. City of Parma*, 494 F. Supp. 1049, 1057 (N.D. Ohio 1980), *appeal dismissed*, 633 F.2d 218 (6th Cir. 1980); Schill, *supra* note 31, at 1309.

34. See Bolden, *supra* note 30, at 1031 n.26.

35. *Id.*

36. *Id.*

had insured over 11 million home mortgage loans.³⁷

As a rule, FHA guaranteed home loans only in "low-risk" areas.³⁸ FHA guidelines defined low-risk areas as areas that were thinly populated, dominated by newer homes, and without African-American or immigrant enclaves nearby—areas that disproportionately tended to be suburban.³⁹ For example, one FHA underwriting manual taught that the FHA should concentrate its efforts on newer, lower-density areas because "'crowded neighborhoods lessen desirability,' and 'older properties in a neighborhood have a tendency to accelerate the transition to lower class occupancy.'"⁴⁰ Another New Deal creation, the Home Owners Loan Corp. (HOLC), "redlined" cities by issuing maps placing metropolitan neighborhoods in various categories, from "green" (the most desirable) to "red" ("high-risk" neighborhoods where the federal government would not insure mortgages).⁴¹ Even areas with relatively small African-American populations were usually given the lowest rating.⁴²

FHA policies also favored new construction over renovation of existing homes. FHA subsidies for repair were smaller than subsidies for the purchase of new homes, so "a family could more easily purchase a new home than modernize an old [home]."⁴³ Because the newest suburbs tend to have the newest homes, this criterion also favored suburbs.⁴⁴

As a result of the FHA's biases, the FHA generally insured suburban mortgages while refusing to insure urban mortgages. For example, residents of suburban St. Louis County received far more FHA insurance than residents of the city of St. Louis.⁴⁵ Similarly, the

37. George Steven Swan, *The Political Economy of American Apartheid: Shaw v. Reno*, 11 T.M. COOLEY L. REV. 1, 21 (1994); Schill, *supra* note 31, at 1309.

38. See KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 207 (1985).

39. See *id.* at 207-08.

40. *Id.* at 207.

41. See Dick Case, *Roosevelt's "Rainbow" Held No Pot of Gold*, SYRACUSE HERALD AMERICAN, Jan. 9, 2000, at B2.

42. See Schill, *supra* note 31, at 1309. In fact, the FHA typically insisted on racially restrictive covenants prohibiting integrated housing developments. See *Spencer v. Kugler*, 404 U.S. 1027, 1029-30* (1972) (Douglas, J., dissenting).

43. JACKSON, *supra* note 38, at 206.

44. *Id.*

45. *Id.* at 210. See also *Liddell v. Bd. of Educ. of St. Louis*, 469 F. Supp. 1304, 1324 (E.D. Mo. 1979) (discussing expert testimony about FHA's anti-urban bias), *rev'd on other grounds*, 620 F.2d 1277 (8th Cir. 1980).

FHA did not insure even one mortgage in Camden, N. J., or Patterson, N. J., until 1966.⁴⁶

In the 1960s, Congress replaced New Deal malice with Great Society blundering. In order to undo the damage caused by FHA redlining, Congress enacted the Section 235 Homeownership Assistance Program in 1968.⁴⁷ This program subsidized low-income homebuyers by providing mortgage insurance and reducing interest rates to as low as 1%.⁴⁸ From 1969 to 1979, approximately 500,000 homes were purchased under the program.⁴⁹ But instead of stabilizing cities, Section 235 fueled "white flight" from cities. In some communities, the federal infusion of capital to the poor fueled "blockbusting:" Realtors sold "a few homes to minority purchasers," then "spread the rumor that the neighborhood would soon become entirely black," thus causing "a wave of panic selling."⁵⁰ Whites would sell their homes at artificially low prices,⁵¹ and neighborhoods turned from all white to all black in a manner of months.⁵² Because low-income purchasers were required to put very little of their money at risk, they could afford to buy homes that they could not afford to maintain, and were therefore forced to abandon those houses upon discovering their defects.⁵³ "By 1979, over ninety-thousand homes, or approximately 18% of the dwellings subsidized under Section 235 [had been] assigned to [the federal government] or foreclosed."⁵⁴

2. Turning Cities Into Dumping Grounds

While the federal government was bribing middle-class home buyers to leave cities, it was bribing the poor to stay in cities. Another New Deal program, the Housing Act of 1937,⁵⁵ funded local housing

46. See Swan, *supra* note 37, at 21.

47. Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 235, 82 Stat. 476, 476-85, *repealed by* Pub. L. No. 100-242, § 401(d), 101 Stat. 1898, 1899 (1988).

48. Schill, *supra* note 31, at 1312.

49. *Id.*

50. *Id.* See also HILLEL LEVINE & LAWRENCE HARMON, DEATH OF AN AMERICAN JEWISH COMMUNITY 1-6, 194-97 (1992) (describing blockbusting tactics used by Boston brokers).

51. See Schill, *supra* note 31, at 1312.

52. *Id.*

53. *Id.* at 1313. See also JACKSON, *supra* note 38, at 215; JOHN NORQUIST, THE WEALTH OF CITIES 113-14 (1998) (describing FHA mismanagement in Detroit).

54. Schill, *supra* note 31, at 1313.

55. Public Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (codified as amended at 42 U.S.C. §§ 1401-1404 (1994)).

authorities that provided housing for the poor. The Housing Act provided that any city desiring public housing had to create a municipal housing authority or enter into an agreement to cooperate with one.⁵⁶ Thus, economically homogenous suburbs were able to avoid public housing by refusing to create or cooperate with housing authorities.⁵⁷ In fact, the Housing Act made it impossible for some suburbs to build public housing even if they wanted to. This statute's "equivalent elimination requirement" mandated that one unit of substandard housing be eliminated for each unit of public housing built.⁵⁸ "Because most suburbs had little substandard housing, even [suburbs] that wished to participate in the public housing program were sometimes excluded."⁵⁹ As a result of these limitations, many suburbs have little or no public housing.⁶⁰

In addition to ensuring that most public housing would be built in cities, the federal government also guaranteed that public housing would be packed with poverty. The Housing Act required that public housing be affordable by families of "low income," defined as "families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise . . . to build an adequate supply of decent, safe, and sanitary dwellings for their use."⁶¹ Congress also set income limits for the program that grew more stringent over the years.⁶² Today, the law requires that 60% of all occupants of existing public housing earn

56. See *Jaimes v. Toledo Metro. Hous. Auth.*, 758 F.2d 1086, 1091 n.11 (6th Cir. 1985); JACKSON, *supra* note 38, at 224.

57. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 41 (1990) ("[I]n all areas suburban localities sought to exclude public or publicly subsidized housing"); *Jaimes*, 758 F.2d at 1096 n. 23, 1097-98 (noting Toledo suburbs' refusal to allow public housing, which caused nearly all public housing units to be in city of Toledo); *United States v. City of Parma*, 661 F.2d 562, 566-67 (6th Cir. 1981) (describing similar obstructionism in Cleveland suburb); JACKSON, *supra* note 38, at 225.

58. See Schill, *supra* note 31, at 1292-1293.

59. *Id.*

60. See *Evans v. Buchanan*, 393 F. Supp. 428, 435 (D. Del.) (noting "Wilmington housing authority operate[d] 2000 public housing units [in city but] fewer than 40 in suburbs"), *aff'd per curiam*, 423 U.S. 963 (1975); Robert E. Mendelson & Michael A. Quinn, *Residential Patterns in a Midwestern City: The St. Louis Experience*, in METROPOLITAN MIDWEST: POLICY PROBLEMS AND PROSPECTS FOR CHANGE 151, 163 (Barry Checkoway & Carl V. Patton eds. 1985) (discussing that in 1970 St. Louis had 10,000 units of public housing while suburban St. Louis County, with a larger population, had only 50).

61. Public Housing Act of 1937, Pub. L. No. 75-412, §§ 2(1)-(2), 50 Stat. at 888.

62. Schill, *supra* note 31, at 1294. At first, Congress merely required "that tenants earn no more than five times the rent they paid." *Id.* Congress tightened income requirements again in 1949 by requiring "that [public housing authorities] establish income ceilings and force those whose incomes exceeded [the ceilings] to move out." *Id.*

less than 30% of their metro area's median income.⁶³

In addition to mandating that public housing be dominated by the poor, the federal government also made it less convenient for public housing authorities to deter antisocial conduct. "In the early years of the public housing program, [public housing authorities] had enormous latitude in admission and eviction decisions," and therefore could easily screen out or evict "problem" tenants.⁶⁴ But in the 1960s, the federal courts forced public housing authorities to give their residents due process protections.⁶⁵ For example, the courts ordered housing authorities to provide tenants with a hearing, access to records, and an opportunity to cross-examine witnesses prior to eviction.⁶⁶ The courts also prohibited public housing authorities from evicting tenants who had criminal records or bore illegitimate children.⁶⁷

Not surprisingly, public housing projects are "havens of crime."⁶⁸ Nationally, public housing residents are two and a half times as likely as other Americans to be victimized by gun-related crimes—and some projects are even more horrendous.⁶⁹ For example, Chicago's Robert Taylor Homes housing projects contain only one-half of 1% of that city's population, but account for 11% of the city's murders.⁷⁰ Similarly, a 1993 study found that "crime in the Los Angeles housing projects was three times greater than crime rates in surrounding high-crime neighborhoods."⁷¹ Because public housing projects are such undesirable

63. See 42 U.S.C. § 1437n(a)-(b); Schill, *supra* note 31, at 1294, 1294-95 n.43 (noting that this law even more restrictive in 1980s).

64. Schill, *supra* note 31, at 1298.

65. See *id.*

66. See, e.g., *Escalera v. N. Y. City Hous. Auth.*, 425 F.2d 853, 862-63 (2d Cir.) (due process is required in order to terminate tenants for misconduct), *cert. denied*, 400 U.S. 853 (1970); NICHOLAS LEMANN, *THE PROMISED LAND* 233 (1991) (writing that after courts imposed due process requirements upon housing projects, project manager "had almost no control over who was admitted to a project as a tenant . . . [and] could evict a troublesome tenant only by going through a lengthy and complicated legal procedure that was difficult to complete successfully").

67. See Schill, *supra* note 31, at 1298 n.61 (citing cases).

68. *Rucker v. Davis*, 203 F.3d 627, 631 (9th Cir. 2000).

69. Gary Fields, *Gun Risk Double In Public Housing*, USA TODAY, Feb. 17, 2000, at 3A.

70. Ronald D. Utt, *Cities and Suburbs: Promoting Innovative Solutions to Community Problems*, Issues 2000, *The Candidates Briefing Book* at <http://www.heritage.org/issues/chap13.html> (last visited Jan. 20, 2000); see also *United States v. Thompson*, No. 91 CR818 1992 U.S. Dist. LEXIS 1420, at *1 (N.D. Ill. Feb. 7, 1992) (describing project as "notorious" for crime); LEMANN, *supra* note 66, at 295 (arguing that Robert Taylor Homes is "quite possibly the worst place in the country in which to raise a family").

71. Utt, *supra* note 70.

neighbors, the concentration of public housing in cities makes nearby city neighborhoods less desirable to anyone who can afford to avoid them.⁷² And by concentrating public housing in central cities, the federal government has, therefore, given suburbs a huge competitive advantage over cities.

Paradoxically, the federal government encouraged cities to destroy functional neighborhoods to build these "havens of crime."⁷³ The Housing Act of 1949⁷⁴ gave mayors broad powers to condemn huge chunks of land in the name of "urban renewal."⁷⁵ Urban renewal projects resulted in the demolition of over 400,000 housing units⁷⁶ and 100,000 small businesses,⁷⁷ as well as fostering the deterioration of neighborhoods threatened with such destruction.⁷⁸ In some cities, government destroyed functional neighborhoods in order to build public housing. For example, in Buffalo, Mayor Frank Sedita destroyed a once-stable Italian neighborhood near downtown Buffalo to build the Shoreline housing project.⁷⁹

In other cities, urban renewal destroyed urban neighborhoods without providing those neighborhoods' displaced residents with

72. Today, the median income for families living in public housing is less than \$6500, and "three-quarters of all nonelderly families living in public housing have incomes below the poverty level." Schill, *supra* note 31, at 1299. And in 1991, 19% of all households living in nonelderly developments earned less than 10% of metro area median incomes, up from only 1% in 1974. Areas near public housing are also poorer than other city neighborhoods. For example, one study showed that in Philadelphia, the neighborhoods with the most public housing had poverty rates four times higher (excluding public housing residents) than neighborhoods without public housing. *Id.* at 1306-07.

73. *Rucker*, 203 F.3d at 631.

74. Housing Act of 1949, Pub. L. No. 81-171, §§ 101-10, 63 Stat. 413, 414-21. The urban renewal program was terminated in 1974 and replaced with a block grant scheme. See Quintin Johnstone, *Government Control of Land Use*, 39 N.Y.L. SCH. L. REV. 373, 395 (1994).

75. See MARK GOLDMAN, *CITY ON THE LAKE* 28 (1990).

76. Johnstone, *supra* note 74, at 396. See also ROBERTA BRANDES GRATZ, *THE LIVING CITY* 17 (1989) ("[T]he federal Urban Renewal Program in two decades after World War II demolished 404,000 low- and middle-income urban units").

77. See Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1085 (1996).

78. See, e.g., *In re Appropriation for Highway Purposes of Lands of Goldflies Storage & Moving Co.*, 247 N.E.2d 315, 317 (Ohio Ct. App. 1969) (noting that as a result of urban renewal and highway projects, "the neighborhood rapidly deteriorated"); *City of Cleveland v. Hurwitz*, 19 Ohio Misc. 184 (Common Pleas Ct. 1969) (describing similar deterioration in Cleveland and other cities).

79. See GOLDMAN, *supra* note 75, at 26-30. See also *James v. Lynn*, 374 F. Supp. 900, 901 (D. Colo. 1974) (describing Denver urban renewal plan contemplating "the demolition of all structures within the area and the construction of assisted low and moderate income housing").

housing,⁸⁰ thereby causing those neighborhoods' low-income residents to destabilize nearby areas. For example, in Boston, the federal bulldozer destroyed 2500 units of housing in Roxbury, a low-income African-American community.⁸¹ The displaced persons quickly moved into nearby Dorchester, triggering a wave of white flight that turned Dorchester into a racially segregated low-income neighborhood.⁸²

While the federal government kept the poor locked up in cities, local governments (with assistance from the federal government) tried to keep the poor out of suburbs. In the 1920s, the federal Department of Commerce drafted the Standard State Zoning Enabling Act (SZEa).⁸³ SZEa, which was quickly enacted by the majority of states,⁸⁴ granted municipalities power to regulate the location and use of buildings.⁸⁵ Suburbs quickly used their zoning powers to keep out the poor,⁸⁶ by limiting apartment construction to keep out "undesirables" or requiring minimum lot sizes to keep out less expensive homes.⁸⁷ For example, in

80. See Johnstone, *supra* note 74, at 398-99; GRATZ, *supra* note 76, at 17 (discussing that only about 10% of units demolished as a result of urban renewal were replaced). In such situations, the destroyed neighborhoods were typically replaced with office buildings. See Frug, *supra* note 77, at 1085-86 (noting that job gain from office buildings arguably offset by job loss from small businesses relocated or destroyed).

81. See LEVINE & HARMON, *supra* note 50, at 81.

82. *Id.* at 89-90. In 1990, 80% of Boston's murders were in Dorchester, Roxbury, and nearby Mattapan, although those areas included only 30% of the city's population. *Id.* at 332.

83. See DEP'T OF COMMERCE, STANDARD STATE ZONING ENABLING ACT (1926) (final version); 1 ANDERSON'S AMERICAN LAW OF ZONING, § 2.21 at 67-69 (Kenneth H. Young ed., 4th ed. 1995) (describing history of SZEa and pointing out that as early as 1930, thirty-five states had adopted act in whole or in part, and that "[a]ll of the states finally adopted zoning enabling legislation, and most reflect the thinking of the draftsmen of the Standard Act").

84. *Id.* See also *Ex Parte City of Huntsville*, 684 So. 2d 123, 125 (Ala. 1996) (stating that SZEa is "used as a model for zoning legislation in the majority of states").

85. See *Chapman v. City of Troy*, 4 So. 2d 1, 3, (Ala. 1941) (noting that SZEa gives cities power to "divide the city into districts, and regulate the erection and use of buildings in the several districts for trade, industry, residence, or other purpose"); Epstein, *supra* note 3, at 357-58.

86. See *Parent Ass'n Andrew Jackson Sch. v. Ambach*, 451 F. Supp. 1056, 1061 (E.D.N.Y. 1978) (discussing segregation in New York City suburbs); *Barnard v. Zoning Bd. of Appeals of Yarmouth*, 313 A.2d 741, 745 (Me. 1974) ("[T]he zoning power has been exercised, under the guise of community planning, to prevent the construction of low-income housing in suburban, as distinguished from inner-city areas").

87. See *Williston Township v. Chesterdale Farms*, 300 A.2d 107, 113 (Pa. Commw. Ct. 1973) (Mencer, J. concurring) (mentioning that suburbs excluded low-income citizens through large-lot zoning, minimum floor space requirements, and restrictions on apartment construction); JACKSON, *supra* note 38, at 242 (noting that zoning "served the general purpose of preserving residential class segregation and property values"); J. Peter Byrne, *Are Suburbs Unconstitutional?*, 85 GEO. L.J. 2265, 2265-66 (1997) ("A town might provide that

1970 more than 99% of vacant land in New Jersey was zoned to exclude multifamily housing, and in Connecticut's Fairfield County 89% of the vacant land was subject to minimum lot requirements of one acre or more.⁸⁸ The predictable consequences of these regulations is to keep prices high and keep low-income purchasers out of a suburb or neighborhood.⁸⁹ In fact, the Supreme Court upheld one of the first anti-apartment zoning ordinances in *Village of Euclid v. Ambler Realty Co.*⁹⁰ Just as government keeps the poor in cities, it keeps the poor out of suburbs. Either way, cities become the dumping ground for the poor.

B. Transportation: Putting Suburbs First

Statist transportation policy, like statist housing policy, has consistently favored suburban migration. For most of the 20th century, all levels of government have funneled money into highway construction. By doing so, government destroyed urban neighborhoods both directly (through physical destruction of cities) and indirectly (by draining cities of their middle-class tax base).

1. How Government Put Roads First

Early in the 20th century, state and federal governments began to build new roads. State and local governments could have levied user fees to force drivers "to reimburse local treasuries . . . for the cost of streets, traffic maintenance, and police services"—but instead frequently chose to subsidize drivers by relying on general taxation.⁹¹ Thus,

only free-standing single-family houses on half-acre . . . lots may be constructed.").

88. Briffault, *supra* note 57, at 41. In one Chicago suburb, local officials now propose to establish a minimum price of \$325,000 for new single-family homes. See Patricia Richardson, *Elgin Ups The Ante*, CRAIN'S CHI. BUS., Mar. 27, 2000, at 3. However, it is unclear whether this proposal, if enacted, will be legally enforceable. *Id.* (noting that local fair housing lobby is threatening a lawsuit).

89. See Byrne, *supra* note 87, at 2266. See also *Holmdel Builders Ass'n v. Township of Holmdel*, 583 A.2d 277, 283 (N.J. 1990) ("[E]xclusionary zoning made [many] suburbs largely inaccessible to lower income households"); *Williston*, 300 A.2d at 113 (discussing that as a result of suburbs' exclusionary policies, "low income groups have been confined to the inner city"). Indeed, such exclusionary zoning may be necessary for a suburb's survival as a desirable community. If a suburb fails to exclude the poor while others succeed in doing so, it will suffer the same problems as poverty-packed central cities. See *infra* notes 447-61, and accompanying text (describing decline of many older suburbs); Richard Briffault, *The Role of Local Control in School Finance Reform*, 24 CONN. L. REV. 773, 803-804 (1992).

90. 272 U.S. 365 (1926). See also Briffault, *supra* note 57, at 42-44, 102-07 (arguing state and federal courts generally tolerate even the most exclusionary zoning).

91. JACKSON, *supra* note 38, at 163; *Nashville, Chattanooga & St. Louis Ry. v. Walters*, 294 U.S. 405, 428 (1935) (noting that motor vehicle-related fees "will not pay for one-half of the annual expenditure in Tennessee for highways" and "[t]he balance is being paid in part by

government essentially taxed the general public (including railroads, transit users, and rail users) to support drivers.⁹² By contrast, streetcar services were typically private and unsubsidized.⁹³ To make matters worse, streetcar fares were often controlled by government and, despite World War I-era inflation, were not allowed to rise.⁹⁴ Because government regulated streetcars while subsidizing drivers, one-third of American streetcar companies were bankrupt by 1919.⁹⁵

Between 1919 and 1929, every state adopted a motor fuel tax and earmarked the revenue therefrom to fund highway construction projects.⁹⁶ By 1927, "highways were second only to education as recipients of state and local expenditure," and "one-third of state assistance to local government was for highway construction."⁹⁷

In 1921, the federal government began to support highway building, by enacting a Federal Highway Act⁹⁸ that designated 200,000 miles of road as eligible for federal matching funds, and by creating a Bureau of Public Roads to plan an interstate highway system.⁹⁹ By that date, government at all levels (federal, state, and local) was pouring \$1.4 billion into highways.¹⁰⁰ (By contrast, most transit systems were privately owned, received no government assistance, and paid taxes to support the highway system and other government functions).¹⁰¹

During the New Deal era, government largess to the highways grew. By 1940, government spent \$2.7 billion on highways.¹⁰² By contrast, at that time the total operating costs of all intracity bus and rail systems

general property taxes").

92. See, e.g., *Nashville, Chattanooga & St. Louis Ry.*, at 425, 428 (noting that state taxed railroads to support highway construction).

93. See PAUL WEYRICH & WILLIAM S. LIND, *CONSERVATIVES AND MASS TRANSIT: IS IT TIME FOR A NEW LOOK?* 10 (1996); *Alewine v. City Council of Augusta*, 699 F.2d 1060, 1068 (11th Cir. 1983) (stating that until 1960, most transit systems privately owned).

94. WEYRICH & LIND, *supra* note 93, at 10.

95. *Id.*

96. See Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 380 n.149 (1990).

97. *Id.* By this time, the states were also providing suburbs with sewers and water service. By contrast, the states were less generous to cities because by the 1920s, cities had already built similar facilities for their own citizens. *Id.*

98. Federal Highway Act, Pub. L. No. 67-87, 42 Stat. 212 (1921). Cf. *Kansas v. Smith*, 295 P. 986, 997 (Kan. 1931) (referencing Highway Act, and noting that the Act required state bureaucracies to build highways themselves rather than relying on counties to do so).

99. JACKSON, *supra* note 38, at 167.

100. WEYRICH & LIND, *supra* note 93, at 10.

101. *Id.*

102. *Id.*

(except commuter rail) were \$661 million—mostly private rather than government spending.¹⁰³

In the postwar years, government intervention on behalf of highways accelerated. In 1950, the government funneled \$4.6 billion into highways and virtually nothing into transit.¹⁰⁴ In 1954, President Eisenhower appointed a committee on highways chaired by Lucius Clay, a member of the General Motors board of directors.¹⁰⁵ Not surprisingly, Clay's committee endorsed a massive highway spending scheme. That scheme was enacted into law as the Interstate Highway Act,¹⁰⁶ which created a 41,000-mile Interstate Highway System.¹⁰⁷ Under the Act, the federal government paid for 90% of the system's construction and maintenance costs, states paid 10%, and municipalities paid nothing.¹⁰⁸ By contrast, the federal government did not begin to subsidize public transit until 1962.¹⁰⁹ In fact, between 1950 and 1970 vehicle miles of transit service declined nationally by 37%.¹¹⁰ Today, federal road spending exceeds transit spending by a margin of almost five to one.¹¹¹ This statistic dramatically understates the "funding gap" between roads

103. *Id.*

104. *Id.*

105. JAMES HOWARD KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* 106 (1993).

106. Interstate Highway Act, Pub. L. No. 85-767, 72 Stat. 885 (1958).

107. KUNSTLER, *supra* note 105, at 106-07.

108. *Movement Against Destruction v. Volpe*, 361 F. Supp. 1360, 1367 (D. Md. 1973); NORQUIST, *supra* note 53, at 153.

109. OFFICE OF MGMT. AND BUDGET, *HISTORICAL TABLES: BUDGET OF THE U.S. GOVERNMENT*, Fiscal Year 1996 (1995) (first federal mass transit spending listed in 1962). *See also* *Town of Secaucus v. United States*, 889 F. Supp. 779, 783-84 (D.N.J. 1995).

110. *See* Norman Krumholz & Janice Cogger, *Urban Transportation Equity in Cleveland*, in *THE METROPOLITAN MIDWEST: POLICY PROBLEMS AND PROSPECTS FOR CHANGE* 221 (Barry Checkoway and Carl V. Patton eds. 1985).

111. *See* Liam A. McCann, *TEA-21: Paving Over Efforts to Stem Urban Sprawl and Reduce America's Dependence on the Automobile*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 857, 859 (1999) ("more than eighty percent of the money in TEA-21 [the 1998 transportation funding bill] will go toward highway funding"); U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 1999*, at 636 (119th ed.) ("1999 Abstract"). A similar gap exists at other levels of government. *See id.* at 635, 652; Electronic correspondence from Daniel Duff, American Public Transit Association (Feb. 9, 2000) (stating that government highway spending is 5.4 times as high as transit spending). And to the extent government has invested in transit, those investments have sometimes redistributed money from bus service to more expensive train service rather than expanding riders' transit options. *See* Gordon & Richardson, *supra* note 28, at 69 (mentioning that some cities' "bus systems have been cannibalized to pay for rail"); Eric Mann, *Confronting Transit Racism in Los Angeles*, in *JUST TRANSPORTATION* 68, 71 (Robert D. Bullard & Glenn S. Johnson eds. 1996) (reporting that Los Angeles reduced bus mileage by 16% between 1988 and 1997 while building a subway).

and transit, because federal transit spending is canceled out¹¹² by a variety of federal mandates that either increase transit agencies' costs or reduce their revenues, including (1) Americans with Disabilities Act provisions mandating that transit agencies install costly amenities to serve the disabled¹¹³ (which alone cost transit providers about \$1 billion a year in the early 1990s, about one-fourth of federal transit spending),¹¹⁴ (2) labor laws that limit transit operators' ability to reduce labor costs¹¹⁵ (which alone cost transit providers \$2 billion to \$3 billion per year,¹¹⁶ or about half of all federal transit spending);¹¹⁷ (3) imposition of federally mandated wage rates for federally funded construction;¹¹⁸ (4) limitations upon transit agencies' use of parts manufactured in foreign countries;¹¹⁹ and, (5) limitations on charter and school bus service in competition with the private sector.¹²⁰ Moreover, some states are even more pro-road and anti-transit than the federal government. For example, some states require fuel tax revenues to be spent exclusively on roads.¹²¹

Henry Ford, one of America's first auto magnates, summed up the

112. I note in passing that because of this fact, the common argument that transit users actually disproportionately benefit from federal subsidies (because they receive 15% to 20% of all federal spending but constitute fewer than 15% to 20% of all commuters) is wrong. See Utt, *supra* note 70 (making this argument).

113. See, e.g., 42 U.S.C. § 12142 (1994) (requiring transit agencies to make vehicles readily accessible to individuals with disabilities); *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1083 (N.D. Cal. 1997) (applying ADA requirements).

114. See Lewyn, *supra* note 10, at 540-41 n.112.

115. See 49 U.S.C. § 5333(b) (1994); *Greenfield & Montague Transp. Area v. Donovan*, 758 F.2d 22, 23 n.1 (1st Cir. 1985) (describing statute); John Walters, *Bus-Jacking the Revolution*, POL'Y REV., Jan. 1996 at 8 (same).

116. Walters, *supra* note 115, at 8.

117. See 1999 ABSTRACT, *supra* note 111, at 636 (noting federal government granted state and local government \$4.56 billion for public transit in 1997).

118. See 49 U.S.C. § 5333(a) (1994); *North Georgia Bldg. and Trades Constr. Council v. Metro. Atlanta Rapid Transit Auth.*, No. C82-1518A, 1982 U.S. Dist. LEXIS 9862, at *3-4 (N.D. Ga. Aug. 4, 1982) (describing requirement).

119. See 49 U.S.C. § 5323(j) (1994); *Seal & Co. v. Wash. Metro. Area Transit Auth.*, 768 F. Supp. 1150, 1158-59 (E.D. Va. 1991) (describing requirement).

120. 49 U.S.C. §§ 5323(d), (f) (1994); *Chicago Transit Auth. v. Adams*, 607 F.2d 1284, 1292-95 (7th Cir. 1979) (discussing protection of school bus companies); *Blue Bird Coach Lines v. Linton*, 48 F. Supp. 2d 47, 49-50 (D.D.C. 1999) (discussing protection of charter bus companies).

121. See *State ex. rel. O'Connell*, 452 P.2d 943, 948-49 (Wash. 1969) (holding that the state was not allowed to spend gasoline tax revenue on public transportation based on provision in state Constitution requiring such revenue to be spent for highway-related purposes); *Michigan Road Builders Ass'n v. Dep't of Mgmt. and Budget*, 495 N.W.2d 843, 847 (Mich. Ct. App. 1992) (noting that under Michigan law, 90% of gas and license tax revenue must be used for roads).

relationship between the highway and the city when he stated: "We shall solve the city problem by leaving the city."¹²² Government's obsession with road building has degraded cities and accelerated suburban sprawl in two ways: by the physical destruction of city neighborhoods and by making suburban life more convenient.

2. How Roads Destroyed Cities

During the first decade of interstate highway construction, bureaucrats destroyed millions of homes¹²³ and countless communities¹²⁴ in order to build interstate highways. For example, nearly 20% of Baltimore's African-Americans had their homes destroyed to make room for I-95 and I-83.¹²⁵ In Miami 20,000 families were displaced in order to build highways.¹²⁶ Overtown, one of Miami's African-American neighborhoods, "was reduced to an impoverished enclave of tenements near downtown Miami."¹²⁷ In Cincinnati, I-75 bulldozed through the city's African-American West End, and the displaced West Enders quickly flooded nearby neighborhoods (causing massive "white flight" from those areas).¹²⁸ In Cleveland, an inner-belt freeway displaced 19,000 city residents.¹²⁹ In Milwaukee, the Wisconsin Department of Transportation destroyed Bronzeville, a hub of local African-American culture, while building I-43,¹³⁰ and nearly destroyed the Third Ward, an

122. JACKSON, *supra* note 38, at 175.

123. *Tullock v. State Highway Comm'n of Mo.*, 507 F.2d 712, 714 n.1 (8th Cir. 1974) (noting that between 1950 and 1968, over 2 million dwellings destroyed due to urban renewal and highway construction).

124. *See* BENFIELD, *supra* note 4, at 121 ("urban freeways destroyed the hearts of African-American communities in the South Bronx, Nashville, Austin, Los Angeles, Durham, and nearly every medium to large American city"); *id.* at 182 n.17 (listing examples). *See also* *Clarke v. City of Cincinnati*, No. C-1-92-278, 1993 WL 761489, at *7 (S.D. Ohio July 8, 1993) (noting that in Cincinnati "African American citizens were being forced to move into previously white neighborhoods as a result of being displaced by the construction of the Interstate Highway through their neighborhood"); *Jenkins v. State of Mo.*, 593 F. Supp. 1485, 1500 (W.D. Mo. 1984) ("[I]t goes without saying that the location of a highway and particularly an interstate highway through a residential area will displace a certain number of residents in that area").

125. Epstein, *supra* note 3, at 370 (adding that similar destruction occurred in "countless other neighborhoods nationwide").

126. *See* Andrea Eaton, *Impact of Urban Renewal or Land Development Initiatives on African-American Neighborhoods in Dade County, Florida*, 3 HOW. SCROLL 49, 55 (1995).

127. *Id.*

128. *See* GRATZ, *supra* note 76, at 70-71 (noting that nearby Mount Auburn changed from 84% white in 1960 to 74% black in 1970); *see also* *Clarke*, 1993 WL 761489, at *7.

129. *See* RICHARD M. BERNARD, *SNOW BELT CITIES* 110 (1990).

130. *See* NORQUIST, *supra* note 53, at 160.

Italian-American neighborhood, while building I-794.¹³¹ According to Milwaukee's current mayor, "Bronzeville has disappeared without a trace."¹³² and "[t]wo years after the elevated freeway was built, [the Third Ward] had declined so much that the city contemplated turning the remains of the Third Ward into a pornographic combat zone for strip joints and erotic book stores."¹³³

Even neighborhoods not destroyed by highways have been damaged by them. For example, in the 1950s the federal government ruined the Treme section of New Orleans, one of the city's oldest neighborhoods,¹³⁴ to build the I-10 expressway. The community's main street was Claiborne Avenue, which boasted 200 businesses in its heyday and had a 6100-foot-long median.¹³⁵ The Louisiana Highway Department built I-10 on that street, because Highway Department bureaucrats thought that it was the most direct path from the central business district to eastern New Orleans.¹³⁶ With the construction of the interstate, the street's median became a strip of dirt, covered with "a concrete roof 100 feet wide and 25 feet overhead."¹³⁷ I-10 became a physical barrier that cut the neighborhood in half, and Claiborne Avenue's oak trees were replaced with concrete pillars.¹³⁸ Not surprisingly, Treme became a crime-filled slum.¹³⁹ Thus, the government had nearly destroyed Treme in order to provide commuters with an escape route to the suburbs.

Even the threat of a new highway sometimes eviscerated urban neighborhoods. For example, throughout the 1960s, Buffalo planners debated a city highway known as the West Side Arterial, that (if built) would have destroyed much of the Lower West Side of Buffalo.¹⁴⁰ At first, the creation of the West Side Arterial seemed inevitable, because "throughout the late 1960s . . . city, county, and state planning officials were still enthusiastic about the West Side Arterial."¹⁴¹ For example, the

131. *See id.* at 160-61.

132. *Id.* at 160.

133. *Id.* at 161.

134. Beverly H. Wright, *New Orleans Neighborhoods Under Siege*, in JUST TRANSPORTATION 121, 132-34 (Robert D. Bullard & Glenn S. Johnson eds. 1997)

135. *Id.* at 132-33.

136. *Id.* at 133.

137. *Id.* at 134.

138. *Id.*

139. *See id.* at 134-36. A survey of area business establishments showed that 63% of businesses "would not invest in another business venture in the area" because of "the lack of physical attractiveness and the high crime rate." *Id.* at 135.

140. GOLDMAN, *supra* note 75, at 31-33.

141. *Id.* at 32.

New York Department of Transportation engineer Norman Krapf explained: "It is imperative that we get started on the preliminary layout of a highway that is capable of handling the future highway traffic destined for downtown Buffalo."¹⁴² Banks, insurance companies, and government agencies were not reasonably unwilling to invest in a neighborhood destined for condemnation. For example, in 1971 the U.S. Department of Housing and Urban Development (HUD) denied an application for a grant to rehabilitate Lower West Side dwellings because, according to HUD, "[t]he project is in the probable roadway corridor of the proposed West Side Arterial."¹⁴³ Not surprisingly, homeowners took the hint and left the neighborhood. In 1960, 1900 families attended Immaculate Conception Church in the neighborhood. By 1973 only 500 were left.¹⁴⁴

3. How Roads Built Up The Suburbs

Highways have accelerated sprawl by enabling people to live farther away from downtown jobs, thus giving commuters easy access to central business districts from once-distant suburbs.¹⁴⁵ And where highway-driven residential development goes, commercial development inevitably follows, as retail businesses and other businesses move to suburbs in order to accommodate their suburban employees.¹⁴⁶ As one

142. *Id.*

143. *Id.* at 33.

144. *Id.* See also *Appropriation for Highway Purposes*, 247 N.E.2d 315, 317 (Ohio Ct. App. 1969) (describing deterioration of Dayton, Ohio neighborhood after highway proposed); GRATZ, *supra* note 76, at 23-24 (discussing similar exodus of businesses from Manhattan's SoHo after highway through area announced, followed by neighborhood revitalization after highway killed).

145. See *infra* notes 146-49, 163-64 and accompanying text; *City of Davis v. Coleman*, 521 F.2d 661, 674-75 (9th Cir. 1975) (noting possible "urban sprawl" caused by new highway interchange).

146. See Gordon & Richardson, *supra* note 28, at 70 ("[F]irms now follow the labor force to the suburbs where their employees live"); Earl Daniels, *Building Boom: Area's Residential, Commercial Growth Spurt*, FLORIDA TIMES-UNION, Jan. 13, 2000, at E1 (quoting Jacksonville realtor Barry Goldstein's statement that "We have population growth in the suburban area, and when you have the growth of residential, you have a demand for other services"); Wolfgang Zuckermann, *END OF THE ROAD: THE WORLD CAR CRISIS AND HOW WE CAN SOLVE IT* 240 (1991). Zuckerman notes,

[T]he new road system had drawn many of the former city-center shoppers to new homes in the suburbs. Many retail firms consequently abandoned downtowns to develop new stores on the periphery of urban areas where motorists could easily reach them using the freeway system. In many cases, offices followed suit, and some suburban downtowns developed around freeway intersections.

federal court has pointed out, "[h]ighways create demand for travel and [suburban] expansion by their very existence."¹⁴⁷

For example, Washington's Capital Beltway, a sixty-six mile long highway surrounding the city, was designed to allow East Coast motorists to bypass the city.¹⁴⁸ But instead, the Beltway became a magnet for office and retail centers that sprouted near Beltway exits, such as Tyson's Corner, a satellite downtown in Fairfax County, Va.¹⁴⁹ And as suburbs grew more populated, they grew more congested, which caused politicians to build even more suburban roads (ostensibly to relieve congestion) then spurring development in even more suburbs.¹⁵⁰ A study by the Surface Transportation Policy Project showed that each of the 50 largest metro areas in America added new road capacity in the 1980s and 1990s.¹⁵¹

Some deny that highways cause sprawl. For example, Ronald Utt, in a paper published by the Heritage Foundation, argues that the interstate highways did not cause sprawl because "[s]uburbanization was well underway in 1960, when the federal interstate highway program had

Id.

147. *Sierra Club, Illinois Chapter v. U.S. Dep't of Transp.*, 962 F. Supp. 1037, 1043 (N.D. Ill. 1997) (citing *Swann v. Brinegar*, 517 F.2d 766, 777 (7th Cir. 1975)).

148. See Glen Frankel & Stephen C. Fehr, *As The Economy Grows, The Trees Fall*, WASH. POST, Mar. 23, 1997, at A1.

149. *Id.* See also JACKSON, *supra* note 38, at 165 (pointing out that many of Detroit's suburbs have risen along major roads).

150. See, e.g., Stephen Fehr, *Montgomery's Line of Defense Against the Suburban Invasion*, WASH. POST, Mar. 25, 1997, at A1 (discussing developers' support for a new highway linking Washington's Maryland suburbs with its Virginia suburbs, in order to reduce congestion on Washington's Beltway); Glenn Frankel & Peter Pae, *In Loudoun, Two Worlds Collide*, WASH. POST, Mar. 24, 1997, at A1 (in Loudoun County, a suburb of Washington, the "four-lane Dulles Greenway, a toll road designed to ease the commute for eastern residents, has opened up the west for further growth"); Alan Sipress, *Widen the Roads, Drivers will Come*, WASH. POST, Jan. 4, 1999, at B1 (discussing Maryland's widening of I-270 near Washington, which spurred suburban development but failed to reduce congestion).

151. See Surface Transportation Policy Project, *Why Are The Roads So Congested?*, at <http://www.transact.org/constr99/default.htm> (last visited Jan. 22, 2000) [hereinafter "*Roads*"]. For example, the Providence, Rhode Island region increased road capacity by 59%, and the Charlotte, North Carolina region increased road capacity by 113%. *Id.* (Tables and Graphs section). Frequently, the new and widened highways have been located in the most newest, most affluent outer suburbs, thus increasing the inequality in tax bases and services between those suburbs and core cities or less politically favored suburbs. See Frug, *supra* note 77, at 1098; Myron Orfield, *Talk Radio Called Him a Commie and Put Him On Hold*, MINN. STAR TRIB., May 23, 1995, at 13A (writing that in Minneapolis/St. Paul, "the southern and western outer-ring suburbs have gotten all of the new freeways and sewer systems—billions of dollars in improvements—and therefore virtually all of the region's new tax base").

been in existence for just four years."¹⁵² This assertion does not prove that highways are unrelated to sprawl, both because the state and federal governments had begun to support highway building long before the interstate highway system was built,¹⁵³ and because other antiurban government policies (such as the FHA's antiurban lending policy) had also been in effect for decades before 1960.¹⁵⁴ Moreover, Utt's assertion overlooks the fact that American cities' most stunning setbacks occurred after 1960. Of the eighteen American cities which had more than 500,000 people in 1950, every single one gained population between 1930 and 1950.¹⁵⁵ By contrast, in the 1950s, thirteen of the cities lost population, and two lost over 10% of their population.¹⁵⁶ In the 1960s, fifteen lost population, and six lost over 10%.¹⁵⁷ And in the disastrous 1970s, sixteen lost population and fourteen lost over 10%.¹⁵⁸ In other words, the sprawl that went along with the interstate system snowballed as interstates were built during the 1960s and 1970s.¹⁵⁹

Utt argues that because some cities in Europe and Japan have also experienced population losses, suburban sprawl is a natural result of affluence.¹⁶⁰ But Utt himself admits that sprawl arises from

152. Utt, *supra* note 70; see also Peter Gordon & Harry W. Richardson, *Critiquing Sprawl's Critics*, CATO INSTITUTE POLICY ANALYSIS NO. 365, at 6 (Jan. 24, 2000) (arguing that interstate highway program a minor factor because "there was significant suburbanization before 1956").

153. See *supra* notes 91-104 and accompanying text.

154. See *supra* notes 30-90 and accompanying text.

155. See INFORMATION PLEASE ALMANAC 1955, *supra* note 2, at 215-18.

156. THE WORLD ALMANAC AND BOOK OF FACTS 1976 at 210 (George E. Delury, ed., 1975)

157. *Id.*

158. WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390. By contrast, older cities began to stabilize in the 1980s and 1990s. See *id.* Although most such cities lost population in those decades, only five lost over 10% of their population between 1980 and 1990, and only three did so between 1990 and 1998. See *Id.*

159. I do not mean to suggest, however, that the interstates were the only cause of middle-class flight from cities during those decades. The crime increases and urban riots of those decades may have been an even more important factor. See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1996, at 341-348 (1990) (referencing that crime is higher in cities than in suburbs), 288 (reporting that violent crime more than tripled between 1960 and 1980, and rose more slowly thereafter); LEMANN, *supra* note 66, at 190 ("[T]here were 164 race riots in the first nine months of 1967"); Marcus Franklin, *Wright-Dunbar Faithful Seek Services*, DAYTON DAILY NEWS, Nov. 15, 1999, at 1B ("[M]asses of people left for the suburbs, particularly after . . . the riots in the 1960s.").

160. Utt, *supra* note 70; see also Gordon & Richardson, *supra* note 152, at 5-6. This argument is flawed for two other reasons. First, sprawl in America has continued during economic booms and recessions alike. For example, unemployment exploded in America

transportation policy, arguing that "[i]n Europe and Japan, as well as in many American cities, comprehensive and heavily subsidized public transit systems helped facilitate the exodus of central-city residents to outlying communities."¹⁶¹ Utt cannot have it both ways: He cannot intelligently argue that public transit facilitated suburban migration without admitting that highways had the same effect. Moreover, even highway-generated sprawl is not confined to the United States. For example, one recent Swedish-planned development has been described as a "vast linear Edge City of business parks and hotels and out-of-town shopping centres, stretching along the E-4 highway, for twelve miles and more towards the Arlanda Airport. It is almost indistinguishable from its counterparts in California and Texas."¹⁶²

Indeed, even organizations generally regarded as supportive of new roads and suburban expansion concede that highways affect the location of development. For example, in 1999, the National Association of Home Builders (which favors increased road spending)¹⁶³ conducted a survey that purported to show the popularity of suburban living: The survey asked respondents what amenities would encourage them to move to a new area, and their top choice (endorsed by 55% of respondents) was "highway access."¹⁶⁴ If highway access makes a suburb

during the 1970s. See 1999 ABSTRACT, *supra* note 111, at 411 (noting that unemployment increased from 4.9% in 1970 to 7.1% in 1980), yet cities lost population far more rapidly in that decade than in earlier decades. See *supra* note 158 and accompanying text. Second, Europe, Japan, and America are not comparable because in recent decades, America's overall population increased far more rapidly than the population of other affluent countries. See 1999 ABSTRACT, *supra* note 111, at 832-34 (reporting that America's population increased by over 20% between 1980 and 2000, as opposed to 6% in the United Kingdom, 10% in France, 9% in Japan, and 8% in Sweden). It follows that in the absence of government-induced sprawl, American cities might have retained more population than their counterparts in other affluent countries.

161. Utt, *supra* note 70.

162. Gordon & Richardson, *supra* note 152, at 3 (quoting PETER HALL, *CITIES IN CIVILIZATION* 862-63 (1998)) (emphasis added). Moreover, European countries have begun to follow the same auto-oriented policies as the United States. For example, over the past decade European rail and bus fares have been increased while the cost of driving has remained stable. See *Transport Environmental Signals 2000*, Ch.5, at <http://themes.eea.eu.int/toc.ph> (last visited Feb. 20, 2000).

163. See National Association of Home Builders, *NAHB's Policy on Smart Growth* at http://www.nahb.com/main_features/smartpolicy.html (last visited Feb. 20, 2000) [hereinafter "*NAHB Policy Statement*"] ("[E]nsuring that the construction of schools, roads and other infrastructure keeps pace with the anticipated growth in population and economic activity is one of the biggest challenges facing [suburban] communities today").

164. National Association of Home Builders, *Consumer Survey on Growth Issues* at http://www.nahb.com/main_features/smart_survey/summary.htm (last visited Feb. 8, 2000) [hereinafter "*NAHB Growth Survey*"]. The NAHB asserted that the survey proved that

more desirable, obviously building highways to a place makes that place more desirable to commuters and businesses.

C. Education: Making Cities Less Livable

Most readers of this article probably know someone who lived in a city neighborhood in their twenties, but moved to suburbia after marriage or childbirth so that his or her children could avoid urban public schools.¹⁶⁵ School-related flight from cities is especially common among middle-class whites: in 1990, seventeen large cities with majority white populations had school systems in which over 50% of pupils were black or Hispanic.¹⁶⁶ What went wrong? Why are urban schools so often stigmatized as "bad schools" and avoided by middle-class parents?¹⁶⁷ Here too, government is the problem: Both the bureaucratic rules of the state-run "public" school system and the blunders of federal judges have driven parents out of cities and into suburbs.

1. Why The System Is To Blame

If schools were left to the marketplace, popular schools, like popular

consumers "prefer current growth patterns over higher density development." *Id.* Similarly, Gordon and Richardson, in an article entitled *Defending Suburban Sprawl* (which seeks to do exactly that) admit in passing that "[g]ood highways and cheap communications reversed [the migration of jobs to cities] in the late twentieth century." Gordon & Richardson, *supra* note 28, at 70.

165. See, e.g., Vicki Been, *Comment on Professor Jerry Frug's The Geography of Community*, 48 STAN. L. REV. 1109, 1110 (1996) ("When I talk to the mothers and fathers of my children's friends about their inevitably impending move to the suburbs, they talk about the higher standard of living they can enjoy there . . . [including] the savings of writing one check for property taxes rather than one for property taxes and another for the private school tuition"); Kristin Kovacic, *New Century, Same Place*, PITTSBURGH POST-GAZETTE, Jan. 1, 2000, at A19 ("Our children were fast approaching school age. The rational response appeared to be moving to a suburb with a good school district. Many city families we know were starting to move to these [suburbs] for the schools alone").

166. See ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 84-85 (1994). See also *Clark v. Bd. of Educ. of the Little Rock Sch. Dist.*, 705 F.2d 265, 267 (8th Cir. 1983) (describing "white flight" in Little Rock schools); *Bradley v. Milliken*, 460 F. Supp. 299, 305 (D. Mich. 1978) (describing similar phenomena in Detroit).

167. See, e.g., *Pa. Human Relations Comm'n v. Gwynne*, 681 A.2d 1366, 1373 (Commw. Ct. Pa. 1996) ("Among the primary causes for the decline in [Philadelphia's] population are the high tax rates and low quality of its schools"); Pete DuPont, *Reject Top-Down Planning on Land Use*, YORK DAILY RECORD, June 27, 1999, at 1 ("As cities aged, they began to suffer from bad schools . . . that drove people, especially working-class families, from the cities to the suburbs."); Onell R. Soto, *Business World Tackles Urban Sprawl: Washington Group's Report Details Steps Companies Take Towards Promoting Smart Growth*, THE PRESS-ENTERPRISE, June 16, 1999, at D1 (suggesting that "bad schools in central cities" a leading cause of sprawl).

universities, bookstores and restaurants, would exist wherever parents were willing to pay for them. For example, many of America's most prestigious universities, such as MIT, Columbia, and NYU, are located in central cities.¹⁶⁸ Such schools might be concentrated in more affluent areas—but they certainly would not be limited to certain cities or counties within a metropolitan area, any more than popular bookstores or restaurants are limited to suburbia.

The status quo, of course, is far more hostile to urban parents than my hypothetical libertarian¹⁶⁹ world. In most of America, government bureaucrats assign students to schools based on their home addresses;¹⁷⁰ urban students must generally attend school within an urban school district, while suburban children attend suburban schools. Thus, a public school's student body typically reflects the city or neighborhood in which the students reside. Because cities tend to be more socially diverse than suburbs,¹⁷¹ the average city school will nearly always have more low-income children than the average suburban school.

Other factors being equal, low-income children are harder to educate and achieve less than middle-income children,¹⁷² and schools packed with low-income children have worse reputations (and therefore are less popular with middle-class parents)¹⁷³ than other schools.

168. See NORQUIST, *supra* note 53, at 90.

169. By comparing such a world to the status quo, I am not necessarily endorsing a government withdrawal from education. Such a scheme, although perhaps beneficial to urban centers in the short run, might well make the populace as a whole less educated (especially the portion of the populace which could not afford the most expensive, prestigious schools).

170. KERN ALEXANDER & M. DAVID ALEXANDER, *THE LAW OF SCHOOLS, STUDENTS AND TEACHERS IN A NUTSHELL* 9 (1995) ("Most state laws require children to attend school in the district in which the student resides .").

171. See *supra* notes 9-10 and accompanying text (explaining that cities tend to have disproportionate share of poverty).

172. See *infra* notes 173-81 and accompanying text.

173. In the words of Cynthia Tucker, the black, liberal editorial page editor of the ATLANTA CONSTITUTION, "Very few upscale parents—black, white or Hispanic—warm to the idea of sending their children to school with poor underachievers. With racial differences mixed in, that reluctance hardens to resistance." Cynthia Tucker, *Education Innovation: Create Charter School For Poor Kids*, ATLANTA CONSTITUTION, Feb. 9, 2000, at A16 (describing hostility in Coweta County, Ga. to proposed combination of Newnan Crossing Elementary, where 84% of students poor enough to receive free or reduced-price lunches, with White Oak Elementary, where most students more affluent). Tucker adds that although some "education experts say that putting the lower-performers in class with the high scorers improves learning at the bottom [] many middle-class parents and their school board representatives fear economic integration would only lower achievement for all students." *Id.* For example, Coweta school board member Wade Corley asks, "Do we want to spread all the low-income children around the schools so we can achieve mediocrity?" *Id.* (quoting Corley).

Low-income children are harder to educate because "socioeconomic status (SES) and family background influence a student's achievement in school."¹⁷⁴ This is so because "children reared in lower socioeconomic status [households] tend to be less intellectually stimulated and, consequently, tend to be less prepared for school which ultimately impacts on the child's achievements."¹⁷⁵ For example, Harvard sociologist Christopher Jencks has concluded that "[q]ualitative differences between high schools seem to explain about 2 percent of the variation in the students' educational achievement"¹⁷⁶ and "[e]qualizing the quality of elementary schools would reduce cognitive inequality [as measured by test scores] by 3% or less."¹⁷⁷ Similarly, a 1960s survey by sociologist James Coleman suggested that everything schools did accounted for only 5% to 35% of the variation in students' academic performances; he concluded that "the inequalities imposed on children by their home neighborhood and peer environment are carried along to become the inequalities with which they confront adult life at the end of school."¹⁷⁸ In sum, it may be the case that if suburban children and urban children switched schools, school boards, teachers, and administrators, the suburban/urban achievement gap would be as large as it is now.

This view is supported by the fact that low-income children are harder to educate and achieve less even within the same school or school system. For example, P.S. 24, in Riverdale (an affluent neighborhood on the northern edge of New York City) has two educational programs: a regular program for relatively gifted students, and a "special" program for slower students.¹⁷⁹ The "special" programs

Reactions such as Corley's belie the theory that middle-class parents who avoid racially and economically mixed schools are merely avoiding "bad schools" rather than avoiding the children in those schools. In fact, some state legislatures have actually criminalized urban parents' attempts to get their children into suburban schools. See Pamela J. Smith, *Reliance on the Kindness of Strangers: The Myth of Transracial Affinity v. The Realities of Transracial Educational Pedism*, 52 RUTGERS L. REV. 1, 46-53 (1999) (describing prosecution of urban parents who sought to cross boundary lines).

174. *Reed v. Rhodes*, 1 F. Supp. 2d 705, 738 (N.D. Ohio 1998).

175. *Id.* at 739.

176. CHRISTOPHER JENCKS ET. AL., *INEQUALITY* 159 (1972).

177. *Id.* at 109. By contrast, "[i]f we could equalize everyone's total environment, test score inequality would fall by 25 to 40 percent." *Id.*

178. James Traub, *What No School Can Do*, N.Y. TIMES MAG., June 16, 1999, at 52, 55.

179. See JONATHAN KOZOL, *SAVAGE INEQUALITIES* 92-3 (1991) (describing Riverdale, and pointing out that most children from households poor enough to qualify for free-lunch programs are in "special" classes, while children in "regular" programs are more likely to be from middle-class households).

are dominated by children who are poor enough to qualify for government free-lunch programs, while the regular program is dominated by students from middle-class households.¹⁸⁰ In other words, poor children achieve less than rich children even within the same school.

It logically follows that even if they are relatively well run, schools filled with poverty-stricken children quickly get a reputation as "bad schools" and parents tend to avoid them whenever possible.¹⁸¹ And because, as noted above, state and local governments require urban children to go to schools within poverty-packed urban districts, those governments have made urban schools less prestigious than suburban schools.

2. How The Courts Made The Problem Worse

If students had always been assigned to schools based solely upon their address, most urban schools would be more socially diverse (and thus, less prestigious) than most suburban schools, but there would be exceptions: Affluent urban neighborhoods would have homogeneously affluent (and, thus, highly regarded) public schools, and middle-class parents would be clamoring to live in those neighborhoods so their children could attend those schools. But the federal courts have inadvertently foreclosed this option. For the past forty-five years, the federal courts have used a variety of techniques to force racial integration upon city schools but made little effort to integrate suburban schools. Because African-Americans and other blacks¹⁸² tend to be poorer than whites,¹⁸³ a racially integrated urban school typically includes children from low-income households. As a result, parents who want to send their children to schools dominated by other middle-class

180. *Id.*

181. *See supra* note 173; JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS & AMERICA'S SCHOOLS* 107 (1990) (noting that median income in "high performance schools" is 36% higher than median income in "low performance schools").

182. Through most of this article, I have used the term "blacks" instead of "African-Americans" because compilers of Census data and similar statistics rarely distinguish between African-Americans and other black Americans. I have tried, however, to use the term "African-American" where doing so would clearly be more appropriate. *See, e.g., supra* notes 125, 127-28, 130 and accompanying text (describing destruction of African-American communities to build highways).

183. *See* THE WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 393 (noting blacks' poverty rate more than twice as high as whites' poverty rate); *Milliken v. Bradley*, 418 U.S. 717, 759-60 (1974) (Douglas, J., dissenting).

children (which is to say, most parents)¹⁸⁴ will usually seek to avoid integrated urban schools, and will often move to the suburbs in order to do so.

The federal government's attempt to integrate public schools began with *Brown v. Board of Education*,¹⁸⁵ which prohibited state-sponsored segregation of public schools. Over the next fourteen years, local governments and their constituents sought to evade *Brown* in a wide variety of ways, including closing public schools, violence against African-American students, and a variety of more moderate measures.¹⁸⁶ The courts responded by extending *Brown*.¹⁸⁷ In *Green v. County School Board of New Kent County*,¹⁸⁸ the Supreme Court rejected a "freedom of choice" plan which permitted each pupil to choose a public school, on the ground that the plan had failed to erase segregation. In *Swann v. Charlotte-Mecklenburg Board of Education*,¹⁸⁹ the Court went a step further and allowed lower courts to create integrated city schools through forced busing, racial quotas and a variety of other techniques.¹⁹⁰ After *Swann*, federal courts have routinely ordered cities to bus students throughout the city in order to create racial balance in public schools.¹⁹¹

By the mid-1970s, some big-city school systems had become overwhelmingly African-American.¹⁹² Thus, urban school systems could not create a large number of integrated schools because very few white students were left in some urban school systems.¹⁹³ In order to solve this problem, some integrationists urged the courts to adopt "metropolitan busing plans" which would have discouraged "white flight" by busing suburban whites into city schools dominated by African-Americans (or vice versa).¹⁹⁴ But in *Milliken v. Bradley*,¹⁹⁵ the Supreme Court rejected

184. See *supra* note 173.

185. 347 U.S. 483 (1954).

186. See ROSEMARY C. SALOMONE, EQUAL EDUCATION UNDER LAW 46 (1986) (describing violence against African-Americans who sought to attend white-dominated schools); RAYMOND WOLTERS, THE BURDEN OF BROWN: FORTY YEARS OF SCHOOL DESEGREGATION 65-128 (1984) (describing Virginians' fight against school desegregation).

187. See *infra* notes 188-91 and accompanying text.

188. 391 U.S. 430 (1968).

189. 402 U.S. 1 (1971).

190. *Id.* at 22-32.

191. See SALOMONE, *supra* note 186, at 47-56.

192. See, e.g., *Milliken v. Bradley*, 418 U.S. 717, 765 (1974) (Douglas, J., dissenting) (noting that even if busing was ordered in Detroit, many city schools would be 75% to 90% black) (citation omitted).

193. *Id.*

194. See, e.g., GARY ORFIELD, MUST WE BUS? 196 (1974) (asserting that if "lasting large-scale desegregation is to be possible . . . the suburban boundary line must be crossed").

metropolitan busing on the ground that the suburbs involved had never discriminated against blacks¹⁹⁶ (despite the fact that many American suburbs have excluded blacks through zoning designed to keep out poor and working-class people,¹⁹⁷ who tended to be disproportionately black¹⁹⁸).

Thus, the federal courts, while attempting to split the difference between pre-*Brown* segregation and massive busing schemes, have in fact adopted a double standard: City schools must be diverse, while suburban schools typically need not be. By imposing differing obligations upon cities and suburbs, the federal courts have presented parents with the following choices: (1) send their children to urban public schools, so that their children would go to school with children from the poorest neighborhoods in the city; (2) stay in cities and spend thousands of dollars on private schools; or (3) move to suburbia and send their children to "good" (i.e. homogeneously middle-class and usually majority-white) public schools for free. Not surprisingly, most parents prefer choice (3).¹⁹⁹

3. Why Schools Matter

It could be argued that middle-class flight from cities is caused by factors unrelated to education, such as transportation policy, housing policy, and crime.²⁰⁰ But this argument is belied by the fact that middle-class flight from cities has primarily been a family phenomenon. For

195. 418 U.S. 717 (1974).

196. *Id.* at 745 (rejecting metropolitan busing because the record contained "no showing of significant violation by the [suburban] school districts").

197. See *supra* notes 86-90 and accompanying text (discussing zoning designed to keep out poor); Briffault, *supra* note 89, at 804 (noting that exclusionary zoning is "racially exclusionary in practice").

198. In fact, at the time of the *Milliken* decision, the economic gap between blacks and whites was even larger than it is today. In 1975, the black poverty rate was over three times the white poverty rate (31.3% to 9.7%) while today it is "only" two and a half times the white poverty rate (26.5% to 11%). See 1999 ABSTRACT, *supra* note 111, at 483.

199. See *Missouri v. Jenkins*, 515 U.S. 70, 95 (1995) (stating that "record evidence" supports proposition that "'white flight' may result from desegregation").

200. See Thomas F. Pettigrew & Robert L. Green, *School Desegregation in Large Cities: A Critique of the Coleman "White Flight" Thesis*, 46 HARV. EDUC. L. REV. 1, 40-41 (1976). I note that Pettigrew & Green make concessions that eviscerate their theory. They point out that desegregation has little effect on "white flight" in small cities and metropolitan school districts, *id.*, precisely those districts where there are often no suburbs to flee to. See Michael E. Lewyn, *The Courts v. The Cities*, 25 URB. LAW. 453, 456-57 (1993) (critiquing Pettigrew & Green); ORFIELD, *supra* note 194, at 101 (mentioning that "white flight" is rare in metropolitan school districts because "in metropolitan school districts . . . there is no place to flee to").

example, in Washington, D.C., a 1967 court decision sought to integrate city schools by busing African-American students into majority white schools and eliminating a "tracking plan" which placed brighter students (who were mostly white) into separate classes.²⁰¹ Over the following dozen years, white enrollment in Washington public schools declined by over 70%,²⁰² while the city's population of single whites declined by only 6%.²⁰³ Similarly, in Boston, where courts sought to integrate public schools through a controversial busing plan,²⁰⁴ the city's juvenile white population declined by over 50% in the 1970s, while the city's single adult white population decreased by only 3%.²⁰⁵ In other words, white flight from cities has been led by the people who are naturally the most concerned about schools—families with children. This fact strongly suggests that schools and sprawl are closely related.

Moreover, property values are higher in suburban school districts even where houses and crime rates are identical to those of nearby city neighborhoods. For example, in May 1996, *USA Today* published an article on housing values in various metropolitan areas.²⁰⁶ The article pointed out that property values were consistently higher in areas where school districts had good reputations, even when other factors were identical.²⁰⁷ For example, the article compared a house in an affluent part of Milwaukee with a house less than half a mile away in the suburb

201. See *Hobson v. Hansen*, 269 F. Supp. 401, 511-517 (D.C. Cir. 1967) (holding that tracking and neighborhood assignments, as practiced in Washington, deprived black children of right to equal protection), *cert. dismissed*, 393 U.S. 801 (1968).

202. WOLTERS, *supra* note 186, at 16.

203. See U.S. DEPT OF COMMERCE, BUREAU OF THE CENSUS, 1970 CENSUS OF POPULATION, VOL. I, PART 10, at 10-32 (1973) [hereinafter "1970 CENSUS"]; U.S. DEPT OF COMMERCE, BUREAU OF THE CENSUS, 1980 CENSUS OF POPULATION AND HOUSING: CENSUS TRACTS, at P-99 (1983) [hereinafter "1980 CENSUS"] (reporting that the number of single whites over the age of fifteen decreased from 79,761 to 76,488). Because persons between fifteen and eighteen are still usually in high school (and therefore likely to be in suburban schools if they are white) this statistic actually overestimates the degree of "white flight" by single adults.

204. See J. ANTHONY LUKAS, *COMMON GROUND* (1985) (describing unusually bitter dispute over busing in Boston in great detail).

205. See *United States v. Bd. of Educ. of Chi.*, 554 F. Supp. 912, 925 (N.D. Ill. 1983) ("Based on the experience in comparable cities, such as Los Angeles, Boston and Detroit, between 40% and 45% of white students reassigned by transportation to minority schools can be expected to leave the school system."); 1970 CENSUS, VOL. I, PART 23, at 23-66 (1973); 1980 CENSUS, VOL. I, PART 23, at 231-34 (noting that the number of single whites in Boston decreased from 170,576 to 165,735) (1983).

206. Del Jones, *Location, Location, Location: Better Schools Mean Higher Property Values*, *USA TODAY*, May 15, 1996, at B1.

207. See *id.*

of Shorewood. In nearly every possible respect, including crime rates, the houses and locations were comparable.²⁰⁸ Yet the Shorewood house was significantly more expensive, because of the Milwaukee public school system's poor reputation.²⁰⁹ If the alleged high quality of suburban school districts affects suburbanites' property values, it logically follows that prestigious schools make suburbs more popular with homeowners.

D. How Big Brother Makes Suburbia Sprawling

In addition to encouraging migration from city to suburb, government has also made both city and suburb far more sprawling and auto-dependent than the market would dictate. In the absence of government regulation, American suburbs might have looked like Lake Forest near Chicago or Shaker Heights near Cleveland: communities that accommodated the automobile without being totally auto-dependent, communities where roads and sidewalks, pedestrians and drivers, mingled together peaceably.²¹⁰ But thanks to stifling government zoning codes,

[W]e have separated housing from every other human activity. The result is the familiar pattern we see today in edge-city suburbs—commercial offices in one parking pod, commercial retail in another, light industrial in another, and housing on cul-de-sacs, completely isolated from everything. Housing subdivisions consequently have no corner stores and nothing much else within walking distance, except more housing.²¹¹

The original purpose of zoning was to make crowded, rapidly growing cities more livable by separating polluting industries from

208. See NORQUIST, *supra* note 53, at 97-98; Jones, *supra* note 206, at 2B.

209. See NORQUIST, *supra* note 53; at 98; Jones, *supra* note 206, at 2B.

210. See Paul Stanton Kibel, *The Urban Nexus: Open Space, Brownfields and Justice*, 25 B.C. ENVTL. AFF. L. REV. 589, 594 (1998) (discussing that Shaker Heights near Cleveland, Lake Forest near Chicago, and other older suburbs "bore little resemblance to the suburbs of today. Unlike contemporary sprawl... [such suburbs had] pedestrian access and good suburban-urban public transportation."); ECOCITY CLEVELAND, CAR-FREE IN CLEVELAND 69, 72 (2000) (arguing that two other older Cleveland suburbs, Cleveland Heights and Lakewood, are even more pedestrian-friendly than Shaker Heights).

211. JAMES HOWARD KUNSTLER, *HOME FROM NOWHERE: REMAKING OUR EVERYDAY WORLD FOR THE TWENTY-FIRST CENTURY* 106 (1996) (emphasizing role of zoning in segregating land uses). See also Frug, *supra* note 77, at 1062 (in some suburbs, "[m]erely walking along a [suburban] residential street is viewed as 'suspicious'").

housing.²¹² But over time, zoning laws have spread—both geographically (to non-industrial suburbs) and functionally (to cover even the least polluting land uses).²¹³

The American version of suburbia was created in part by a few bureaucrats in our nation's capital. In 1921, the federal Department of Commerce formed an advisory committee on zoning and drafted the first Standard State Zoning Enabling Act (SZEa).²¹⁴ By 1925, nineteen states had enacted zoning statutes based on the 1921 Act.²¹⁵ In 1926, the Commerce Department published a revised version of SZEa²¹⁶ that was adopted by most states.²¹⁷ SZEa set up a general grant of power to cities to allow them to restrict building and lot size, the size of yards and other open spaces, the density of population, and the location and use of structures for trade, residence, and other purposes.²¹⁸ The SZEa declared that such legislation would be designed "to prevent the overcrowding of land [and] to avoid undue concentration of population."²¹⁹ Specifically, SZEa defined zones as parcels wherein all lots conform to the same requirements of minimum lot size, yard size, and distance of buildings from streets.²²⁰ By requiring minimum lot and yard sizes for all lots within a given zone, SZEa effectively mandates "single use zoning" which often keeps stores out of residential zones and

212. See Briffault, *supra* note 96, at 366; but cf. Andrew J. Cappel, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 YALE L.J. 617, 634-37 (1991) (questioning necessity of zoning in New Haven, and suggesting that zoning codes may have merely ratified preexisting land uses).

213. See Briffault, *supra* note 96, at 366-72.

214. See ANDERSON'S AMERICAN LAW OF ZONING, *supra* note 83, § 2.21 at 67.

215. *Id.*

216. See STANDARD ZONING ENABLING ACT (1926) [hereinafter "SZEa"], quoted in full at DANIEL R. MANDELKER & ROGER A. CUNNINGHAM, PLANNING AND CONTROL OF LAND DEVELOPMENT 168-72 (3d ed. 1990).

217. See *Bd. of County Supervisors of Prince William County v. United States*, 48 F.3d 520, 523, 524 n.7 (Fed. Cir. 1995) (stating that after SZEa, zoning "spread rapidly across the country . . . All states today have adopted enabling acts that delegate zoning authority to local governments"); ANDERSON'S AMERICAN LAW OF ZONING, *supra* note 83, § 2.21 at 68 (mentioning that SZEa was adopted in thirty-five states by 1930 and "[a]ll of the states finally adopted zoning enabling legislation, and most reflect the thinking of the draftsmen of the Standard Act . . ."); MANDELKER, *supra* note 216, at 168 ("[T]he majority of the current statutes still retain[] the substance of the Standard Act"); Ronda Larson, *The End of An Era: Suburban Village Aversion in Citizens For Mount Vernon v. City of Mount Vernon*, 74 WASH. L. REV. 367, 370 n.16 (1999).

218. Epstein, *supra* note 3, at 357 n.50.

219. SZEa, § 3, quoted by Epstein, *supra* note 3, at 358 n.50.

220. See SZEa, § 2 ("[R]egulations shall be uniform for each class or kind of building throughout each district."); Larson, *supra* note 217, at 373.

vice versa, keeps rental properties out of zones reserved for single family homes, and forces all homes in an area to be roughly the same size.²²¹ The practical consequences of the Enabling Act and its state and local clones are that absent a zoning variance, walkable traditional neighborhoods are outlawed in many American suburbs, because every activity demands a separate zone of its own; people cannot live within walking distance of shopping, and offices cannot be within walking distance of either.²²²

Cities as well as suburbs often adopted similar restrictions. In 1916, Dan Hoan, mayor of Milwaukee, stated: "Congestion of the population is a serious problem confronting our community. This can be overcome only by a spreading out of the population."²²³ To remedy this so-called problem, Milwaukee used zoning to restrict "Polish flats" (three or four-room houses where spare rooms were rented out to boarders).²²⁴ And in downtown Sandy, Utah, "[the city's] zoning ordinance says only two words about mixing residential and commercial uses: 'Not permitted.'"²²⁵

Just as bureaucratic regulation of housing and commerce has made cities and suburbs less pedestrian-friendly, local governments' regulation of parking has also accelerated auto dependence. Governments make neighborhoods more auto-dependent and accelerate sprawl by forcing businesses, apartment buildings, and developers to provide (usually free) parking.²²⁶ For example, nearly all building codes require developers to provide two off-street parking spaces per house, and apartment buildings must provide at least one parking space per bedroom and sometimes more.²²⁷ Some suburbs are even more

221. See *Belle Terre v. Boraas*, 416 U.S. 1, 7-10 (1974) (upholding ordinance limiting land use to single family homes); *State v. Village of Oakwood*, 886 S.W. 2d 74, 82 (Mo. Ct. App. 1994), *cert. denied*, 514 U.S. 1078 (1995) (upholding ordinance that only single family homes would be allowed anywhere in city); *Simone v. Worcester County Institution for Savings*, 1995 U.S. App. LEXIS 9081, *6 (1st Cir. April 20, 1995) (holding that Worcester zoning law required 8000 square foot lot for a two family house); *Larson*, *supra* note 217, at 373; *Epstein*, *supra* note 3, at 378.

222. See *KUNSTLER*, *supra* note 211, at 111; *Frug*, *supra* note 77, at 1091-93.

223. *NORQUIST*, *supra* note 53, at 105.

224. *Id.* at 102, 105.

225. Brandon Loomis, *Sandy Seeks Ways to Create a More People-Friendly Downtown*, SALT LAKE TRIB., Jan. 31, 2000, at B8.

226. See Donald C. Shoup, *The Trouble With Minimum Parking Requirements at* <http://www.vtpi.org/shoup.htm> (last visited Jan. 22, 2000); Todd Litman, *Parking Impact Requirements on Housing Affordability at* <http://www.vtpi.org/park-hou.htm> (last visited Jan. 22, 2000).

227. See *Litman*, *supra* note 226; *Ruprecht v. Zoning Hearing Bd. of Hamilton Township*, 680 A.2d 1214, 1220 (Pa. Commw. Ct. 1996) (interpreting ordinance requiring two

restrictive; Schamburg, Ill. demands that developers provide 1.5 spaces per one bedroom unit, thereby ensuring that apartment buildings have 50% more parking spaces than people.²²⁸ Commercial developers are also required to provide parking for stores and office buildings.²²⁹ Municipalities typically calculate the amount of "necessary" free parking based on Institute of Transportation Engineers surveys that count the number of vehicles parked at the time of peak parking demand in areas with ample free parking and nonexistent public transit—in other words, the maximum imaginable amount of vehicles.²³⁰ Local governments' free parking mandates create significant costs for developers: "In Los Angeles, the average construction cost of an office building, excluding the cost of parking, is about \$150 per square foot."²³¹ The installation of four aboveground parking spaces per 1000 square feet of office space (a fairly typical requirement) costs \$40 per square foot.²³² Thus, free parking requirements increase the cost of office space by 27%, and underground parking is even more expensive.²³³ Such requirements also increase the cost of housing. For example, a requirement that each apartment include one parking space increases the cost of housing by 12.5%.²³⁴

Governments' parking mandates augment sprawl in a variety of ways. First, when businesses are forced to provide parking, driving becomes cheaper and more convenient,²³⁵ and homeowners have a greater incentive to live in auto-dependent areas. In addition, the resulting increases in driving, other factors being equal, cause the roads to become more congested,²³⁶ thus giving government an excellent

parking spaces per townhouse).

228. See Litman, *supra* note 226.

229. Shoup, *supra* note 226. See also *Michel v. Planning and Zoning Comm'n. of Monroe*, 612 A.2d 778, 785-87 (Conn. App. Ct. 1992) (requiring fast food restaurants to provide forty-four parking spaces for customers); *Dietrich v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 282, 286 & n.3 (D.C. 1974) (requiring thirty-three parking spaces for school with twenty-two teachers).

230. See Shoup, *supra* note 226.

231. *Id.*

232. *Id.*

233. *Id.*

234. See Litman, *supra* note 226.

235. See Shoup, *supra* note 226.

236. See *S.E. Pa. Transp. Auth. v. Int'l Ass'n of Machinists & Aerospace Workers*, 708 F. Supp. 659, 663 (E.D. Pa. 1989) (noting that interruption of commuter rail service would "greatly increase the numbers of persons utilizing automobiles, causing congestion and standstills on the already burdened traffic arteries of the region") *aff'd*, 882 F.2d 778 (3d Cir.), *cert. denied*, 493 U.S. 1044 (1990); *but cf. infra* note 475 (noting debate on whether dispersed,

excuse to build and widen roads²³⁷ which (as explained above)²³⁸ accelerates sprawl by making it more convenient for motorists to move further away from cities' older areas. Second, government parking mandates make cities and suburbs less pedestrian-friendly and more auto-dependent, by forcing consumers to walk through huge parking lots to shop and work and to share this space with speeding vehicles.²³⁹

It could be argued that such parking mandates are necessary to prevent streets from being deluged with parked cars. Assuming, *arguendo*, that limiting the number of parked cars is a legitimate function of government, this problem can sometimes be solved without bureaucratic parking mandates. Employers can sometimes reduce demand for parking by allowing employees to "cash out" their parking benefits. For example, upon moving to new offices in the Seattle suburb of Bellevue, Washington, the 430 employees of the engineering firm of CH2M Hill were offered the following choice: They could get \$40 per month (reflecting the cost of a parking space) if they walked, bicycled, carpooled or took transit to work, or they could get free parking if they drove alone.²⁴⁰ The percentage of employees driving alone quickly nosedived from 89% to 54%.²⁴¹ Such arrangements are less frequent where employers by law must provide enough parking for every employee, because such employers have no incentive to economize on parking.²⁴²

Government also makes streets inconvenient for pedestrians through traffic planning. For example, traffic engineers use a standard procedure for grading drivers' experiences at intersections. If drivers

auto-dependent pattern of development increases or reduces congestion).

237. See, e.g., *New River Valley Greens v. Dep't of Transp.*, Civ. No. 95-1203-R, 1996 U.S. Dist. LEXIS 16547, *3 (W.D. Va. Oct. 2, 1996) ("Defendants claim the highway is needed to reduce traffic congestion"), *aff'd without opinion*, 129 F.3d 1260 (4th Cir. 1997).

238. See *supra* notes 145-50 and accompanying text.

239. See Douglas G. French, *Cities Without Soul: Standards For Architectural Controls With Growth Management Objectives*, 71 U. DET. MERCY L. REV. 267, 280 (1994) ("[P]arking lots are inconvenient and inhospitable to pedestrians"); Renee Elder, *Green Hills Tries to Catch Its Breath: Advisory Group Working to Make Retail Area More Livable*, THE TENNESSEAN, June 4, 1999, at 1E (quoting local planner as stating that "[a]nytime your buildings are set back behind parking lots, they're more difficult for pedestrians to reach").

240. See PATRICK SIEGMAN, HOW TO GET PAID TO BIKE TO WORK: A GUIDE TO LOW-TRAFFIC, HIGH-PROFIT DEVELOPMENT, PROCEEDINGS OF PROBIKE/PROPED 1996: THE NINTH INTERNATIONAL CONFERENCE ON BICYCLE AND PEDESTRIAN PROGRAMS.

241. *Id.* See also Raul Garcia, *Project-Based Traffic Mitigation*, URBAN LAND, Aug. 1991, at 21, 23 (describing similar experiment in Silver Spring, Maryland which reduced employees' drive-alone share to 28% as opposed to over 50% share among other workers in area).

242. See SIEGMAN, *supra* note 240.

wait an average of five seconds or less to get through an intersection, they have an "A" level of service (the ideal).²⁴³ If drivers wait fifteen to twenty-five seconds, they have a "C" level of service, and if they have to wait a minute or longer, they have an "F" level of service.²⁴⁴ By contrast, engineers have no such scheme for grading pedestrian service, and as a result pedestrians often have to wait sixty seconds or longer to cross.²⁴⁵

Traffic engineers also make streets unfriendly to pedestrians by making them extremely wide. For example, much of Main Street in Buffalo, N.Y., is six lanes wide—a width that discourages pedestrians from walking across the street unless absolutely necessary.²⁴⁶ By making Main Street too wide to be easily walkable, government's traffic engineers have also hastened the decay of Main Street by depriving its merchants of walk-in traffic.²⁴⁷ By contrast, another commercial street a few blocks away, Elmwood Avenue, is only four lanes wide and is thriving.²⁴⁸

Finally, traffic engineers make cities less competitive by limiting on-street parking.²⁴⁹ Cities sometimes limit on-street parking in order to accelerate access to freeways (and thus accelerate access to suburbs).²⁵⁰ But the elimination of on-street parking discourages pedestrians from crossing a street by eliminating a buffer between pedestrians and cars (thus effectively widening that street),²⁵¹ and also discourages downtown business patrons from parking near stores, thus making downtowns less

243. See CONSERVATION LAW FOUNDATION, CITY ROUTES, CITY RIGHTS 37 (June 1998) ("CITY ROUTES").

244. *Id.*

245. *Id.*

246. See *Donovan v. Jones*, 658 So. 2d 755, 765 (La. Ct. App. 1995) (citing expert's testimony that "a wider roadway takes longer to cross thus increasing the time the pedestrian is exposed to traffic"); Robert H. Freilich, *The Land Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. L. 547, 557 (1998) (narrower streets easier for pedestrians to cross); Kevin Collision, *University Plaza Still Tough for Pedestrians*, BUFFALO NEWS, Sept. 5, 1998, at C1 (describing Main Street); Michael Lewyn, *Good Streets, Bad Streets*, BUFFALO BEAT, July 29, 1999, at 7 (same).

247. See Lewyn, *supra* note 246.

248. See Susan Schulman, *Sidewalk Work in Step With Elmwood Improvements*, BUFFALO NEWS, July 1, 1996, at B5 (describing Elmwood); RAND McNALLY ROAD ATLAS & TRAVEL GUIDE 68 (1996) (discussing that parts of Elmwood are within half a mile of Main).

249. See NORQUIST, *supra* note 53, at 174-75.

250. *Id.*

251. See Lewyn, *supra* note 246 (narrow street easier to cross on foot). Cf. KUNSTLER, *supra* note 211, at 129 (noting that cars parked on street "create a physical barrier, and a psychological buffer, that protects pedestrians on the sidewalk from moving vehicles").

competitive with suburbs.²⁵² For example, in Milwaukee, parking was banned on Wisconsin Avenue in the 1930s to allow an additional driving lane for cars. As a result, "[b]usinesses suffered from the perception of shoppers that there was no place to park, even though a two-thousand space parking ramp was built nearby."²⁵³ According to Milwaukee's Mayor Norquist, Wisconsin Avenue recently became more prosperous after on-street parking was reinstated.²⁵⁴

E. Alternative Explanations of Sprawl—or, Misguided Counterarguments

It could be argued that despite the pro-sprawl policies outlined above, suburban sprawl is the natural result not of state and federal bungling but of the incompetence of city governments in population-losing older cities²⁵⁵ or Americans' understandable desire for more space.²⁵⁶ It has also been argued that pro-sprawl federal policies are counterbalanced by anti-sprawl federal policies.²⁵⁷ Each of these arguments will be addressed in turn.

1. Blaming the Victims

It has been argued that municipal incompetence rather than suburban sprawl is the cause of cities' problems, and that if cities would only provide their citizens with decent services and lower taxes, they would be able to compete with suburbs successfully.²⁵⁸ This argument has a grain of truth: middle-class Americans abandon cities not just because of the convenience provided by new and widened highways, but also because of crime, high taxes, and public schools with poor reputations.²⁵⁹ Nevertheless, cities are not solely, or even primarily, to blame for their own problems.

252. See NORQUIST, *supra* note 53, at 174-75.

253. *Id.* at 175.

254. *Id.*

255. See *infra* notes 258-59 and accompanying text.

256. See *infra* notes 316-17 and accompanying text.

257. See *infra* note 325 and accompanying text.

258. See Gregg Easterbrook, *Suburban Myth*, NEW REPUBLIC, Mar. 15, 1999, at 18, 19 ("[P]eople also sought the suburbs to escape the corruption and mismanagement of urban government.").

259. See, e.g., Alex Gibney, *Glendale, Vicious Glendale, California*, NEW REPUBLIC, Sept. 5, 1994, at 22 (describing author's move to the suburbs to avoid crime); NORQUIST, *supra* note 53, at 52, 83 (stating that crime and schools are two major factors causing people and businesses to avoid cities).

a. Confusing Cause and Effect

High taxes, high crime, and poor schools are less a cause of suburban sprawl than a result of suburban sprawl. This is so for a variety of reasons.

First, if a city's middle class migrates en masse to suburbia, its tax base will be smaller and it, therefore, will, other things being equal, have to raise taxes or reduce services.²⁶⁰ So other things being equal, middle-class migration to suburbia may actually cause higher taxes and poor services in cities.

Second, suburban sprawl itself may facilitate the election of urban governments whose policies drive away middle-class taxpayers. Because of middle-class flight from cities, many cities are dominated by African-American and low-income voters,²⁶¹ who tend to favor left-leaning politicians and high-tax, redistributionist policies²⁶² that might drive out

260. See *United Bldg. & Constr. Trades Council of Camden County v. Mayor & Council of Camden*, 465 U.S. 208, 222 (1984) (noting that the decline of industrial city has "eroded property value and depleted the city's tax base"); *Ybarra v. Town of Los Altos Hills*, 370 F. Supp. 742, 750 n.10 (N.D. Cal. 1973) (articulating that central cities "are trying to reverse the population movements that have left them with concentrations of the poor, high service demands, and a stagnant tax base"); DOWNS, *supra* note 166, at 50 (reporting that the largest cities tend to have revenue raising capacity 15% below national average); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1136 (1996) (noting that more affluent communities have larger tax bases). Cf. Terry Nichols Clark, *Fiscal Strain: How Different Are Snow Belt and Sun Belt Cities?*, in THE NEW URBAN REALITY 253, 256, 259-60 (Paul E. Peterson ed., 1985) (questioning impact of population loss upon tax base, but admitting that there is a 0.34% positive correlation between population growth and market value of taxable property).

261. See *supra* notes 9-10 and accompanying text (noting concentration of poverty in cities); 1999 ABSTRACT, *supra* note 111, at 44, 47-49 (reporting that not one of seventy-five largest metropolitan areas has black majority, but nine of those areas' central cities have black majority, and blacks overrepresented in many other core cities); *Ybarra*, 370 F. Supp. at 750 n.10 (cities typically saddled with poor while suburbs skim off middle class).

262. See *Bush v. Vera*, 517 U.S. 952, 970 (1996) (finding that African-Americans are mostly Democrats); *Graves v. Barnes*, 343 F. Supp. 704, 745 (W.D. Tex. 1972) (Justice, J., dissenting) (arguing that African-Americans and working-class whites "ally themselves to elect liberal legislators"), *aff'd in part*, 412 U.S. 755 (1973); 1999 ABSTRACT, *supra* note 111, at 299 (reporting that blacks and less educated voters more likely to support Democrats); University of Michigan National Election Survey, *The NES Guide to Public Opinion and Electoral Behavior* at http://www.umich.edu/~new/nesguide/2ndtable/t2a_2_2.htm (last visited Feb. 14, 2000) (30% of voters in income percentiles 0-16 identified themselves as Republicans in 1998, as opposed to 56% of voters in percentiles 96-100; between 1952 and 1998, percentage of lowest income group describing themselves as Republicans ranged from 18% to 38%, and at no time did percentage of blacks identifying themselves as Republicans exceed 22%); *Washington Post Poll Taker* at <http://www.washingtonpost.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=polls> (last visited Feb. 14, 2000) (reporting that 64% of voters earning less than \$30,000 and 76% of

anti-tax upper-income voters. For example, in Washington, the "white flight" of the 1950s and 1960s²⁶³ and the middle-class African-American flight to suburbia of more recent decades²⁶⁴ combined to create a low-income,²⁶⁵ overwhelmingly African-American urban electorate²⁶⁶ that was responsive to Marion Barry's appeals to racial pride,²⁶⁷ and to his attempts to create jobs by inflating the city payroll.²⁶⁸ As a result, Barry was able to emasculate the city's police force,²⁶⁹ get convicted of using crack cocaine, and nevertheless be reelected as mayor of Washington in

blacks thought federal budget surplus should be used to strengthen Social Security or increase spending on other domestic programs rather than to reduce debt or taxes, while only 42% of voters earning over \$75,000 and 48% of whites favored similar spending increases); *ABCNEWS.com Poll Finds Little Support for TaxCuts*, at <http://www.abcnews.go.com/sections/politics/DailyNews/poll990728.html> (last visited Feb. 14, 2000) (showing similar results).

263. See Kenneth Bredemeier & Mary Jordan, *Downtown Shaking Off Riot Images*, WASH. POST, Apr. 8, 1988, at A1.

264. See Marc Fisher & Eric Pianin, *The Riots and D.C.'s Underclass: City's Poor Still Feel Effects of Black, White Exodus After Uprising*, WASH. POST, Apr. 4, 1988, at A1.

265. See 1999 ABSTRACT, *supra* note 111, at 485 (Washington's poverty rate ranged from 21.1% to 24.1% during 1990s)

266. See 1999 ABSTRACT, *supra* note 111, at 49 (reporting that as of 1990, Washington electorate 65.8% black).

267. See Ron Walters, *Why Barry Happened: For Many Black Voters, A Declaration of Independence*, WASH. POST, Sept. 18, 1994, at C1.

268. See Michael H. Cottman & Sari Horwitz, *Williams To Appoint Official to Work out Agencies' Problems*, WASH. POST, Nov. 3, 1999, at B7 (describing that Barry "inflated the city's payroll as a way to create jobs for minorities and a political power base for himself"); Michael H. Cottman, *Mayor To End Job Protection For Managers*, WASH. POST, Oct. 10, 1999, at A1 (noting that in low-income areas of Washington, "city jobs are viewed lustily"); Rene Sanchez, *Barry Acknowledges Many Remain Skeptical About His Recovery and Ability to Govern*, WASH. POST, Nov. 10, 1994, at C12 (reporting that Barry overwhelmingly won low-income African-American areas in general election, his Republican challenger won white areas, and middle-class African-American areas were evenly divided); Maurice Weaver, *U.S. Primaries Under Way*, DAILY TELEGRAPH (LONDON), Sept. 14, 1994, at 11 (reporting that Barry backed by "poor, young and black" while his Democratic primary opponent, John Ray was "backed mainly by whites and middle class blacks."); Vanessa Williams, *With Barry Out, Candidates' Challenge Is Keeping Voters Tuned In*, WASH. POST, May 22, 1998, at B1 (discussing that Barry's base consisted of "government workers and low-income residents").

269. See Carl Rowan, *D.C. Confidential*, NEW REPUBLIC, Jan. 19, 1998, at 20, 21-22 (Barry reduced police force by 25% and reduced hiring standards so dramatically that police academy recruits were kept "beyond their scheduled graduation dates" to be taught remedial writing and "training instructors had to deal with recruits whom veteran cops recognized as former crooks"). Not suprisingly, between Barry's inauguration in 1979, *id.* at 21, and 1996, Washington's murder rate increased from 27.4 per 100,000 to 73.1 per 100,000, an increase of 166%, while the suburban murder rate increased by only 32% and the national murder rate decreased. See CRIME IN AMERICA'S TOP-RATED CITIES, 1997-98 at 735 (Andrew Garoogian, ed., 1997). Similarly, robberies increased in the city of Washington while decreasing both in Washington's suburbs and in the nation as a whole. *Id.* at 736.

1994.²⁷⁰ By the mid-1990s, 7% of Washington's population was on the city payroll, far more than in any other large American city.²⁷¹ Washington's nearest competitor, New York City, clocked in at 5.4%.²⁷² Not surprisingly, Washington's taxes significantly exceeded those of its suburbs: City residents paid 9.5% of their income in city income taxes, as opposed to 5.75% in nearby Virginia.²⁷³ The results of Barry's policies were calamitous: Washington lost 27% of its population between 1980 and Barry's departure in 1998,²⁷⁴ while the Washington metro area's population increased by over 30%.²⁷⁵ Between 1990 and 1998, Washington lost 13.8% of its population,²⁷⁶ more than all but two other American cities.²⁷⁷ By contrast, if Washington had not been ravaged by the pro-suburban federal policies discussed above,²⁷⁸ it might have had a more racially diverse, middle-class electorate that would never have tolerated Barry's shenanigans.

Third, the common complaint that "bad schools" drive people out of cities²⁷⁹ exemplifies how state and federal policies cause "bad" municipal services. State and federal governments' anti-urban transportation,

270. See Linda Diebel, *Clinton Given A Stiff Rebuke; Stunning Gains By Republicans Threaten Agenda, Re-Election Bid*, TORONTO STAR, Nov. 9, 1994, at A1 (noting Barry's misconduct and reelection).

271. See 1999 ABSTRACT, *supra* note 111, at 343. See also Cottman & Horwitz, *supra* note 268.

272. See 1999 ABSTRACT, *supra* note 111, at 343.

273. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 161.

274. See 1999 ABSTRACT, *supra* note 111, at 49. Ironically, Barry's policies had little if any positive effect on the city's unemployment rate. In 1997, the city's unemployment rate was 7.9%, far higher than the national and metro area unemployment rates. *Id.* at 414-15.

275. *Id.* at 43. Had Washington been better governed, it probably still would have lost some population, but might have lost far less than it did. Minneapolis is somewhat analogous: it is (a) a city with very little immigration (like Washington), (b) trapped within its 1950s boundaries (like Washington), and (c) in a region whose population increased by 25%, only slightly less than Greater Washington's growth rate. See RUSK, *supra* note 4, at 138 (describing Minneapolis and Washington as zero-elasticity cities); 1999 ABSTRACT, *supra* note 111, at 42, 48-49 (listing growth statistics and stating that both cities are less than 6% Asian or Hispanic). Unlike Washington, Minneapolis has a reputation as being relatively well governed. See *infra* note 293 and accompanying text; 1999 ABSTRACT, *supra* note 111, at 332 (describing that the city has AAA bond rating according to Standard & Poor's, the highest possible bond rating). Minneapolis has nevertheless lost 5% of its population since 1980. See 1999 ABSTRACT, *supra* note 111, at 48.

276. See 1999 ABSTRACT, *supra* note 111, at 49.

277. *Id.* at 48-49 (reporting that only St. Louis and Norfolk lost greater share of population during 1990s).

278. See *supra* notes 30-205 and accompanying text (discussing effect of federal policies on cities generally, including Washington).

279. See *supra* note 167.

housing and educational policies have, as discussed above, caused cities to become disproportionately comprised of the poor²⁸⁰ and thereby caused urban schools to become dominated by children from poor households. Because children from low-income households tend to be low achievers in school,²⁸¹ the "quality gap" between city schools and suburban schools arises from state and federal incompetence rather than municipal incompetence.

Fourth, cities' high crime rates arise partially from government policy. As explained above, federal housing policy and exclusionary suburban zoning caused low-income households to be concentrated in cities, while a variety of federal, state, and local policies encouraged middle-class flight to suburbia.²⁸² As a general rule, low-income areas in cities are more dangerous than high-income areas.²⁸³ If poor areas are more crime-ridden, and government policy caused cities to be dominated by poor people, it logically follows that government policy made cities more dangerous than suburbs.

b. Bizarre Coincidences

The claim that bad city government rather than state and federal misconduct drives middle-class families out of cities is logically, as well as factually, flawed.

As noted above, most older American cities gained population in the 1930s and 1940s and have lost population ever since.²⁸⁴ Thus, to believe that suburban sprawl is the result of municipal incompetence, one would have to believe that dozens of city governments, by an incredibly strange coincidence, became unable to police their streets or improve their schools at exactly the same time—obviously a bizarre proposition.

The "municipal incompetence" theory also fails to explain why, in

280. See *supra* notes 30-205 and accompanying text (discussing effect of federal policies on cities generally).

281. See *supra* notes 172-81 and accompanying text.

282. See *supra* notes 30-205 and accompanying text.

283. See *Patrolmen's Benevolent Ass'n v. City of N.Y.*, 74 F. Supp. 2d 321, 336 (S.D.N.Y. 1999) (citing *Bridgeport Guardians, Inc. v. Delmonte*, 553 F. Supp. 601, 610-11 (D. Conn. 1983)) (equating "high-crime" areas with "low-income" areas and "affluent" parts of city with "lower crime areas"); Douglas S. Massey, *Getting Away With Murder: Segregation and Violent Crime in Urban America*, 143 U. PA. L. REV. 1203, 1215 (1995) ("[U]sing least squares regression, I estimated the relationship between crime and poverty to be: Major Crime Rate = 36.55 + .02 (percentage white) + .79 (poverty rate), where the units are census tracts and crime rates are expressed per 1000 inhabitants").

284. See *supra* notes 155-58 and accompanying text; WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390.

many stagnant metropolitan areas, older suburbs closer to the city have begun to lose population. For example, every suburb contiguous to Cleveland and Buffalo lost population during the 1990s.²⁸⁵ So to believe that municipal incompetence causes population loss, one would have to believe that all of these suburbs became ungovernable at exactly the same time—obviously a proposition too bizarre to be believable. Indeed, this theory is even less plausible than the theory that big cities' incompetence caused their problems. It could perhaps be argued that big cities have become ungovernable because of their sheer size (although the growth of cities that have annexed their suburbs²⁸⁶ and of the nation's very largest cities²⁸⁷ suggest otherwise)—but this argument cannot plausibly be made about inner ring suburbs that are just as small as their rivals further away from central cities.

c. Good Government And Bad Cities

The theory that bad city government causes suburban sprawl rests on the assumption that the most inefficient governments drive out people and businesses while competent city governments do not. Undeniably, high taxes and municipal incompetence are factors that drive out middle-class taxpayers—but far from the only factor.²⁸⁸ Some cities with relatively competent municipal governments are being bled to death by sprawl, while other less well-run cities continue to grow.²⁸⁹

In 2000, the Maxwell School of Citizenship & Public Affairs and *Governing Magazine* graded thirty-five big cities on the management of

285. See DAVID BEACH, *MOVING TO CORN FIELDS* 10 (1996) (describing population losses in inner suburbs); RAND MCNALLY, *supra* note 248, at 68 (showing maps and locations of Buffalo and Cleveland suburbs); THE WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 414-18; Susan Schulman, *Skepticism Greets Report of Drop in Suburban Population*, BUFFALO NEWS, July 14, 1999, at B1 (noting nearly all Buffalo suburbs other than some outer ring suburbs lost population in 1990s).

286. In his book *CITIES WITHOUT SUBURBS*, former Albuquerque mayor David Rusk divides American cities into inelastic cities (that is, those that cannot annex suburban territory) and elastic cities (those that have annexed a great deal of territory). Between 1950 and 1990, the average zero-elasticity city lost 23% of its population even though these cities' metropolitan areas grew by an average of 30%—while the most elastic cities (termed "hyper-elastic" by Rusk) increased their population by 250%, more than the growth in those cities' suburban populations. See RUSK, *supra* note 4, at 56. Elastic cities also tend to have less poverty, higher bond ratings, and more rapid income growth. *Id.* at 70-71, 73.

287. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390 (reporting that four largest cities gained population during 1990s).

288. See *supra* notes 30-205 and accompanying text (describing a variety of anti-urban government policies).

289. See *infra* notes 290-97 and accompanying text.

their governments.²⁹⁰ The two highest-graded cities, Phoenix and Austin,²⁹¹ have gained population in recent decades.²⁹² But not all of the well-run cities are doing so well. Fourth-place Minneapolis has consistently lost population since 1950, as has eighth-place Milwaukee.²⁹³ Conversely, some poorly managed cities continue to grow. Columbus was fourth from the bottom according to the Maxwell School survey,²⁹⁴ while Los Angeles was third from the bottom.²⁹⁵ Yet, both cities have gained population in recent decades.²⁹⁶ In fact, of the ten most incompetently managed cities, five (Nashville, San Francisco, Anchorage, Columbus, and Los Angeles) gained population during the 1990s.²⁹⁷

It could be argued that high taxes rather than incompetent service delivery drives middle-class flight from cities. Although taxes are hardly irrelevant,²⁹⁸ they are not the only factor governing a city's ability to survive sprawl. Cleveland imposes only \$593 per capita in taxes, far less than Indianapolis (\$688), Seattle (\$772), and Denver (\$959).²⁹⁹ Yet Cleveland has lost nearly half its 1950 population, while the other three

290. See Richard Wolf, *Phoenix is Managing to Get Everything Right*, USA TODAY, Jan. 31, 2000, at 13A.

291. *Id.*

292. WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390. Both of these cities have annexed a significant amount of territory. See RUSK, *supra* note 4, at 138-39 (describing Phoenix and Austin as "hyperelastic").

293. See Wolf, *supra* note 290 (listing cities' grades, and giving Minneapolis a B+ and Milwaukee a B); WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6 at 390 (listing cities' population gains and losses).

294. Wolf, *supra* note 290.

295. *Id.*

296. WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390.

297. Wolf, *supra* note 290; WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390; 1999 ABSTRACT, *supra* note 111, at 47-49. Three of these cities, Nashville, Anchorage and Columbus, are high-elasticity cities that have prospered by annexing suburban territory. See Rusk, *supra* note 4, at 138-39. The other two are hubs for immigration. See *id.* at 8-9 (noting that Los Angeles was a center for immigration); Lynette Evans, *Where Bay Area Immigrants Call Home*, S. F. EXAMINER, Feb. 9, 1997, at W7 (reporting that 33% of San Francisco residents foreign born).

298. See Pa. Human Relations Comm'n v. Sch. Dist. of Phila., 681 A.2d at 1366, 1373 (Pa. Commw. Ct. 1996) (attributing Philadelphia's population losses in part to its high taxes); Briffault, *supra* note 96, at 352 (mentioning that central cities typically have higher taxes than suburbs). *But cf.* Editorial, *How Businesses Get Hurt By Taxation, Buffalo-Style*, BUFFALO NEWS, May 13, 1992, at B2 (unsigned editorial noting that Buffalo's taxes higher than those in neighboring suburbs).

299. See BUREAU OF THE CENSUS U.S. DEPT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1998 at 328 (118th ed. 1998).

cities have gained population over time.³⁰⁰ Why? Perhaps because the other cities have been able to annex some of their suburbs, while Cleveland is confined within its 1940s boundaries.³⁰¹ Similarly, Buffalo has lower taxes than its suburbs,³⁰² yet has lost over 45% of its 1950 population.³⁰³

Utt cites New York, Milwaukee, and Indianapolis as examples of cities that have fought suburban sprawl during the 1990s by the simple expedient of electing mayors who have governed more effectively than their predecessors.³⁰⁴ But these three examples show the futility of counting on good government to reverse suburban sprawl. Indianapolis continues to grow because decades ago, it merged with a surrounding county, and thereby took over a great deal of suburban territory.³⁰⁵ (Ironically, Utt condemns the metropolitan government that saved Indianapolis from the fate of Cleveland).³⁰⁶ In fact, the 1990s have been less kind to Indianapolis than prior decades: The city grew by 4% from 1980 to 1990, but only 1% from 1990 to 1998.³⁰⁷ Despite its dramatic drop in crime, New York grew more slowly in the 1990s than in the "bad old days" of the 1980s: by 3% in the 1980s and by only 1% in the 1990s.³⁰⁸ And in Milwaukee, the 1990s have been a difficult decade: After losing only 1% of its population in the 1980s, the city lost 8% of its population in the 1990s—even though it has cut taxes by 21.4% during the 1990s.³⁰⁹ It may be that with less charismatic and competent mayors, these cities would have been in much deeper trouble. But nevertheless, these cities' anemic growth in the 1990s suggests that factors other than the competence of a city's leadership underlie urban decline.

In fact, the cities that have rebounded most impressively in the 1990s

300. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390.

301. See RUSK, *supra* note 4, at 17, 138 (noting that Cleveland is a zero-elasticity city, while Seattle is a low-elasticity city, Denver a medium-elasticity city, and Indianapolis a high-elasticity city); 1999 ABSTRACT, *supra* note 111, at 47, 49 (reporting that city of Cleveland encompassed only 77 square miles, as opposed to Seattle's 83, Denver's 153, and Indianapolis's 361). Another relevant factor is that Cleveland, unlike the other three cities, is part of a stagnant region. *Id.* at 41-43 (Cleveland metro area lost population between 1980 and 1996, while other three areas grew by over 10%).

302. See *How Businesses Get Hurt By Taxation, Buffalo-Style*, BUFFALO NEWS, *supra* note 298.

303. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390.

304. See Utt, *supra* note 70, at <http://www.heritage.org/issues/chap13.html>.

305. See RUSK, *supra* note 4, at 96-97.

306. See Utt, *supra* note 70, at <http://www.heritage.org/issues/chap13.html>.

307. See 1999 ABSTRACT, *supra* note 111, at 48.

308. *Id.*

309. See NORQUIST, *supra* note 53, at 44.

have done a mediocre job of fighting major urban problems. Of the fifty largest American cities, only four gained population in the 1990s after losing population in the 1980s: Chicago, Atlanta, Denver, and Kansas City.³¹⁰ According to the Maxwell School study, these cities have thoroughly mediocre governments: Chicago was No. 16 of 35 in governmental competence; Denver, No. 17; Kansas City, No. 20, and Atlanta No. 22—and all finished behind seemingly doomed cities such as Philadelphia and Baltimore (both of which have lost about 30% of their 1950 population).³¹¹ Similarly, the "comeback cities" have not done an especially good job at fighting urban problems such as crime. In 1997, three of the four "comeback cities" (Chicago, Atlanta, and Kansas City) had higher murder rates than supposedly better-governed Milwaukee, and all four had higher murder rates than New York City.³¹² While New York's murder rate declined by almost two-thirds between 1991 and 1997 (from 29.3 per 100,000 to just 10.5 per 100,000), Denver's murder rate declined by 29% (from 18.4 to 13.1 per 100,000), Chicago's murder rate declined by 16% (from 32.9 to 27.4 per 100,000), Atlanta's by 30% (from 50.9 to 35.6 per 100,000), and Kansas City's by 28% (from 30.8 to 22.1 per 100,000).³¹³ (Nationally, the murder rate declined by about 30%, from 9.8 per 100,000 to 6.8 per 100,000).³¹⁴ Yet three of these four cities grew faster than New York City in the 1990s.³¹⁵ In sum, the quality of a city's government is undeniably relevant to the speed of suburban sprawl, but is only one relevant factor among many.

2. Another Counterargument: The "Natural Desire" Theory

It could also be argued that even if government has discouraged city living in a variety of ways, the status quo was nevertheless inevitable because Americans, when empowered by prosperity, naturally desire the bigger houses and bigger lots they get by choosing low-density suburban living,³¹⁶ and the effects of pro-sprawl government programs

310. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390.

311. See Wolf, *supra* note 290 (listing cities' "grades"); WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390 (listing cities' population gains and losses).

312. See 1999 ABSTRACT, *supra* note 111, at 216.

313. See BUREAU OF THE CENSUS U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1993 at 194 (113th ed. 1993) [hereinafter "1993 ABSTRACT"] (listing 1991 statistics); 1999 ABSTRACT, *supra* note 111, at 216 (listing 1997 statistics).

314. 1993 ABSTRACT, *supra* note 313, at 192; 1999 ABSTRACT, *supra* note 111, at 214.

315. 1999 ABSTRACT, *supra* note 111, at 47-48 (reporting that New York City grew by 1.3%, Chicago by 0.7%, Kansas City by 1.6%, Atlanta by 2.5%, and Denver by 6.7%).

316. See *Showa v. Comm'r of Internal Revenue*, 123 F.3d 190, 193 n.6 (4th Cir. 1997)

are thus minor.³¹⁷ This argument requires one to believe that even if cities had crime rates, school systems, tax rates, and government services identical to those of suburbia, they would still be as depopulated as they are now—a proposition that should seem highly questionable to everyone who has known anyone who moved to suburbia for the schools.³¹⁸

More importantly, this argument overlooks a simple fact: that livable city neighborhoods have sky-high property values. Neighborhoods like Buckhead in Atlanta, Cleveland Park in Washington, D.C., and Boston's Back Bay are more expensive than many suburban neighborhoods.³¹⁹ For example, in 1998 the average home price in Buckhead was \$364,952—more than the average home price in all but one of greater Atlanta's suburbs.³²⁰ Similarly, the average home in the Back Bay cost \$444,000 in 1996, more than twice the metro Boston average,³²¹ and the average home in the zip code that includes Cleveland Park cost \$571,095 in 1996,³²² more than three times the cost of the average Washington-area home.³²³ If "good" city neighborhoods are

(attributing suburban migration to fact that "many middle class homeowners [were] becoming more secure in the economic prosperity following World War II"); DOWNS, *supra* note 166, at 3 (criticizing effects of sprawl but describing "a home in the suburbs" as a goal "that most Americans cherish").

317. One Cato Institute-sponsored report, entitled *Critiquing Sprawl's Critics*, asserts that "[u]rban economists have found that the alleged subsidies [to suburbia]—to the effect that they exist—are minor and have little effect at the margin." See Gordon & Richardson, *supra* note 152, at 5. But this assertion misconstrues its source. The only "urban economist" Gordon and Richardson cite, *id.* at 16 n.29, citing WILLIAM FISCHER, *THE ECONOMICS OF ZONING: A PROPERTY RIGHTS APPROACH TO AMERICAN LAND USE CONTROLS* 281-84 (1985), asserts that sprawl takes up a relatively small proportion of cropland and that low gasoline prices have a minor effect on sprawl. *Id.* at 282. But the pages cited by Gordon and Richardson do not address the impact of any of the pro-sprawl policies cited above, such as public housing, highway construction, or school desegregation. In fact, Fischer asserts that "much sprawl is caused by local zoning practices," *id.* at 268, hardly the statement of someone who believes sprawl is a natural result of the free market.

318. See *supra* notes 165-66 and accompanying text (describing impact of school systems upon migration to suburbs).

319. See *infra* notes 320-23 and accompanying text.

320. See Heather Moore Johnson, *Best Places to Live*, ATLANTA MAG., Apr. 1999, at 80, 88.

321. See Tina Cassidy, *Real Estate Buyers, Sellers Signs of 80's-Type Boom*, BOSTON GLOBE, June 30, 1996, at 1 (metro section; noting that median home in metro area cost only \$187,300).

322. See Ruth Hepner, *Where Can You Afford to Buy? List of Area ZIPs and Their Average Housing Price*, WASH. TIMES, May 31, 1996, at F33.

323. See 1999 ABSTRACT, *supra* note 111, at 726 (noting that the median area home cost \$160,700 in 1996).

expensive, the demand for such neighborhoods obviously exceeds the supply.³²⁴ In other words, despite cities' "bad" schools and higher crime rates, there is a huge pent-up demand for city living. And if government had not turned city schools and neighborhoods into crime-ridden warehouses for the destitute and the dispossessed, the demand for city living would be higher still.

3. The Most Bizarre Counterargument: Does The Government Favor Cities?

One commentator has argued that "critics of sprawl overlook the many policies that favor central cities, such as downtown renewal, subsidized stadia placed in central cities, and heavily subsidized downtown-focused rail transit systems."³²⁵ But none of these policies are tremendously helpful to central cities.

As explained above, the federal "urban renewal" program destabilized central cities by destroying housing and displacing people and businesses.³²⁶ And although rail systems mitigate the effect of sprawl upon the carless poor³²⁷ and make it easier for suburban commuters to reach downtown jobs, their impact on cities is unclear: Like highways, rail systems that extend into suburbia make it more convenient for central city workers to live in the suburbs (as opposed to urban neighborhoods near downtown), and thus may actually accelerate sprawl under certain circumstances.³²⁸ And the idea that sports stadia counterbalance pro-sprawl policies requires one to believe that a significant number of families scared out of cities by crime-ridden public housing projects³²⁹ and poverty-packed schools,³³⁰ and lured out of cities by convenient highways,³³¹ will nevertheless move back to a city to be a few miles closer to a ballgame. To state such a bizarre proposition is to rebut it.³³²

324. Cf. French, *supra* note 239, at 291 ("[H]omes in traditional cities typically command a higher price than comparable homes in the modern suburbs.").

325. Gordon & Richardson, *supra* note 152, at 5.

326. See *supra* notes 74-82 and accompanying text.

327. See WEYRICH & LIND, *supra* note 93, at 23-24 (citing examples of public transit's role in reducing welfare dependence).

328. See Utt, *supra* note 70, at <http://www.heritage.org/issues/chap13.html> (asserting that European rail lines encourage migration to suburbs).

329. See *supra* notes 55-72 and accompanying text.

330. See *supra* notes 165-209 and accompanying text.

331. See *supra* notes 146-64 and accompanying text.

332. In fact, it has been argued that sports stadia actually reduce economic development. See Raymond J. Keating, *We Wuz Robbed: The Subsidized Stadium Scam*, POL'Y REV., Mar.-

III. SPRAWL AS A CONSERVATIVE ISSUE: OR, WHY YOU SHOULD OPPOSE SPRAWL EVEN IF YOU ARE NOT AN ENVIRONMENTALIST

As noted above, environmentalists have traditionally fought sprawl, while conservatives have often criticized anti-sprawl policies. But in fact, even the most anti-environmentalist conservatives³³³ have excellent reasons to fight suburban sprawl. As explained below, sprawl reduces, rather than enhances, consumer choice, dissolves social stability, and increases welfare dependence.

A. Economic Freedom vs. Suburban Sprawl

Economic conservatives claim to favor more consumer choice and less government;³³⁴ but sprawl, as explained below, means less freedom and higher taxes.

1. Sprawl vs. Freedom

Conservative economist Milton Friedman has argued that the market is superior to government not just because it is more efficient but also because it produces "unanimity without conformity"—that is, because millions of consumers can satisfy their diverse needs without imposing their desires on others.³³⁵ And in some metropolitan areas (such as the American cities of the first half of the 20th century, or many Canadian and European cities today) consumers can choose among a wide variety of options: they can live in city or suburb, and can live with no cars or plenty.³³⁶ Such diversity, such unanimity without conformity,

Apr. 1997, at 56-57 (citing study asserting that new stadiums caused no positive economic impact, because harm from taxes raised to subsidize stadiums outweigh benefits). Certainly, there is little evidence that cities with sports teams are more prosperous than those lacking such tenants; every single American city that had a major league baseball team in 1954 has lost population over the past several decades. See INFORMATION PLEASE ALMANAC, *supra* note 2, at 912 (listing 1954 teams); WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390 (listing population trends).

333. By "anti-environmentalist conservatives" I mean not conservatives who consciously favor befouling the natural environment (since I doubt that any exist) but conservatives who tend to oppose the priorities of well-known environmental groups such as the Sierra Club.

334. See R. Shep Melnick, *An American Dilemma*, WILSON Q., Autumn, 1999, at 70, 72 ("Conservatives are forever lamenting that 'big government' has been foisted upon an unsuspecting public"); Hayward, *supra* note 25, at 38 (expressing fear that antisprawl activists seek to limit consumer choice).

335. See MILTON FRIEDMAN, CAPITALISM AND FREEDOM 14-15, 23 (1982 ed.).

336. See NORQUIST, *supra* note 53, at 172 ("[A]s in the rest of the advanced industrial world, driving a car in Canadian cities is a travel choice, not a necessity. Only the U.S. government denies this choice to its citizens"); RUSK, *supra* note 4, at 5 (describing that in 1950 most metropolitan Americans lived in same city, and "rode city buses, streetcars, and

is what supporters of economic freedom should support.

But in most of metropolitan America, conformity is the rule in two respects. Sprawl has made auto ownership mandatory in most of America, and has made suburban living mandatory in large chunks of America.³³⁷ To quote one newspaper article, "the suburban sprawl that started after World War II forced Americans to go everywhere by car. Traditional, walkable communities are mostly a thing of the past."³³⁸

a. Drive or Die

In a free society, government generally should not force a particular mixture of products down consumers' throats: Consumers should be free to spend half their income on mortgage payments and take the bus to work, or live in a rundown trailer park and throw their money at a BMW. But in fact, government-induced sprawl has forced most American adults³³⁹ to spend thousands of dollars on one product: a functional automobile.

In a few cities, like New York and Washington, one person can comfortably survive without a car. But in most cities and suburbs, government policies have made auto ownership virtually mandatory.³⁴⁰ As explained above, government has, through the highway system, the education system and the FHA, lured middle-class people and their jobs to the suburbs, and then used zoning and traffic engineering to make those suburbs as auto-oriented as possible.³⁴¹ Government has further rigged suburban life in favor of the auto by building roads for drivers but providing minimal public transportation to nondrivers.³⁴² Thus, suburbanites often need a car even if they live in regions with relatively well-developed transit systems, and in most smaller and Sun Belt cities

subways to blue-and white-collar jobs within the city or, occasionally, to nearby factories"). *But cf.* Gordon & Richardson, *supra* note 152, at 5 (noting that suburban communities are now beginning to evolve outside the United States).

337. *See infra* notes 339-78 and accompanying text.

338. Charles Belfoure, *Neighborhood Profile: Woodlawn*, BALT. SUN, Feb. 7, 1999, at 1M. *See also* Frug, *supra* note 77, at 1062 (suggesting that walking is viewed as "suspicious" in some suburbs). In my view, Belfoure exaggerates slightly. There are a few cities (especially in the Northeast) where car dependence is less mandatory than in the areas discussed below.

339. *See* 1999 ABSTRACT, *supra* note 111, at 16, 637 (reporting that 182.7 million Americans own 207.7 million motor vehicles in nation of 208 million people 16 or over).

340. *See* *Wooley v. Maynard*, 430 U.S. 705, 715 ("[D]riving an automobile [is] a virtual necessity for most Americans."); *infra* notes 341-65 and accompanying text.

341. *See supra* notes 30-254 and accompanying text.

342. *See infra* notes 345-64 and accompanying text. *Cf.* Briffault, *supra* note 96, at 376 (suggesting that suburbanites consciously limit public transit "because of the concern that [transit] would increase the ability of central city residents to travel to the suburbs").

even city residents can barely function without them.³⁴³ Because two-thirds of all new jobs are now created in suburbs, many workers need a car just to get to work.³⁴⁴ In fact, a survey by the U.S. Department of Commerce shows that only 54.4% of American households have any public transit at all available, and that only 28.8% claim to have satisfactory public transit.³⁴⁵

Even in metropolitan areas with extensive transit systems, the majority of entry-level jobs are not transit-accessible.³⁴⁶ For example, the Boston region has a central city with a well-developed transit system and a commuter train system that serves many of its suburbs.³⁴⁷ But even in Greater Boston, just 32% of entry-level employers are within one-quarter mile of transit, 43% are within one-half mile, and 58% are within one mile.³⁴⁸ Just 14% of entry-level jobs can be reached by transit within an hour from Boston's poorer neighborhoods.³⁴⁹

The situation is even worse in Sun Belt cities. For example, Atlanta's second-largest suburban county (Gwinnett County, which had 522,000 people in 1998) has no public transportation whatsoever,³⁵⁰ and even some neighborhoods within the city limits have virtually no bus service.³⁵¹ Even in areas with bus service, the absence of sidewalks (or even lawns that one can walk on) prevents would-be riders from walking

343. See *infra* notes 350-64 and accompanying text. Cf. *Bank One of Columbus, N.A. v. Butts*, No. 89-3703, 1991 U.S. App. LEXIS 29863, *13 (6th Cir. Dec. 1, 1991) ("[T]here is no indication, however, that public transportation was available [or safely available] to get [defendant] to and from her workplace").

344. Gearen, *supra* note 14.

345. See Paul M. Weyrich and William S. Lind, *Does Transit Work? A Conservative Reappraisal at* <http://www.apta.com/info/online/weyrich2new.htm> (last visited July 7, 1999) (citing survey).

346. See Gearen, *supra* note 14 ("[E]ven in metropolitan areas with extensive transit systems, fewer than half the entry-level jobs are accessible by that means.").

347. See CITY ROUTES, *supra* note 243, at 20.

348. *Id.*

349. *Id.*

350. See Stacy Shelton, *Transit Chief Faces Hurdles In Gwinnett*, ATLANTA CONSTITUTION, Feb. 11, 2000, at C1 (noting that Gwinnett is nation's largest county without public transit).

351. For example, my parents live within the city of Atlanta about ten miles from downtown Atlanta, but, except for a "maid bus" that comes from downtown once in the morning and returns downtown in the afternoon, they have no bus service. See Michael E. Lewyn, *Are Spread Out Cities Really Safer? (Or, is Atlanta Safer Than New York?)*, 41 CLEVE. ST. L. REV. 279, 295 n. 63 (1993); MARTA Web Site at http://www.itsmarta.com/riding/busroutes/bus_sch.htm (last visited Feb. 17, 2000) (listing buses 701-17, a group of once-a-day "maid buses").

safely from residential areas to the bus stop.³⁵² Not surprisingly, less than half of Atlanta-area entry level jobs are located within a quarter-mile of a public transit route.³⁵³

And in smaller cities, a non-driver's life is more desperate still. For example, in Macon, Georgia, 16% of city households³⁵⁴ (and 14% of households in the county that includes Macon)³⁵⁵ lack cars, yet city buses only operate until 6:45 p.m. in the evening on weekdays, Saturday service is limited, and there is no service on Sundays or holidays.³⁵⁶ Because many entry-level employers require their newest employees to work evening and weekend shifts, this system virtually shuts many of Macon's carless residents out of the job market.³⁵⁷

And many employers are not transit-accessible at all: Macon's largest employers are located in the area's periphery far from any bus line: Brown & Williamson (cigarettes), Riverwood (paper mill), Cagle's (chicken processing), Cigna (insurance data processing) and the hotel operators and fast food establishments among major streets.³⁵⁸ As a result, Macon's employers of unskilled labor often ask would-be employees whether they have a car—and if the answer is no, the applicant won't be hired.³⁵⁹

Macon's transportation system limits a wide variety of other activities as well. The largest supermarket chain in the area, Kroger, is not efficiently served by the buses. While two of the system's routes pass Kroger stores, the routes do not swing down access roads and into

352. See Lewyn, *supra* note 351, at 295 n.63; Actor Cordell, *Kingsboro Road Humps Slowing Cars Going Through Buckhead*, ATLANTA CONSTITUTION, Oct. 19, 1991, at A13 (mentioning absence of sidewalks in Atlanta city neighborhood); Frances Cawthon, *Atlanta Weekly At Home Circle of Success*, ATLANTA JOURNAL-CONSTITUTION SUNDAY MAG., Feb. 26, 1989, at M6 (same); Doug Monroe, *Traffic Report-Suburban Family Puts Best Foot Forward, Decatur Neighborhood Encourages Residents To Take Things In Stride*, ATLANTA JOURNAL-CONSTITUTION, Apr. 7, 1991, at C2 ("Walking in many [Atlanta area] communities is dangerous because of the lack of sidewalks.").

353. See BENFIELD, *supra* note 4, at 125.

354. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING, POPULATION AND HOUSING CHARACTERISTICS FOR CENSUS TRACTS AND BLOCK NUMBERING AREAS: MACON-WARNER ROBINS, GA MSA at 177 (1993). Cf. Alewine v. City Council of Augusta, 699 F.2d at 1060, 1069 (11th Cir. 1993) ("[A] small percentage of Macon's population require public transit.").

355. See David G. Oedel, *The Legacy of Jim Crow in Macon, Georgia*, in JUST TRANSPORTATION 97, 102 (Robert D. Bullard & Glenn S. Johnson eds., 1997).

356. *Id.*

357. *Id.* at 103.

358. *Id.*

359. *Id.*

the store parking lots to permit less agile riders (such as children and senior citizens) to reach the stores.³⁶⁰ The two largest Kroger stores in the area are not on bus lines, nor is a large discount supermarket, FoodMax, or a new Publix supermarket.³⁶¹ Conversely, a largely abandoned shopping center where anchor tenant K-Mart closed in 1991 is served by the system—but the new K-Mart is not.³⁶² Churches are not served by the system at all, because churches tend to be most active on Sundays and weekday evenings, when the bus system is shut down.³⁶³ Even on the bus system's limited routes, the frequency of service is so minimal as to discourage use. For example, students who use public transit to attend Macon College must devote the entire day to the ordeal. After rising before 6:00 a.m. to catch the first bus from their homes to the downtown transfer station, students must catch a morning bus from downtown to the college at 7:30 a.m. Later in the day, they have only one opportunity to return home.³⁶⁴ Needless to say, drivers suffer from none of these limitations: Government has built a toll-free, twenty-four hour system to serve them, and by building highways further and further away from downtown Macon, has encouraged employers to relocate to areas not served by bus routes.³⁶⁵

In sum, in most of America (especially in suburbs and small cities) government has rigged transportation systems to make driving a necessity for anything resembling a normal life, by building roads that shifted development to newer areas without creating bus routes or rail lines to serve those highway-created suburbs. Free enterprise devotees would certainly oppose a law ordering consumers to spend thousands of dollars a year on television sets, housing or ice cream. It logically follows that they should oppose policies that have the effect of forcing consumers to spend thousands of dollars on automobiles.³⁶⁶

360. *Id.* at 104.

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.* at 100 ("In theory, Macon's extensive road network may be used (or at least indirectly enjoyed) by the entire population. In fact, however, the roads operate as instruments of isolation for many residents without cars, [by] facilitating white flight to the periphery [of the area]. . ."); *see also supra* notes 339-353 and accompanying text (discussing impact of highways upon suburban development).

366. *See* 1999 ABSTRACT, *supra* note 111, at 471 (reporting that average household spent over \$6000 per year on auto-related expenses).

b. Suburbia or Else

Just as government policies have forced Americans to buy more cars than they might otherwise buy, government policies have forced Americans out of cities and into suburbs. The tyranny of the automobile arises in part from a second tyranny: the tyranny of suburbia. In a few metro areas urban decay has advanced so far that cities are essentially not an option for any consumers but the most adventurous.³⁶⁷

This fact is reflected in the mainstream media: all too often "suburban" is used as a synonym for "white," "respectable," "moderate," or "middle-class,"³⁶⁸ while the word "urban" is used as a synonym for "poor," "dangerous," or "black."³⁶⁹ In the most degraded cities, like Detroit and Newark, urban decomposition is so advanced that even single people are unwilling to live in the city. For example, an elite³⁷⁰ prep school in Connecticut, Choate Rosemary Hall (CRH), has dozens of alumni in New Jersey suburbs and hundreds in New York City—but not one who lives in Newark.³⁷¹ And in southeastern Michigan, CRH has about twenty alumni in Detroit's suburbs—but not one who lives in the city of Detroit.³⁷² By contrast, healthier big cities are jam-packed with CRH alumni, especially younger alumni. For example, about 1000 CRH alumni live in Manhattan, and 180 more live in New York City's other boroughs.³⁷³

367. See *infra* notes 371-77 and accompanying text. See also Frug, *supra* note 77, at 1075 (suggesting that middle class has to some extent been "forced . . . to move to the suburbs").

368. See, e.g., RIV-ELLEN PRELL, *FIGHTING TO BECOME AMERICANS: JEWS, GENDER, AND THE ANXIETY OF ASSIMILATION* 151 (1999) (using the term "suburban" three times in two paragraphs to describe middle-class Jewish life and concern in popular Jewish press over matriarchal dominance of Jewish families); Frank C. Rizzo, *A Lively 'Celebration' of Beloved Comic Strip*, ATLANTA JOURNAL-CONSTITUTION, Jan. 2, 2000, at K14 (asserting that "Peanuts" comic strip explored "the fears and foibles of a group of suburban children"); Lee Walczak & Richard S. Dunham, *Zagging Right: Did Bush Lose More Than He Won?*, BUS. WEEK, Feb. 7, 2000, at 44 (speculating that George W. Bush's conservatism will hurt him because "in the general election . . . he'll need support from suburban swing voters to win").

369. See, e.g., Darlene Ricker, *Street Smarts*, 21 STUDENT LAWYER 16 (1992) (describing dangerous neighborhoods as "urban"). See also Frug, *supra* note 77, at 1064 (noting that term "inner city" is generally "a reference to the black poor").

370. See Glen Hurowitz, *Paul Mellon and the New Yale Man*, YALE DAILY NEWS, Feb. 22, 1999, 1999 WL 12727178 (describing CRH as an "elite boarding school"); CHOATE ROSEMARY HALL ALUMNI/AE DIRECTORY 1999 at 161, 202 (identifying six Rockefellers and five Mellons among the alumni).

371. CRH DIRECTORY, *supra* note 370, at 347-49.

372. *Id.* at 345.

373. *Id.* at 350-57.

Even where single people can live in the city, families often cannot. For example, in Cleveland even the most open-minded Clevelanders were unwilling to stay in the city after marriage, because of the state of the city's public school system (which was unusually disreputable even by the low standards of urban public school systems)³⁷⁴ and because nearly all of the area's private schools (except for a few parochial schools) are in the suburbs.³⁷⁵ As a result, in Cleveland only 4% of households earning over \$100,000 live in the city.³⁷⁶ Even institutions that would be urban in other communities are suburban in Cleveland. For example, the city's major bohemian-oriented shopping street, Coventry Road, is in the suburb of Cleveland Heights,³⁷⁷ as is the office of EcoCity Cleveland, one of the area's leading anti-sprawl groups.³⁷⁸

In sum, suburban life is often not an option but a virtual necessity for Middle-class Americans, because of the shortage of safe city neighborhoods and reputable city schools. So by fighting sprawl and preserving cities, Americans can actually expand, rather than limit

374. See *Mixon v. State of Ohio*, 193 F.3d 389, 394-95 (6th Cir. 1999) (noting that the "fiscal and administrative collapse" of Cleveland school district led to temporary state takeover); Dick Feagler, *At Last, Schools' Malady is Accurately Diagnosed*, PLAIN DEALER, Mar. 18, 1996, at 2-A (describing Cleveland schools as "doomed"); Bill Lubinger, *Some Say Busing Cut Will Boost City Housing*, CLEVELAND PLAIN DEALER, July 25, 1993, at 15-A (school system a primary cause of middle-class flight from Cleveland).

375. See CLEVELAND MAG. CITY GUIDE 1999, at 156-58 (1999) (listing private schools, and showing that only area private schools with city addresses are named after saints).

376. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING, POPULATION AND HOUSING CHARACTERISTICS FOR CENSUS TRACTS AND BLOCK NUMBERING AREAS: CLEVELAND, OH, at 512, 513 (1993) (reporting that 29,159 metro area households earned over \$100,000, but only 1310 of them lived in city of Cleveland). By contrast, about two-thirds (33,323 of 49,231) of metro area households earning under \$5,000 live in the city of Cleveland. *Id.*

377. See Bill Lubinger, *Pages Lure Bookseller Back*, CLEVELAND PLAIN DEALER, Dec. 4, 1997, at 1-C (describing Coventry as a "trendy district of shops and restaurants that caters to a nontraditional, more progressive clientele").

378. See BEACH, *supra* note 285 (noting that address on inside front and outside back covers). Cleveland Heights is about seven miles from downtown Cleveland. See RAND MCNALLY, *supra* note 248, at 68. By contrast, German Village, a comparable neighborhood in the growing city of Columbus, Ohio, is less than a mile from that city's commercial core. See *id.* at 69; Robert Albrecht, *Preservation Pioneers Leave Neighborly Legacy: Tidy Brick Homes Show Dedication of Many Restorers*, COLUMBUS DISPATCH, March 19, 2000, at 4D ("[W]ell-kept houses that are close to both the sidewalks and each other, restaurants and other businesses sprinkled in the neighborhood all give [German Village] a charm that harkens back to the Old World but is modern enough—and close enough to downtown—to attract a mix of well-to-do residents."). Thus, it cannot be argued that the suburban location of Coventry is due solely to Cleveland's failure to annex suburban areas. Cf. 1999 ABSTRACT, *supra* note 111, at 47-49 (reporting that city of Cleveland encompasses seventy-seven square miles—less than Columbus, but more than numerous other large cities).

consumer choice.

2. Sprawl Means Higher Taxes

Over the past two decades, taxes have become a defining issue in American politics, like the New Deal in the 1930s.³⁷⁹ Conservatives and Republicans have generally opposed higher taxes; liberals and Democrats have not.³⁸⁰ As explained below, sprawl is more likely to raise local taxes than to lower them.

a. Taxes in the Cities

Although suburban sprawl is not generally thought of as a tax issue, sprawl in fact means higher taxes and bigger government. Here's why: As cities lose middle-class residents and retain the poor, they become poorer.³⁸¹ In the metro areas encompassing the twenty-three American cities that David Rusk designates as "zero elasticity" cities (that is, cities that have been unable to annex their suburbs) city per capita income is, on the average, only 66% of suburban per capita income.³⁸² And in most older cities, the city-suburb income gap has widened over time. In every single one of America's twenty-four most distressed cities (which Rusk defines as cities that have lost 20% of their 1950 population, are over one-third black or Hispanic, and have average income levels less than 70% of suburban income levels),³⁸³ the gap between the average suburban income and the average city income widened during the 1980s.³⁸⁴

Common sense dictates that as a city becomes poorer, its tax base

379. See WILLIAM E. LEUCHTENBURG, *THE FDR YEARS: ON ROOSEVELT AND HIS LEGACY* 103 (1995) (noting that as a result of New Deal, "the parties divided on issues in 1936 as they had at no previous time this century"); MICHAEL BARONE AND GRANT UJIFUSA, *ALMANAC OF AMERICAN POLITICS* 2000 at 31 (1999) (discussing that Republicans took over House of Representatives by "pinn[ing] responsibility for the unpopular tax increase of 1993 on every Democrat who voted for it").

380. See, e.g., Michael J. Graetz, *Randolph W. Thrower Lecture: Your Tax Dollars at Work: Why U.S. Tax Law Needs To Be Changed*, 48 EMORY L.J. 849, 853 (1999) ("Democrats would like to spend money on social programs, and Republicans would like to cut taxes.").

381. See *Ybarra v. Town of Los Allos Hills*, 370 F. Supp. 742, 750 n.10 (N.D. Ca. 1973) (noting impoverishment of central cities); *Holmdel Builders Ass'n v. Township of Homdel*, 583 A.2d 277, 283 (N.J. 1990); BENFIELD, *supra* note 4, at 123 (noting that central cities include half of nation's poor but only 30% of nation's population).

382. See RUSK, *supra* note 4, at 61.

383. See *id.* at 74. Rusk describes these cities as ones "past the point of no return" because no such city ever "has closed the economic gap with its suburbs by as much as a single percentage point." *Id.* at 75 (emphasis omitted).

384. *Id.* at 76-77.

will decline, and tax hikes will thus become more tempting.³⁸⁵ For example, between 1972 and 1987, Cuyahoga County (Cleveland and its older suburbs) lost \$1.5 billion worth of payroll, while Cleveland's newer outer suburbs gained over \$1 billion.³⁸⁶ Moreover, poorer cities will typically have to spend more money to obtain the same quality of public services as affluent suburbs, because poorer populations will need more money for public assistance and poverty-related health care than would the population of a more affluent city, and poorer people are more likely to commit crimes (thus causing higher criminal-justice related spending).³⁸⁷

And as a city (and more recently, its inner suburbs)³⁸⁸ becomes dominated by poorer voters, its electorate will be more likely to be dominated by liberals and Democrats who will prefer higher taxes to reductions in the size of government.³⁸⁹ For example, between 1976 and 1996, in the city of Buffalo, the Republican percentage of the two party presidential vote nosedived from 37% to 17%—a twenty percentage point drop that dwarfed the national four point drop in the Republican vote (from 49% to 45%).³⁹⁰ In Buffalo's population-losing inner ring suburbs, Republicans suffered comparable losses between 1976 and 1996. For example, the Republican nominee lost fourteen points in Lackawanna (from 35% to 21%), Cheektowaga (from 45% to 31%), and West Seneca (50% to 36%) as well as nineteen in Tonawanda (from 56% to 37%).³⁹¹ By contrast, in Clarence, a still-growing outer suburb, the Republican nominee lost only eight points (from 64% to

385. See Briffault, *supra* note 96, at 352 & n.37 (arguing that central cities tend to have smaller tax bases and higher taxes).

386. See Beach, *supra* note 285, at 10. Most of the income losses were in the city of Cleveland, but even Cleveland's inner suburbs lost \$589 million. *Id.* See also Schulman v. E.W. Scripps, No. 35539, 1977 Ohio App. LEXIS 9789, *5-6 (Ohio Ct. App. June 16, 1977) (describing earlier blows to Cleveland's tax base).

387. See Bd. of Educ. v. Nyquist, 94 Misc. 2d 466, 496-500 (N.Y. Sup. Ct. 1978) (explaining how poverty caused higher public spending in New York City and in poorer cities in upstate New York); *modified*, 443 N.Y.S. 2d 843 (N.Y. App. Div. 1991); Briffault, *supra* note 57, at 20 (noting that poverty-stricken cities have greater "public safety, public health and public assistance needs").

388. See Frug, *supra* note 77, at 1097-98.

389. See Graetz, *supra* note 380, at 853 (noting Democrats' preference for more generous government); see also *supra* note 262 (noting that poorer voters tend to be more likely both to support Democrats and to support larger government rather than lower taxes).

390. See Michael E. Lewyn, *Who Benefits From Suburban Sprawl?*, BUFFALO BEAT, Mar. 20-26, 1998, at 4.

391. *Id.*

56%).³⁹² In the Maryland suburbs of Washington, D.C., the Republicans suffered an eleven point drop (48% to 37%) in the mature suburb of Montgomery County, and only a four point drop (50% to 46%) in booming Howard County.³⁹³ In Philadelphia, the Republicans lost fifteen points (from 32% to 17%). The Republicans lost twelve points in Delaware County, a stagnant Philadelphia inner suburb (from 56% to 44%) but only five points in booming Chester County (61% to 55%).³⁹⁴

In sum, suburban sprawl causes cities and older suburbs to become poorer, which means they have a smaller tax base, which means that (a) their politicians will be more tempted to raise taxes, and (b) their voters will be poorer, more politically liberal, and thus less fiscally conservative.

b. Taxes in the Suburbs: Or, Tax and Tax, Spend and Spend, Sprawl and Sprawl

It could be argued that even if city residents face higher taxes from the redistribution of people and jobs caused by sprawl, suburbanites do not. After all, suburbanites often live in growing areas with few poor people to make demands on government or elect pro-spending politicians.³⁹⁵ But even in suburbia, sprawl's impact on the public fisc is at best ambiguous.³⁹⁶ A fast-growing suburb benefits from a larger residential and commercial tax base, but suffers when its new residents demand additional schools and roads to serve them.³⁹⁷ For example, in

392. *Id.* See also Schulman, *supra* note 285 (noting that Clarence is the only Buffalo suburb that has experienced significant population growth in 1990s).

393. See Lewyn, *supra* note 390; WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 434 (reporting that Howard County grew by over 25% during 1990s, while Montgomery County grew by only 10%).

394. Lewyn, *supra* note 390. See also WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 440 (reporting that Chester County grew by 11% in 1990s, while Delaware County lost population).

395. See BENFIELD, *supra* note 4, at 120, 123 (noting that suburbs have had disproportionate share of recent population growth while cities saddled with disproportionate percentage of poor).

396. Commentators are divided as to whether, other factors being equal, new low-density development is more costly than high-density development. *Id.* at 105-06. But it is undeniable that suburban new development of any sort imposes costs of taxpayers. See *infra* notes 411-13 and accompanying text (discussing that National Association of Home Builders has admitted that new development leads to increased government spending).

397. See *infra* notes 398-406 and accompanying text; BENFIELD, *supra* note 4, at 112-15 (discussing tax base impact of suburban development, and noting that "[t]here is a common belief among local governments that . . . the revenues generated from commercial land uses have only positive fiscal benefits").

rapidly-growing³⁹⁸ Loudoun County near Washington, D.C. the annual tax rate increased by 11% from 1997 to 1998 in order to pay for new services.³⁹⁹ Likewise, Prince William County, another high-growth Washington suburb,⁴⁰⁰ has the highest real estate tax rate of any county in Virginia.⁴⁰¹ Such tax increases arise from the infrastructure expenses caused by population growth. In Prince William County, for example, schools are so overcrowded with new residents' children that students are crammed into more than 100 classroom trailers.⁴⁰² Some suburbs also try to temporarily limit or avoid tax increases by taking on huge debt loads. In Loudoun County, debt payments rose from 3.3% of the county budget in 1990 to over 10% in 1999.⁴⁰³ In rapidly expanding Howard County,⁴⁰⁴ between Baltimore and Washington, debt nearly tripled from \$130 billion to \$384 billion from 1987 and 1997.⁴⁰⁵ In Montgomery County, Maryland, some areas are growing while others are shrinking. So to accommodate these population shifts, the county built seventy new schools during the 1980s, while closing sixty-eight.⁴⁰⁶ Thus, Montgomery County had the worst of both worlds: the money it spent building the now-closed schools had become a waste of money, yet the county also had to throw money at new schools.

Some suburban cities and counties try to finance the costs of increased residential development by encouraging increased commercial development. For example, Howard County's planning goals state that commercial development should account for 25% of the county's tax base because those developments provide revenue without adding students to the school system.⁴⁰⁷ This strategy, although helpful if it works, is quite risky: Because many commuters wish to live close to work, any increase in commercial development may create a demand for nearby residential development, which in turn increases the costs of

398. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 443 (noting that the county population increased by over 60% in 1990s)

399. See BENFIELD, *supra* note 4, at 91.

400. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 443 (reporting that the county population increased by 15% in the 1990s, far more than in inner suburbs such as Arlington and Alexandria); RAND MCNALLY, *supra* note 248, at 48-49, 80 (providing maps of Virginia near Washington).

401. See BENFIELD, *supra* note 4, at 91.

402. *Id.* at 92.

403. *Id.*

404. See *supra* note 393.

405. See BENFIELD, *supra* note 4, at 92.

406. *Id.* at 94.

407. *Id.* at 113.

government services.⁴⁰⁸ And if a suburb tries to solve this problem by limiting such residential development, workers will have to commute from other areas, which in turn means more traffic congestion, which creates political pressure for more roads, which in turn means higher spending and higher taxes.⁴⁰⁹

In fact, groups generally recognized as supportive of suburban expansion openly admit that sprawl means bigger government. The National Association of Home Builders (NAHB), hardly an anti-sprawl organization,⁴¹⁰ has issued a policy statement endorsing a so-called "Smart Growth" strategy that includes "[p]lanning and constructing new schools, roads, water and sewer treatment facilities and other public infrastructure in a timely manner to keep pace with the current and future demand for housing."⁴¹¹ NAHB does not pretend that developers will bear these costs.⁴¹² Instead, it asserts that

[a]ppropriate bodies of government should adopt capital improvement plans . . . designed to fund necessary infrastructure required to support new development. Ensuring that infrastructure is funded equitably and that the cost is shared equitably throughout all segments of the community—existing residents as well as newcomers—is an even greater challenge.⁴¹³

408. *Id.*

409. Moreover, even commercial development requires some increase in government services, though arguably not enough to cancel out the increased tax revenues it brings. See GRATZ, *supra* note 76, at 216-18 (describing construction of mall near Ithaca, New York, that brought in tax revenue, but forced Ithaca to spend money on street lighting for highway overpass, highway ramps, and police/fire services).

410. An NAHB policy statement asserts, for example, that Americans "show a strong preference for single-family homes in a suburban setting Communities should recognize these basic preferences as part of any comprehensive planning process." *NAHB Policy Statement*, *supra* note 163. NAHB also asserts, without any supporting evidence, that even if new housing is built in "older suburban and inner city markets . . . [such] development will satisfy only a small percentage of a community's demand for new housing." *Id.*

411. *Id.*

412. However, some suburbs have sought to make new development pay for itself by imposing "impact fees" and "user fees" upon developers and homeowners. See BENFIELD, *supra* note 4, at 109-12. It is unclear, however, whether these fees recapture all costs of sprawl. *Id.* at 110-12 (asserting that because impact fees rarely capture all costs of low-density development, local governments inevitably undercharge residents of new areas, causing cities and older suburbs to essentially subsidize newer, usually wealthier suburbs). For example, such fees often do not recover differences in costs between high-density and low-density areas, *id.* at 111, or maintenance (as opposed to capital) costs of new infrastructure. *Id.* at 110.

413. *Id.*

In other words, NAHB admits that sprawl (or as NAHB calls it, "new development") means higher government spending for schools, roads, and other "infrastructure" designed to "support new development." As NAHB claims, Americans may be entitled to "have a free choice in deciding where and in what kind of home to live."⁴¹⁴ But developers and home buyers are not necessarily entitled to finance that "free choice" by taxing others.

c. The Car Tax

In 1997, the average American household spent \$6060 on car-related expenditures: \$2736 on new and used vehicle purchases, \$1098 on gasoline, \$293 on finance charges, \$682 on maintenance and repair, \$755 on car insurance, and \$501 on leasing costs, rental costs, and license fees.⁴¹⁵ Households with teenage children must spend even more, because they "need" cars not just for both parents, but for the children as well.⁴¹⁶ As explained above, Americans live in areas where autos are a daily necessity not because of free choices made in a free market, but because of government policies that have made daily life without a car impossible for many drivers.⁴¹⁷ It logically follows that American auto dependency is an unfunded mandate analogous to the thousands of pages of federal regulations contained in the Federal Register, and that most auto-related spending is a form of indirect taxation just as much as if government enacted a law requiring consumers to spend \$6060 per household on automobiles (a sum equaling 89% of the average federal income tax payment).⁴¹⁸ And if auto-related spending is a tax paid by consumers, it further follows that any efforts to reduce auto dependency reduce the burden of government upon the American people. Or to put the matter another way: if the average American could avoid owning a car, he or she would get the equivalent of an 89% income tax cut to save, invest, or spend on other consumer goods.

In sum, sprawl means higher taxes, plus a continuation of the car tax

414. *Id.*

415. 1999 ABSTRACT, *supra* note 111, at 471.

416. See *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (describing automobile ownership as "necessity"); Walt Schaefer, *Working Teens See Profits, Pitfalls*, CINCINNATI ENQUIRER, Jan. 30, 1990, at 20 ("[C]ars have become near necessities for 16-year-olds."); 1999 ABSTRACT, *supra* note 111, at 472 (transportation spending increases with size of household).

417. See *supra* notes 340-65 and accompanying text.

418. I calculate as follows: Americans paid \$2614 in income taxes per capita in 1996. See 1999 ABSTRACT, *supra* note 111, at 360. The average American household in 1996 had 2.62 persons in it. *Id.* at 63. Thus, the average American household pays \$6768 in income taxes, of which \$6060 is 89%.

that squeezes so many American households.

B. Sprawl and Cultural Conservatism

Suburban sprawl also affects two values commonly associated with cultural conservatism: social stability and the work ethic.

1. Sprawl vs. Stability

As Paul Weyrich of the Free Congress Foundation has pointed out,

Community is of significant value to most cultural conservatives, for very good reason. Without it, there are few mechanisms to uphold morals and maintain standards of behavior. Traditionally, when most people were part of a community, they behaved for fear of community sanctions. But where there is no community, community sanctions cannot exist.⁴¹⁹

And for community to exist, there must be stability: Today's stable, safe neighborhoods must be tomorrow's stable, safe neighborhoods, so their residents and their children and grandchildren can build a community rather than being driven out by the next wave of urban decay.

But sprawl creates constant instability: Today's suburbs can quickly become tomorrow's slums. Some of today's poor city neighborhoods were once rich, outlying areas comparable to today's suburbs—neighborhoods that were created by streetcars just as today's suburbs were created by highways.⁴²⁰ For example, in Detroit, 19th century tycoons built mansions near Woodward Avenue—an area that in the late 20th century became, in one commentator's words, "something worse than a slum" where the remaining "hopelessly decayed mansions stand in these blocks like inscrutable megaliths in a wilderness of rubble."⁴²¹ Cleveland's Euclid Avenue has met a slightly less horrible, yet nevertheless unfortunate, fate. In 1892, fifty-three of sixty-eight millionaires named in the *New York Tribune's* list of America's richest people called Euclid Avenue home.⁴²² And in the first half of the 20th

419. WEYRICH & LIND, *supra* note 93, at 25.

420. See Briffault, *supra* note 96, at 356-57 & n. 50.

421. See KUNSTLER, *supra* note 105, at 190. In fact, a web page is devoted to photographs and descriptions of Detroit's ruined buildings. See Lowell Bioleau, *The Fabulous Ruins of Detroit*, at <http://bhere.com/ruins/home.htm> (last visited Mar. 8, 2000).

422. Stephen Phillips, *Street of Dreams: Euclid Avenue Tries To Regain Its Image As The City's Main Line of Success*, CLEVELAND PLAIN DEALER, Feb. 6, 1994, at 1-E.

century, Euclid became a thriving commercial strip, "a regional retail nexus with trolley cars feeding six department stores, live theater, and downtown offices."⁴²³ But by the late 1990s, one-third of the 8.2 million square feet of upper-floor office space on Euclid Avenue was empty,⁴²⁴ seventeen storefronts were empty,⁴²⁵ and the blocks of Euclid Avenue east of the city's business district were a "weed-filled wasteland[]." ⁴²⁶

And as sprawl has accelerated, the decay of city neighborhoods has accelerated. The number of high-poverty census tracts (that is, tracts where over 40% of the inhabitants have incomes below the federal poverty line)⁴²⁷ in metropolitan areas increased by 131% between 1970 and 1990,⁴²⁸ and the number of persons trapped in these slums nearby doubled.⁴²⁹ The spread of urban decay was fastest in the cities of the Northeast and Midwest: in 1970, these areas had 379 high-poverty tracts (164 in the Northeast, 215 in the Midwest) and in 1990 they had 1471 (578 in the Northeast, 893 in the Midwest).⁴³⁰

Milwaukee presents one of the most extreme examples of urban decay. In 1980, the city had only nine high-poverty census tracts, all packed tightly around downtown Milwaukee.⁴³¹ In 1990, the city had forty-two, most of which were also close to downtown and to the original nine ghetto tracts.⁴³² The sudden decay of Milwaukee's core was due partially to a regional economic downturn, and partially due to "racial succession" (i.e. white flight to outlying areas).⁴³³ In the tracts where poverty exploded during the 1980s, the number of white residents

423. Bill Lubinger, *Rebuilding Euclid Ave. Street of Dreams*, CLEVELAND PLAIN DEALER, June 8, 1997, at 1-H. Lubinger adds that "[t]he assassin [of Euclid Avenue] was post-1950 suburban sprawl." *Id.*

424. See Bill Lubinger, *Up To A Third Of Space On Euclid Ave. Is Vacant*, CLEVELAND PLAIN DEALER, Feb. 14, 1997, at 1-C.

425. Phillips, *supra* note 422.

426. KUNSTLER, *supra* note 105, at 160.

427. See PAUL A. JARGOWSKY, *POVERTY AND PLACE* 11 (1997).

428. *Id.* at 34.

429. *Id.* at 33-34 (noting increase from 4.1 million to 7.9 million). I note that although the overall number of people living in high-poverty census tracts increased, the average number of persons per high-poverty tract (i.e. the population of the average poor neighborhood) declined, both in Columbus and throughout America. See *id.* It follows that such tracts' increases in poverty were caused by those areas' loss of middle-class people as well as by poor people moving in from other areas or countries.

430. *Id.* at 45.

431. *Id.* at 50, 55.

432. *Id.*

433. *Id.* at 56-57.

declined from 1767 per tract in 1970 to 613 per tract in 1990.⁴³⁴

Many other cities suffered similar "ghetto explosions" from 1970 to 1990: for example, in Buffalo the number of high poverty tracts increased from 3 to 26,⁴³⁵ in Pittsburgh from 14 to 42,⁴³⁶ in Rochester from 4 to 20,⁴³⁷ in Chicago from 48 to 184,⁴³⁸ in Minneapolis from 7 to 33,⁴³⁹ and in Cleveland from 20 to 69.⁴⁴⁰

Admittedly, the Rust Belt's urban decay arises partially from regional economic decline as well as from suburban sprawl.⁴⁴¹ But if regionwide economic decline was the only cause of urban decay, the economic gap between city and suburb would have remained constant over the years. But in fact, per capita city income has dropped from 96% of suburban income in 1973 to 84% in 1990.⁴⁴² Similarly, city population has typically declined far more rapidly than suburban population. For example, the population of metropolitan Buffalo decreased by 6% between 1980 and the mid-1990s,⁴⁴³ while the city population declined by 16%.⁴⁴⁴ And in Milwaukee, Minneapolis, and Rochester, city population declined in recent decades while the suburbs continued to grow.⁴⁴⁵ Moreover, even some growing cities suffered from growing blight as the middle class moved to the city's fringes: for example, Columbus, Ohio (whose citywide population has consistently grown in recent decades)⁴⁴⁶ had six high-poverty census tracts in 1970 and twenty-four in 1990.⁴⁴⁷

In turn, the decline of the oldest, closest-in city neighborhoods has set in motion a chain of events that endangers newer city neighborhoods and even suburbs. As the oldest neighborhoods decay, they become

434. *Id.* at 56.

435. *Id.* at 223.

436. *Id.*

437. *Id.* at 224.

438. *Id.*

439. *Id.* at 226.

440. *Id.*

441. See GOLDMAN, *supra* note 75, at 176-77, 218-19, 270 (describing impact of industrial layoffs on Buffalo economy); Briffault, *supra* note 260, at 1138-39 (noting high correlation between city growth and suburban growth or lack thereof).

442. Briffault, *supra* note 260, at 1137 n.102.

443. 1999 ABSTRACT, *supra* note 111, at 41.

444. *Id.* at 47.

445. *Id.* at 42-43, 48-49 (stating that the metro area population of all three regions grew between 1980 and 1996, while city population continued to decline).

446. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 390.

447. See JARGOWSKY, *supra* note 427, at 224.

occupied by the poor, and nearby middle-class neighborhoods become uncomfortably close to city slums, which in turn causes them to become less appealing and eventually decay, which in turn starts the cycle in another nearby neighborhood. And by using its powers to drain cities of middle class taxpayers, government has accelerated this cycle.⁴⁴⁸

In recent decades, urban decay has spread out beyond the central city line. The most troubled suburban municipalities near cities as varied as Los Angeles, Detroit, and Miami have crime rates higher than those of the nearby big cities themselves.⁴⁴⁹ For example, in 1997, Highland Park, Michigan, had 53 murders per 100,000 people (15% more than nearby Detroit) and 1196 robberies per 100,000 people (over 30% more than Detroit).⁴⁵⁰ Similarly, Compton, Ca., had 66 murders per 100,000 people (more than four times as many as nearby Los Angeles), and 807 robberies per 100,000 (nearly 40% more than Los Angeles).⁴⁵¹ And Opa Locka, Fl., had 41 murders per 100,000 (over 50% more than nearby Miami) and 1369 robberies per 100,000 (18% more than Miami).⁴⁵² Although these municipalities are extreme cases, city crime has increasingly spread to some suburbs. In 1991, for instance, nine of Chicago's suburbs had higher crime rates than the city of Chicago.⁴⁵³ Poverty as well as crime has spread past the city line: today, both the ten poorest and the ten richest incorporated cities in America are suburbs.⁴⁵⁴ For example, both Chicago and St. Louis have suburbs with median household incomes 40% lower than those of the cities themselves.⁴⁵⁵

And even where older suburbs are not as poor or as dangerous as nearby cities, they are often in decline. For example, most of Cleveland's inner suburbs have experienced dramatic declines in

448. See Lewyn, *supra* note 10, at 521 nn.30-31 (describing cycle of decay); Parents Ass'n of Andrew Jackson Sch. v. Ambach, 451 F. Supp. 1056, 1060 (E.D.N.Y. 1978) (describing Queens as "inner suburb" of Manhattan, and pointing out that inner city problems were beginning to affect Queens). *Id.*

449. See *infra* notes 450-53 and accompanying text.

450. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1997 at 135 (1998).

451. *Id.* at 119, 121.

452. *Id.* at 127.

453. See BENFIELD, *supra* note 4, at 127.

454. See Briffault, *supra* note 96, at 353 n.43.

455. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, COUNTY AND CITY DATA BOOK 1994 at 871 (reporting that Ford Heights, Ill., median income \$14,032, while Chicago median income \$26,301), 890 (noting that Kinloch, Mo., median income \$10,375 while St. Louis median income \$19,458) (1994).

household income relative to other suburbs. In Cleveland's poorest inner ring suburb, East Cleveland, household income declined from 77% of the metro area mean in 1970 to 57% in 1990.⁴⁵⁶ Other suburbs experiencing similar declines include Bedford (101% to 87%), Bedford Heights (106% to 84%), Brooklyn (109% to 81%), Brook Park (127% to 101%), Euclid (103% to 82%), Fairview Park (136% to 113%), Garfield Heights (100% to 82%), Lakewood (99% to 93%), Maple Heights (103% to 85%), Mayfield Heights (103% to 85%), Middleburg Heights (138% to 114%), North Olmsted (124% to 115%), Parma (111% to 96%), Parma Heights (114% to 89%), Seven Hills (148% to 121%), South Euclid (117% to 106%), and Warrensville Heights (104% to 84%).⁴⁵⁷ All but two of these suburbs lost population during the 1990s,⁴⁵⁸ as did all of Cuyahoga County (which includes seventy-seven square miles within the city of Cleveland⁴⁵⁹ and 381 square miles of suburbia)⁴⁶⁰—not because metro Cleveland as a whole lost population, but because "outer counties" like Geauga, Lake, and Medina sucked away middle-class Clevelanders.⁴⁶¹ In fact, Cleveland's decay is not limited to the inner ring of suburbs (that is, those suburbs that are contiguous to the city). Of the declining suburbs listed above, several (Bedford, Bedford Heights, Mayfield Heights, Parma Heights, Middleburg Heights, Seven Hills, South Euclid, and North Olmsted) are second- and third-ring suburbs: that is, they border inner ring suburbs but not Cleveland itself.⁴⁶²

Cleveland is not alone; suburbs in other metro areas, especially slow-growth areas in the Midwest and Northeast, are experiencing similar problems. The major inner ring suburbs of older cities such as Buffalo, St. Louis, Minneapolis, and Chicago lost population during the 1990s.⁴⁶³

456. David Beach, *Sprawl and Race: Today's Winners Become Tomorrow's Losers*, ECO CITY CLEVELAND, May/June 1996, at 6, 9.

457. *Id.*

458. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 418-19.

459. See 1999 ABSTRACT, *supra* note 111, at 47 (citing city land area).

460. See WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 439 (citing county population loss and land area).

461. See *id.* (reporting that all three counties gained population in 1990s).

462. See RAND MCNALLY, *supra* note 248, at 68 (providing a map).

463. See *id.* at 67-68, 72-73, 77 (providing maps); WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6, at 403-05, 411-12, 415-18; MYRON ORFIELD, METROPOLITICS 162 (1997) (discussing decline of Minneapolis's inner suburbs); Arthur Getis, *Energy Costs and Land Use Patterns in Metropolitan Chicago*, in THE METROPOLITAN MIDWEST: POLICY PROBLEMS AND PROSPECTS FOR CHANGE 56, 64 (Barry Checkoway & Carl V. Patton eds., 1985) (describing 1970s population losses in Chicago's inner ring suburbs); BENFIELD, *supra* note 4, at 127.

In sum, suburban sprawl, like the French Revolution, devours its own children. Sprawl creates inner ring suburbs, only to destroy them a few decades later by creating outer suburbs to skim off their elites. So as long as cities and older suburbs continue to lose their most affluent citizens to newer suburbs, no community is truly safe from the ravages of neighborhood decay, and no stable community can endure.

2. Sprawl vs. Work

Conservatives claim to believe that people should be independent rather than relying on government for handouts. For example, it took a Republican Congress to enact the welfare reform bill that limited the amount of time anyone can spend on welfare.⁴⁶⁴

But sprawl punishes work and rewards welfare dependency. Here is why: Thanks to suburban sprawl, most low-skill jobs are located in areas that are inaccessible by public transportation or nearly so.⁴⁶⁵ In small cities like Macon, many jobs are inaccessible without a car either because the public transportation system does not reach major employers or because the buses stop running early in the evening.⁴⁶⁶ And even in the relatively transit-friendly Boston metropolitan area, just 32% of entry-level employers are within one-quarter mile of transit, 43% are within one-half mile, and 58% are within one mile.⁴⁶⁷ Just 14% of entry-level jobs can be reached by transit within an hour from Boston's poorer neighborhoods.⁴⁶⁸ So to get off welfare and get a job, a welfare recipient often needs a car which she probably cannot afford (otherwise she would not be on welfare in the first place).⁴⁶⁹ The recipient may be stuck in a vicious cycle: she needs the car to get a job, but she can't get a job unless she has a car first. Thus, the dispersion of employment opportunities caused by sprawl frustrates welfare reform

464. See NORQUIST, *supra* note 53, at 69 (describing bill).

465. See *supra* notes 346-65 and accompanying text. Ironically, one defender of the status quo argues that "[t]here is no evidence that the best or most desirable jobs are disproportionately fleeing from urban centers." Gordon & Richardson, *supra* note 152, at 4. This assertion is of course beside the point: our least skilled workers by definition need not the "best" job but the entry-level, low-skilled jobs that are mostly located in suburbia.

466. See *supra* notes 356-59 and accompanying text. Cf. Briffault, *supra* note 96, at 376 n.134 (suggesting that mismatch between workers and jobs is the result of conscious policy choices by suburban politicians to keep central city residents out of suburbs).

467. See *supra* note 348 and accompanying text.

468. See *supra* note 349 and accompanying text.

469. See CITY ROUTES, *supra* note 243, at 20 (reporting that only 24% of Boston-area welfare mothers owned cars).

and encourages welfare dependency.⁴⁷⁰

Even if one assumes that a welfare recipient can somehow obtain a car, the costs of auto ownership encourage welfare dependency at the margins. For example, suppose that welfare recipient A can earn \$700 a month on welfare and \$900 after taxes at work, but would have to spend \$250 a month on a car if she gets a job. On balance, A would be better off on welfare because the cost of a car reduces her overall pay to \$650 (\$900 in wages minus \$250 in auto expenses). Thus, the auto dependency caused by sprawl discourages work and encourages welfare dependency.

IV. SOLUTIONS TO SPRAWL: OR, STOPPING SPRAWL WITHOUT EMPOWERING GOVERNMENT

Conservative hostility to anti-sprawl measures is based on the delusion that there is no way to limit sprawl without increasing government spending or government regulation of land use.⁴⁷¹ In fact,

470. It has been argued that auto dependency is unrelated to welfare dependency because "transit-dependent New York City has higher central-city unemployment than other American cities." Gordon & Richardson, *supra* note 152, at 4. See also Gordon & Richardson, *supra* note 28, at 70 ("[I]nner-city unemployment is prevalent in New York City, the U.S. transit capital, where reaching far-flung jobs is the easiest."). This argument is meritless because auto dependency affects not a city's total unemployment rate, but the unemployment rate among people without cars—and among that group, unemployment is higher in auto-dependent cities. For example, Dallas has lower unemployment than New York City, as does all but one of the ten largest American cities. *Id.*; see also *Economagic.com: Economic Time Series Page*, at www.economagic.com (last visited Mar. 15, 2000). But in the five noninstitutional census tracts (that is, tracts where most people are not in a prison or mental institution) where the majority of households do not have a car, labor force participation rates range from 37% to 47%, and unemployment rates range between 21% and 33%. See 1990 CENSUS OF POPULATION AND HOUSING, CHARACTERISTICS OF CENSUS TRACTS AND BLOCK NUMBERING AREAS: DALLAS PMSA 838, 850, 852, 1416, 1428, 1430 (1993) (first three pages list unemployment data, last three list vehicle ownership data). By contrast, in Staten Island, New York City's most auto-dependent borough, there are four noninstitutional census tracts where the majority of households do not have a car: but in those census tracts, labor force participation was far higher, and unemployment was far lower than in their Dallas counterparts. See 1990 CENSUS OF POPULATION AND HOUSING, CHARACTERISTICS OF CENSUS TRACTS AND BLOCK NUMBERING AREAS: NEW YORK PMSA 2193-97, 3657-59, 3662, 3667 (1993) (reporting that the labor force participation rates in tracts ranged between 56% and 68%, unemployment rates ranged between 2% and 18%). In sum, carless workers in auto-dependent cities are far more likely to be unemployed than are carless workers in other cities.

471. See, e.g., Sowell, *supra* note 27, at B7. This view, although incorrect, has a slight basis in reality. Many environmentalist solutions to sprawl do involve either more government spending or increased government regulation. See, e.g., Kelly Erin & Ferguson Ellyn, *The Sprawl Brawl: Congress and the White House are Stepping In, But Should They?*, DES MOINES REG., Dec. 11, 1999, at 2 (Vice President Gore proposes \$20 billion in allegedly

even if conservatives must agree to disagree with environmentalists on some fiscal and regulatory issues, they can still fight sprawl in other ways consistent with conservative values.

For example, conservatives can focus on (1) eliminating highway spending that encourages sprawl, (2) breaking the link between residence and schooling, so that families can live in cities without being trapped in urban schools, and (3) limiting sprawl by reducing rather than increasing government regulation of land use.

A. No New Roads

If state and federal policy caused our urban crisis, the logical solution is to stop the policies that led to the crisis. Because highway spending has been a significant cause of suburban sprawl,⁴⁷² we can take a significant bite out of both sprawl and big government by eliminating sprawl-generating highway spending.

Specifically, state and federal governments should prohibit the use of their funds to build or widen roads in newer suburban areas. Because highway spending totaled \$101 billion in 1997,⁴⁷³ such a "paving moratorium" would give taxpayers a significant break (including, ironically, drivers, whose fuel taxes pay for more than half of government highway spending).⁴⁷⁴ A paving moratorium would not prevent settlement in existing suburbs—but would prevent government from creating new suburbs by building more highways, and would thus prevent government from turning today's suburbs into deserted slums.

Government justifies new and widened roads on the ground that more roads, not fewer, are needed to deal with traffic congestion.⁴⁷⁵ But

anti-sprawl spending); BENFIELD, *supra* note 4, at 152-58 (praising various measures that limit development in order to limit sprawl). The wisdom of such measures is beyond the scope of this article.

472. See *supra* notes 145-64 and accompanying text.

473. See 1999 ABSTRACT, *supra* note 111, at 635.

474. *Id.*

475. See, e.g., *New River Valley v. U.S. Dep't of Transp.*, No. 95-1203-R, 1996 U.S. Dist. LEXIS 16547 at *3 (W.D. Va.) *aff'd without op.*, 129 F.3d 1260 (4th Cir. 1997); *In re Save the Pine Bush v. City Engineer of the City of Albany*, 220 A.D. 2d 871, 871 (N.Y. App. Div. 3d Dep't 1995) (discussing that the new road approved "to mitigate traffic congestion"); James J. Casey, Jr., *The Politics of Congestion and Implementation: Milwaukee's Freeways and the Proposed Light Rail and Transit System*, 78 MARQ. L. REV. 675, 706, 732 (1995) (discussing that the purpose of the interstate highway system was to "eliminate highway congestion" and additional roads should be built because "reliance on mass transit solutions to the unique problems of traffic congestion in the [Milwaukee] region will not suffice over the long run"); DOWNS, *supra* note 166, at 8 ("[C]ongestion could have been mitigated if a lot more streets and roads had been built, or existing ones expanded, in the 1980s."). A related argument is

the claim that new roads eliminate congestion is at best speculative. Admittedly, if new and widened roads did not affect development patterns, a new or widened road might reduce traffic congestion. But in reality, highway building affects where people live and work. If government builds highway X to suburb Y, homeowners and businesses will soon move to subdivisions near X's interchanges, thereby increasing traffic along the interchanges.⁴⁷⁶ Thus, "[b]uilding more highways to reduce traffic congestion is an exercise in futility. Whenever it is done, more people take to their cars, and before long the roads are as clogged as ever."⁴⁷⁷ Even people and groups sometimes identified as pro-sprawl admit as much. As Joel Garreau of the *Washington Post* has written, "[t]he more capacity you add, the more likely you are to make the place more popular . . . creating more traffic."⁴⁷⁸ Mr. Garreau is hardly an anti-sprawl activist; for example, he has described the status quo as the "manifest pattern of millions of individual American desires over seventy-five years."⁴⁷⁹ Similarly, the National Association of Home Builders (which advocates accelerated road construction)⁴⁸⁰ conducted a survey that reveals that highway access would influence 55% of respondents to move to a new community—more than any other amenity.⁴⁸¹ By admitting that highways encourage movement to areas

that sprawl itself, by reducing density, reduces traffic congestion. See Steven Hayward, *Smart Growth Policy is Full of Dumb Ideas*, BALT. SUN, May 10, 1999, at 13A ("[A]s metropolitan population density rises, auto traffic congestion gets worse, not better."); but see contra Larson, *supra* note 217, at 368 (attributing "gridlock traffic" in part to suburban sprawl). But in fact, the correlation between density and congestion is at best slim. For example, Atlanta is more thinly populated than all but one of America's twenty largest metropolitan regions. See *TTI Urban Mobility Study, Table 1*, at <http://mobility.tamu.edu> (last visited Feb. 22, 2000) [hereinafter "*TTI Study*"] (noting that Atlanta and Phoenix tied for least densely populated, with only 1440 people per square mile). Yet, Atlanta is one of America's most congested regions. See 1999 ABSTRACT, *supra* note 111, at 644 (reporting that the 1996 congestion cost per driver was \$1095, more than all but three metro areas). The two most densely populated regions, Las Vegas and Los Angeles, see *TTI Study, supra*, vary dramatically in their congestion levels: Los Angeles is more congested than Atlanta, while Las Vegas has below-average congestion. See 1999 ABSTRACT, *supra* note 111, at 644. Thus, the most prudent conclusion is probably that density is not an extremely significant factor either in creating or in mitigating congestion.

476. See *infra* notes 483-91 and accompanying text.

477. Henry R. Richmond, *From Sea to Shining Sea: Manifest Destiny and the National Land Use Dilemma*, 13 PACE L. REV. 327, 337 n.57 (1993) (quoting Andres Duany & Elizabeth Plater-Zyberk, *The Second Coming of the Small Town*, UTNE READER, May-June 1992, at 97).

478. JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* 128 (1991).

479. *Id.* at 222.

480. NAHB Policy Statement, *supra* note 163.

481. NAHB Growth Survey, *supra* note 164. See also Gordon & Richardson, *supra* note

with highway access, the NAHB has effectively conceded that highways shift development to suburbs (thus making those suburbs more rather than less congested).⁴⁸²

Numerous studies suggest that "induced traffic" eliminates some or all of the reduction of congestion caused by new roads and road widenings. For example, Mark Hansen, a professor of transportation engineering at the University of California at Berkeley, used statewide California statistics in concluding that new road capacity is almost entirely offset by induced traffic within five years.⁴⁸³ A study conducted by Robert B. Noland, a former transportation analyst at the Environmental Protection Agency, similarly found that a 10% expansion in roads produced a 2.8% rise in travel over two to four years.⁴⁸⁴ These traffic increases arise because in the short run, motorists switch from other routes, because they abandon mass transit and drive instead, and because development may shift people and jobs to areas near the highway.⁴⁸⁵ In fact, studies such as Hansen's, if accurate, may actually overestimate the benefits of new roads by failing to account for the medium- and long-run changes in development plans caused by new and widened roads (that is, the changes that occur more than four or five years after the road is built or widened).

For example, in 1991, Montgomery County, Maryland (a suburb of Washington) widened Interstate 270 to as many as twelve lanes to reduce traffic congestion.⁴⁸⁶ According to Sidney Kramer, Montgomery County executive from 1986 to 1990, "[y]ou saw a tide of development go forward because of that improvement."⁴⁸⁷ One of the high-growth suburbs created by the I-270 widening, Germantown, Maryland, grew from just over 41,000 people in 1980 to 70,000 people in 1998.⁴⁸⁸ In turn, the growth of Germantown and nearby suburbs caused traffic to increase. In fact, traffic along I-270 has surpassed the levels state

28, at 70 (citing "[g]ood highways" as cause of sprawl).

482. Of course, it could be argued that by shifting congestion to suburbs, sprawl reduces congestion in cities. But such freedom from congestion comes at an awful price—the abandonment and collapse of city neighborhoods. See *supra* notes 9-10, 421-63 and accompanying text (describing abandonment and impoverishment of older cities and their inner suburbs).

483. See Sipress, *supra* note 150.

484. *Id.* See also Robert E. Noland, *Relationships Between Highway Capacity and Added Vehicle Travel*, at <http://www.epa.gov/tp/trb-rn.pdf> (last visited Feb. 22, 2000).

485. Sipress, *supra* note 150.

486. *Id.*

487. *Id.*

488. *Id.* See also WORLD ALMANAC AND BOOK OF FACTS 2000, *supra* note 6 at 408.

highway planners forecast for 2010 in their 1984 study of the proposed widening.⁴⁸⁹ The Maryland highway department reported that the "1997 volume at Route 28 in Rockville was 193,000 vehicles [per] day—2,000 more than the 2010 projection."⁴⁹⁰ According to David Palank, an area real estate broker, "[w]ith all the lanes that are there, it just doesn't seem to be moving that quickly . . . I haven't found any relief at any time. It seems like it was congested and continues to be congested."⁴⁹¹

If I-270 was an aberration, areas that increased road space would have experienced a reduction in congestion during the 1990s, or at least less congestion than areas that did less road-building. But recent studies show otherwise. The Hartford, Ct., and Providence, R.I., areas experienced similar population growth between 1982 and 1997.⁴⁹² But Hartford's road capacity stagnated, while Providence increased its road mileage by 59%.⁴⁹³ If road-building reduced congestion, Providence would have far less congestion than Hartford. But a study by the Texas Transportation Institute (the official research agency for the Texas Department of Transportation and the Texas Railroad Commission)⁴⁹⁴ revealed that the two areas had similar levels of traffic growth and traffic congestion. In 1997, the cost of congestion per eligible driver was \$390 in Hartford and \$360 in Providence (Nos. 49 and 50 of 68 areas surveyed).⁴⁹⁵ Rush-hour congestion increased by 200% from Hartford and 225% in Providence between 1982 and 1997.⁴⁹⁶ Annual delay per driver increased by 283% in Hartford and 320% in Providence between 1982 and 1997.⁴⁹⁷ In other words, Providence built far more roads, yet congestion increased in Providence just as rapidly as in Hartford.

The correlation between free-flowing traffic and free-spending road builders is equally weak in fast-growing metro areas. For example, Charlotte and Fresno had comparable population growth rates (64% and 57%).⁴⁹⁸ But Charlotte increased its highway mileage by 113%

489. Sipress, *supra* note 150.

490. *Id.*

491. *Id.*

492. See *Roads*, *supra* note 151 ("Tables and Graphs" section) (reporting that the Hartford region grew by 13%, Providence region by 9%).

493. *Id.*

494. See *Texas Transportation Institute Home Page* at <http://tti.tamu.edu/inside/factsheet/> (last visited Feb. 23, 2000).

495. See *TTI Study*, Table 8, *supra* note 475; see also 1999 ABSTRACT, *supra* note 111, at 644 (Hartford and Providence had comparable congestion costs in 1996).

496. *TTI Study*, Table 3, *supra* note 475.

497. *Id.*, Table 4.

498. *Roads*, *supra* note 151 ("Tables and Graphs" section).

while Fresno's road-building lagged behind its population growth (with only a 27% increase).⁴⁹⁹ Charlotte's congestion cost \$680 per driver, while Fresno's cost only \$315.⁵⁰⁰ Annual delay per driver increased by 356% in Charlotte and only 171% in Fresno,⁵⁰¹ while peak hour congestion increased by about the same amount in both areas (229% in Charlotte and 225% in Fresno).⁵⁰²

Ironically, drivers are sometimes the biggest losers from road-building: When states favor road-building over routine street maintenance, roads become rutted and packed with potholes. A recent survey by The Road Information Program, a group financed by the road construction industry, shows that 35% of roads in Detroit and New Orleans are in poor condition.⁵⁰³ Over 30% of roads were in poor condition in three other metro areas (Los Angeles, Indianapolis, and San Jose), and 20% to 30% of roads were poor in fourteen others (San Francisco, Chicago, Baltimore, Sacramento, Grand Rapids, Norfolk/Virginia Beach, Oklahoma City, Denver, Dallas, Houston, New York, Washington, Philadelphia, and Austin).⁵⁰⁴ By an odd coincidence, all of these areas increased highway capacity in the 1980s and 1990s.⁵⁰⁵ For example, Detroit's highway mileage increased by 21% (far ahead of its anemic 5% population growth) while New Orleans's highway mileage increased by 45% (despite that region's 4% population growth).⁵⁰⁶ It, therefore, appears that some states are letting existing

499. *Id.*

500. See *TTI Study*, *supra* note 475, Table 8. See also 1999 ABSTRACT, *supra* note 111, at 644 (reporting that Charlotte's congestion costs exceeded those of Fresno in 1996).

501. *TTI Study*, *supra* note 475, Table 4.

502. *Id.*, Table 3. Gordon and Richardson assert that "the two major cities that have reduced congestion—Houston and Phoenix—have had major highway projects." Gordon & Richardson, *supra* note 28, at 68. But, in fact, peak hour congestion increased by 133% in Phoenix between 1982 and 1997. See *TTI Study*, *supra* note 475, at Table 3. Similarly, annual delay per driver increased by 119% in Phoenix. *Id.*, at Table 4. Houston did have unusually small increases in congestion—but increases nonetheless. *Id.* Moreover, Gordon's suggestion that Houston and Phoenix were unique is incorrect. In fact, other regions increased their road capacity to a greater extent than did Houston and Phoenix, with less favorable results. For example, Charlotte increased its road capacity by 113% (discussing that more than either Houston or Phoenix) yet experienced far greater increases in congestion. See *supra* notes 498-502 and accompanying text.

503. Blake Morrison, *Bad Roads Cost Cities, Motorists*, USA TODAY, Mar. 21, 2000, at 1.

504. *Id.*

505. See *Roads*, *supra* note 151 ("Tables and Graphs" section). I note, however, that other metropolitan areas with better roads also increased road capacity. *Id.* (nearly every metropolitan area increased highway capacity).

506. *Id.*

roads deteriorate so that they can build new roads instead.

In sum, both common sense and actual experience support the view that suburban road-building creates sprawl without mitigating congestion. Thus, continued road widening and roadbuilding is pointless, if not harmful.

B. Ending the Urban School Crisis

As Mayor Norquist of Milwaukee has pointed out, "[a] major factor in the extreme separation of rich and poor in the United States is that people who are rich avoid city schools."⁵⁰⁷ As explained above, a "bad" school (one with a poor reputation) is typically "bad" at least partially because of its disadvantaged student body.⁵⁰⁸

Indeed, many suburbanites implicitly admit as much by fighting attempts to enroll urban children in suburban schools, on the ground that the admission of such children would "ruin" their schools.⁵⁰⁹ For example, Cleveland's suburban public schools have locked out urban children by refusing to participate in Cleveland's voucher program,⁵¹⁰ and some states have even created the crime of "enrollment fraud" to criminally punish urban parents who seek to sneak their children into suburban schools.⁵¹¹ If suburban schools would in fact be adversely affected by the enrollment of urban students, suburban school districts' alleged superiority obviously rests upon the background of their pupils rather than the excellence of their teachers and administrators. Thus, even suburbanites know that the quality of their "good" schools rests on the absence of low-income students rather than on the superiority of their teachers or administrators.

It logically follows that even if government can improve poverty-packed urban schools slightly by spending more, raising expectations, or other reforms,⁵¹² it probably can never make such schools as attractive to middle-class families as homogenous suburban schools. It further follows that if government wishes to stop driving middle-class families out of cities, it must stop forcing parents to choose between middle-class-dominated schools and city living. The most market-oriented

507. NORQUIST, *supra* note 53, at 86.

508. See *supra* notes 172-81 and accompanying text.

509. See Jim Ryan, *School Choice and the Suburbs*, 14 J.L. & POL. 459, 467-68 (1998).

510. See *Simmons-Harris v. Zelman*, 54 F. Supp. 2d 725, 728 (N.D. Ohio 1999).

511. See Smith, *supra* note 173, at 46-50; 105 ILL. COMP. STAT. ANN. 5/10-20.12b(f) (West 1999); N.J. STAT. ANN. § 18A:3-1(c) (West 1999).

512. But cf. MILTON FRIEDMAN, *FREE TO CHOOSE* 155-56 (1980) (outlining failure of spending increases in American schools).

remedies for the urban education crisis (other than the complete abolition of government-funded education in city and suburb alike) are various forms of the voucher system.

Under a voucher system in its purest form, "money spent on schooling [would] go directly into the pockets of families with school-age children, who could spend their voucher wherever they pleased—in either public or private systems."⁵¹³ Less radical voucher plans might require the government to pay only part of a student's private school tuition, just as college students obtain tuition assistance through government-backed loans and grants.⁵¹⁴

Any form of voucher program, other than one limited to the poor,⁵¹⁵ would discourage middle-class flight by ensuring that parents could live in the city and nevertheless send their children to selective private or suburban schools for free (or at least at a lower price, depending on the generosity of the program).⁵¹⁶

513. Carol Ascher, *And It Still Is News: The Educational Inequalities That Have Brought Us Vouchers*, 1998 ANN. SURVEY AM. L. 205, 206 (1998) (describing Milton Friedman's proposition). The term "voucher" is commonly used because one of the earliest proponents of the idea, Nobel Prize-winning Milton Friedman, uses the term. See John Mullen, *School Vouchers: An Intractable Dilemma?*, 26 HUMAN RIGHTS 16, 16 (1999) (asserting that Friedman invented the concept in a 1955 essay); FRIEDMAN, *supra* note 512 at 161 (proposing that "the government [will say] to you: 'If you relieve us of the expense of schooling your child, you will be given a voucher, a piece of paper redeemable for a designated sum of money, if, and only if, it is used to pay the cost of schooling your child at an approved school'").

514. See FRIEDMAN, *supra* note 512, at 175 (criticizing government support of higher education, but admitting that "[a] wide range of choice eases the problem of quality"). But cf. James S. Liebman, *Voice, Not Choice*, 101 YALE L.J. 259, 284 (1991) (arguing that if tuition is not capped at voucher amount, educational inequalities would increase).

515. Unfortunately, the most widely publicized voucher experiments have been limited to either a small number of students or to the poor and near-poor, and thus have been totally ineffective in protecting cities from suburban sprawl. See *Simmons-Harris v. Zelman*, 54 F. Supp. 2d 725, 728 (holding that the Cleveland program limited to students chosen by lot, vouchers smaller for middle-class students, and amount of voucher limited to \$2500 per student); CITY GUIDE, *supra* note 375, at 156-58 (noting that most Cleveland area private schools charge far more than \$2500); *Jackson v. Benson*, 578 N.W. 2d 602, 608 (Wis. 1998) (ruling that the Milwaukee voucher program is limited to 15% of students and to families whose income did not exceed 1.75 times the poverty level), *cert. denied*, 525 U.S. 997 (1998); Associated Press, *Judge Voids Florida School Voucher Plan: Governor Vows Appeal of Ruling Barring Aid for Private Education*, CHI. TRI., Mar. 15, 2000, at 6 (voiding, on state law grounds, voucher program affecting students in only two public schools in entire state of Florida). Two other programs are effectively limited to rural areas because they aid only students in school districts without public schools. See *Bagley v. Raymond School Dep't*, 728 A.2d 127, 130 (Me.) (upholding Maine program in which vouchers limited to areas with no public high schools), *cert. denied*, 120 S. Ct. 364 (1999); *Campbell v. Manchester Bd. of Sch. Dirs.*, 641 A.2d 352, 354 (Vt. 1994) (upholding similar Vermont program).

516. See Paul E. Peterson, *School Choice: A Report Card*, 6 VA. J. SOC. POL'Y & L. 47,

Some criticize the voucher system as a repudiation of the American ideal of the "common school" where children of different backgrounds cross paths and learn about one another.⁵¹⁷ And indeed it is arguable that a public school system that in fact educated children of different backgrounds together might "teach [children] respect for opposing points of view and ways of life, and to provide them with the intellectual skills necessary to evaluate ways of life different from their parents."⁵¹⁸ It follows that in pre-suburban America, this "common school" argument might have had some relevance to reality. But in major metropolitan areas, the common school concept has been assassinated by sprawl: Middle-class families live in middle-class suburbs with homogeneously middle-class schools, while poor families live in cities or poor suburbs with homogeneously poor schools.⁵¹⁹ By contrast, a voucher system will increase children's exposure to diversity by enabling parents to live in or near diverse neighborhoods without sending their children to widely feared urban schools. For example, suppose Mr. and Mrs. X are willing to expose their children to city life but fear city schools. Under today's educational system, when the X children reach school age, they would reluctantly leave the city in order to avoid city schools. Under the voucher system, Mr. and Mrs. X would be able to live in a diverse city neighborhood and send their children to schools similar to those that their children would attend if they lived in suburbia.⁵²⁰

79 (1999) (writing that if vouchers implemented, "young parents with children entering school will forgo the expensive move to the suburb and pick instead a local school suited to their needs").

517. See Peter Schrag, *School Vouchers in California: Bailing Out of Public Education*, NATION, Oct. 4, 1993, at 351, 351-52. Schrag inexplicably asserts that public schools are "virtually the last place where children of different backgrounds and classes cross paths and learn about one another." *Id.* at 354.

518. Briffault, *supra* note 89, at 786.

519. See NORQUIST, *supra* note 53, at 86. Norquist notes,

[U]nder the traditional government monopoly in education, children from affluent families are leaving children from less affluent families behind. Instead of choosing an alternative school for their children, wealthy parents are choosing an alternative place to live, the suburbs. Vouchers would give all parents a similar power of choice, one that doesn't require moving out of town.

Id. See also Peterson, *supra* note 516, at 79 ("[T]he white middle-class population has already left the central-city schools for private or suburban ones."); FRIEDMAN, *supra* note 512, at 166 ("[T]he public school system has fostered residential stratification, by tying the kind and cost of schooling to residential location.").

520. See Lewyn, *supra* note 10, at 532-33; Nancy A. Denton, *The Persistence of Segregation: Links Between Residential Segregation and School Segregation*, 80 MINN. L. REV.

A related argument is that competition between city schools and private schools would be "unfair," because private schools could exclude the least desirable students.⁵²¹ This argument is beside the point, because many of the most "desirable" students (i.e. high-achieving students from middle-class households) will be segregated in any event as long as the middle class continues to avoid city schools,⁵²² and because suburban schools can exclude some of the least desirable students by using zoning and the resulting high property values to exclude low-income households⁵²³ whose children are more likely to be slow learners.⁵²⁴ Whether middle-class children go to exclusive urban schools or exclusive suburban schools, those schools will be segregated by class as well as ability; but under the status quo, this segregation creates the additional evil of urban decay. In other words, the status quo equals class segregation plus sprawl, but vouchers would at worst create class segregation minus sprawl. Because two social evils are worse than one, the voucher system is obviously preferable to the status quo.

Indeed, the "unfairness" argument leads to absurd results. One commentator argues that vouchers are unfair because "[i]f they [private schools] choose not to help children with discipline problems, they can turn those students away."⁵²⁵ Presumably, the author of this article believes that it is "fair" for children in urban public schools to share their classrooms with a horde of bullies, while other children are able to learn in a more orderly environment. This hardly seems like a fair result. The author's remark exemplifies the kind of societal double standard that has made many American cities unattractive to the middle class: Cities have become the dumping ground for the destitute and the disorderly, while social justice demands nothing of suburbanites except pious proclamations.

795, 803 (1996) (noting that private schools "provide an outlet for groups to live together while not sharing schools").

521. See Schrag, *supra* note 517, at 351-52; Mullen, *supra* note 513, at 17 ("Public schools may lose their best students and most involved parents to private schools, leaving behind the more poorly performing or disruptive students the private schools will not accept."); Arnold Fege, *Private School Vouchers: Separate and Unequal*, in *WHY WE STILL NEED PUBLIC SCHOOLS* 221, 225-26 (Art Must, Jr., ed. 1992).

522. See *supra* notes 165-66 and accompanying text (pointing out that middle class tends to avoid urban schools).

523. See *supra* notes 86-89 and accompanying text.

524. See *supra* notes 172-81 and accompanying text.

525. Jennifer A. Henrikson, Jackson v. Benson: *School Vouchers—Offering An Apple To Private Schools; Creating A Serpent For Public Schools*, 75 CHI-KENT L. REV. 259, 277 (1999).

Voucher critics predict that an increased demand for private schools might cause private schools to raise tuition and make vouchers so fiscally impractical as to make private schools financially unaffordable,⁵²⁶ and that vouchers will naturally lead to government overregulation of private schools.⁵²⁷ These arguments overlook the fact that the United States already has a modified voucher system at the college and university level: the intricate web of grants and loans that help Americans attend private as well as public colleges.⁵²⁸ If vouchers reduced access to college or made colleges worse, America's college and university system would be inferior to that of other countries. In fact, Americans attend college in greater numbers than citizens of other affluent countries,⁵²⁹ and our university system, far from having been crushed by government regulation, is so superior that in 1995, 452,599 foreign students came to American universities to learn.⁵³⁰ Thus, vouchers have worked well at the university level, and accordingly, should be provided for younger students. Moreover, it is unlikely that government funding would endanger the quality of private schools, for the simple reason that the government must regulate its own schools, but at least has the option of not regulating private schools.⁵³¹ Thus, government would probably not regulate private schools as extensively as it regulates public schools.⁵³² America's experience with charitable tax deductions suggests that government subsidies to private schools would

526. See Donald Frey, *What if Government Subsidies are Legislated?*, in *WHY WE STILL NEED PUBLIC SCHOOLS*, 191, 196-97 (Art Must, Jr., ed. 1992) ("According to conventional economics, this increase in demand for places in private schools . . . [may cause private schools to] increase their tuition and so capture part of the subsidy for themselves.").

527. See Fege, *supra* note 521, at 221, 233 (suggesting that if vouchers were implemented, private schools "would come under mounting pressure for public regulation"); Ralph Z. Hallow, *Buchanan Hits School Vouchers*, in *WASH. TIMES*, Sept. 14, 1995, at A4 (conservative presidential candidate argued that vouchers are "wolves in sheep's clothing" that could lead to federal control of private education).

528. See *United States v. LaHue*, 170 F.3d 1026, 1031 (10th Cir. 1999) (noting that private colleges participate in federal student loan programs); *Trustees of the Cal. State Univ. v. Riley*, 74 F.3d 960, 965 (9th Cir. 1996) (deciding that students at private colleges are eligible for federal grants); NORQUIST, *supra* note 53, at 89.

529. See 1999 ABSTRACT, *supra* note 111, at 840 (reporting that 26% of Americans have university education; of twenty-five other countries listed, only one, the Netherlands, has university attendance over 20%, while other affluent nations such as Sweden, Switzerland, Canada, United Kingdom, France, Germany and Italy have university attendance rates ranging from 8% to 17%).

530. *Id.*

531. Eugene Volokh, *Equal Treatment is Not Establishment*, 13 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 341, 364 (1999).

532. *Id.*

not lead to overregulation. Though the federal government certainly attaches some strings to the charitable deduction, charitable institutions are certainly not regulated as extensively as government-run schools.⁵³³

Another common anti-voucher argument is that vouchers violate the Establishment Clause of the First Amendment⁵³⁴ by subsidizing church-run schools.⁵³⁵ This assertion is quite controversial, and is rejected even by some constitutional law scholars generally regarded as liberals.⁵³⁶ Even if this argument is correct, a voucher system could still pass constitutional muster if it was confined to secular institutions.⁵³⁷ It could be argued that the exclusion of sectarian schools would make any voucher experiment useless, because most existing private schools are either parochial schools or elite schools for the rich.⁵³⁸ This argument is questionable because if government paid a significant amount of tuition⁵³⁹ for private schools, entrepreneurs might create non-sectarian

533. *Id.*

534. U.S. CONST., amend. 1 ("Congress shall make no law respecting an establishment of religion . . . ")

535. *See, e.g., Simmons-Harris v. Zelman*, 54 F. Supp. 2d 725, 733-41 (N.D. Ohio 1999) (granting preliminary injunction against Cleveland voucher program on Establishment Clause grounds); Liebman, *supra* note 514, at 283 ("[W]ithout contemplating drastic changes in Establishment Clause doctrine, it is hard to imagine educationally attractive voucher programs . . . that include Catholic schools."); *but see contra* Jackson v. Benson, 578 N.W. 2d 602, 610-20 (Wis. 1998) (rejecting Establishment Clause challenge to Milwaukee program).

536. *See* Liebman, *supra* note 514, at 281 n.98 (quoting Prof. Laurence Tribe to effect that "[o]ne would have to be awfully clumsy to write voucher legislation that could not pass constitutional scrutiny"); Thomas McArdle, *Will Education Vouchers Work?*, INVESTOR'S BUS. DAILY, Dec. 8, 1994, at A1 (arguing that Tribe is one of "the nation's most liberal legal minds"). The literature on both sides of the constitutional question is quite extensive. *See, e.g., Symposium, School Vouchers and the Establishment Clause*, 31 CONN. L. REV. 803 (1999) (containing articles by Gary Mozer, Marci Hamilton, Michael McConnell, Mark Tushnet, Alan Brownstein, Mark Chopko, and Marc Stern). The constitutionality of vouchers for sectarian schools is beyond the scope of this article, because (a) I believe that a voucher system excluding sectarian schools would probably be workable, *see infra* notes 539-40 and accompanying text, and (b) the literature is so overwhelming that no further discussion is necessary.

537. *See* Christopher D. Pixley, *The Next Frontier in Public School Finance Reform: A Policy and Constitutional Analysis of School Choice Legislation*, 24 J. LEGIS. 21, 43 (1998) (noting that voucher experiment in Milwaukee initially excluded religious schools and for-profit schools); *see also* Bagley v. Raymond Sch. Dep't, 728 A.2d 127, 130 (Me. 1999) (upholding Maine program excluding religious schools).

538. *See* FRIEDMAN, *supra* note 512, at 169.

539. Existing voucher experiments have not proven or disproven this theory, because government subsidies to private school students have been minuscule. *See, e.g., Simmons-Harris*, 54 F. Supp. 2d at 728 (ruling that vouchers limited to \$2,500); *Jackson*, 578 N.W. 2d at 608 (ruling that vouchers limited to 15% of students, thus limiting demand for private schooling); *Judge Voids Florida School Voucher Plan: Governor Vows Appeal of Ruling Barring Aid for Private Education*, *supra* note 515 (discussing that Florida vouchers are

schools. Just as the public demand for food and drink has encouraged entrepreneurs to form restaurants and taverns, the voucher-generated public demand for schooling would create a market that private entrepreneurs would fill.⁵⁴⁰

It could be argued that government can "save" city schools by spending more money on them.⁵⁴¹ But there is little correlation between school spending and educational achievement. Although some city school systems spend less than suburban schools,⁵⁴² others do not. "[I]n 1989-90, big-city schools systems as a group spent over \$5447 per pupil in 1989-90, compared with \$5427 in suburban areas and \$4507 in rural communities."⁵⁴³ "[E]ven when adjustments are made for" [cities' greater expenses,] "per pupil spending" by [city] "schools, on average, is only 1% " [below] "that of their suburban competitors."⁵⁴⁴

Moreover, there is little evidence that well-funded urban schools are significantly superior in any way to their underfunded counterparts. For example, Milwaukee public schools spend more than the state average per pupil and more than some suburbs, yet most middle-class parents avoid them.⁵⁴⁵ And in Kansas City, Missouri, a desegregation decree mandated that the city be granted a bonanza of funds: between 1987 and 1992, the state devoted \$1.5 billion to the school district.⁵⁴⁶ As a result, the Kansas City school district spends at least 30% more than the most well-funded suburban districts, and over twice as much as less well funded suburban districts.⁵⁴⁷ Although students' test scores improved modestly in absolute terms, their performances on statewide tests did not improve relative to their peers in other school districts throughout the state of Missouri.⁵⁴⁸ Thus, it appears that even where urban schools

limited to students in two public schools).

540. *Id.*

541. See Ascher, *supra* note 513, at 213-214 (asserting that urban schools suffer from "criminal inequities").

542. See KOZOL, *supra* note 179, at 236-37; Ascher, *supra* note 513, at 205-206.

543. Peterson, *supra* note 516, at 58-59.

544. *Id.*

545. See NORQUIST, *supra* note 53, at 87.

546. *Missouri v. Jenkins*, 515 U.S. 70, 75-80 (1994); James E. Ryan, *Schools, Race and Money*, 109 YALE L.J. 249, 290 (1999).

547. See *Jenkins*, 515 U.S. at 99 (discussing that Kansas City school district spends between \$7665 and \$9412 per pupil in non-capital costs, while suburbs spend between \$2854 and \$5956 per pupil).

548. *Id.* Similarly, court-mandated increases in funding for urban schools have resulted in minimal gains in student achievement in Hartford and in New Jersey. See Ryan, *supra* note 546, at 291.

outspend suburban schools, student achievement does not improve enough to make urban schools attractive to middle-class parents.

A related argument is that vouchers would drain money from government-run schools.⁵⁴⁹ This argument, even if true, is beside the point for two reasons. First, if, as suggested above, government-run schools do not consistently benefit from spending increases,⁵⁵⁰ they might not be significantly harmed by spending cuts. Second, this "harm" merely eliminates an unfairness to private school parents, who would no longer have to pay twice for education, once for their own child's schooling and once (through taxes) for the schooling of children in government-run schools.⁵⁵¹

In order to give governments a chance to evaluate the validity of opponents' concerns, any voucher plan which includes private schools should be limited to the group that needs vouchers most—residents of cities where the school system drives out the middle class. Thus, a state or federal voucher plan might give vouchers only to residents of cities above a certain size that had lost population in recent decades or that have higher poverty rates than their region as a whole. If the voucher system worked well enough, governments could follow up by expanding vouchers to all children.⁵⁵²

1. Vouchers Lite

A less radical plan would be a "public schools only" voucher plan. Under such a system, the federal or state government could radically expand consumer choice by enacting the following statute: "No publicly funded elementary or secondary school receiving state [or federal, depending on who enacted the statute] funding shall discriminate in its admissions on the basis of residence." Under a "public schools only" voucher plan, parents would be free to send their children to suburban or urban schools, no matter where they lived. This plan would increase consumer choice without creating the practical, constitutional, and fiscal difficulties of a voucher system that included private schools.⁵⁵³

549. See Ascher, *supra* note 513, at 213 ("[V]ouchers also leave the public schools that much more decimated—both in their student body and in the loss of public money they would otherwise receive for their students.")

550. See *supra* notes 542-44 and accompanying text.

551. See Volokh, *supra* note 531, at 362.

552. See Lewyn, *supra* note 10, at 534-35.

553. I note that thirteen states have "interdistrict enrollment" plans, under which students from one district can enroll in another. See Ryan, *supra* note 509, at 462, 467-68; CHUBB, *supra* note 181, at 210 (describing Minnesota's interdistrict enrollment plan).

However, a "public schools only" voucher plan would do less to combat sprawl than a pure voucher plan, because parents with children in suburban schools might be tempted to move to suburbs in order to reduce their commutes to suburban schools.

C. Housing and Land Use Policy

Although a libertarian, non-coercive land use policy cannot dictate where people live, such a policy can give Americans the opportunity to live in more pedestrian- and transit-friendly environments. As explained above, traditional, walkable neighborhoods have been virtually outlawed in much of America, thanks to local zoning laws dictating that almost nothing may be within walking distance of anything else, that commercial streets must be built for the happiness of cars rather than people, and that densities must be lower than a free market could tolerate.⁵⁵⁴

One remedy for this problem might be the complete abolition of zoning laws.⁵⁵⁵ The abolition of zoning would maximize individual freedom and reduce housing costs by allowing developers to build as they pleased, without any interference from government. On the other hand, the abolition of zoning might be even more politically impossible than any reforms discussed below, and would have the added cost of eliminating sprawl-limiting ordinances (such as those limiting development in newer suburbs) as well as sprawl-creating ordinances.⁵⁵⁶

Because suburban districts are allowed to opt out of such plans and states typically fail to provide transportation to students, such plans are rarely useful to urban students. *See* Ryan, *supra* note 509, at 467; CHUBB, *supra* note 181, at 210. Apparently, "[s]uburbanites fear that the schools that they have struggled to pay for with big mortgages and high property taxes will be destroyed by an influx of poorly educated, undisciplined students from inner cities." Ryan, *supra* note 509, at 467-68 (citing David Boaz, *Learning Opportunities*, NAT'L REV., Sept. 12, 1994, at 50, 54). If this is so, suburbanites' fears prove that their so-called "good schools" arise out of the "quality" of their students rather than from superior teaching or administration, and thus that poverty-packed schools can never attract the middle class. *See* Smith, *supra* note 173, at 46-50 (describing criminal punishment of urban parents for enrolling students in suburban schools).

554. *See supra* notes 211-25 and accompanying text.

555. *See* Cappel, *supra* note 212, at 619 nn.10-13 (citing numerous articles and books supporting abolition of zoning).

556. *Cf.* BENFIELD, *supra* note 4, at 152-58 (endorsing various land use controls to address sprawl). I note that anti-sprawl land-use controls and partial deregulation of land use are not mutually exclusive. *See* Epstein, *supra* note 3, at 372 (suggesting combination of "urban growth boundaries" limiting suburban development outside boundaries with "mak[ing] it easy (and much less expensive) to develop significant projects inside them"). The purpose of this article, however, is to suggest anti-sprawl measures acceptable to even the most doctrinaire libertarian. Accordingly, the wisdom of urban growth boundaries and

A narrower remedy to zoning-generated sprawl would be a Pedestrian's Bill of Rights, which would target zoning laws that encouraged sprawl and discouraged the creation of walkable neighborhoods. Such a statute would limit localities' zoning powers by eliminating many of the most onerous sprawl-creating zoning restrictions. For example:

(1) States should outlaw government-imposed minimum lot sizes, yard sizes, house sizes, or setbacks (that is, the distance between a house and the street).⁵⁵⁷ Where lots, yards and setbacks are humongous, houses are so far from each other that their occupants cannot walk from one house to shopping, or even to other houses.⁵⁵⁸ If people want to live in such an environment, they can certainly try to do so—but there is no reason why government should encourage them to by ordering developers to create unwalkable subdivisions.

(2) States should outlaw municipal restrictions on residential development in commercial zones, and allow some retail development in apartment buildings and other residential areas.⁵⁵⁹ Under the status quo of single-use zoning, suburbanites who would like to walk to work or to shopping often cannot do so, because the dead hand of government prohibits would-be landlords from building or renting apartments in commercial zones.⁵⁶⁰ It follows that if shop owners or office park developers were consistently allowed to rent surplus space to residential tenants, more Americans would be able to walk to work, shopping, and other opportunities. Similarly, states could allow some commerce in residential areas while preserving their residential nature by allowing retail development in residential zones up to a certain percentage of a subdivision's or apartment building's square footage (up to, say, 10%) so that homeowners could walk to some amenities without

similar measures are beyond the scope of this article.

557. See George W. Liebmann, *The Modernization of Zoning, Enabling Act Revision as a Means to Reform*, 23 URB. LAW. 1, 13 (1991).

558. See KUNSTLER, *supra* note 211, at 134 (arguing that because modern zoning typically "mandates the spreading out of houses on large lots separated by enormous laws," often "[c]ar use is unavoidable").

559. See Epstein, *supra* note 3, at 367 (asserting that cities and urbanized suburbs should "contain mostly unsegregated mixes of single-family and multi-family densities and other land uses"); Larson, *supra* note 217, at 382 (describing Washington statute encouraging mixed-use zoning); Liebmann, *supra* note 557, at 13 ("[A]ll zones, other than industrial zones, [should be] cumulative so that any use possible in a more protected zone may be carried on in a less protected one, thus, allowing mixed-use development in office and commercial areas, apartments over shops, etc.").

560. See KUNSTLER, *supra* note 211, at 111.

having their neighborhoods completely transformed.⁵⁶¹

(3) Duplex homes and apartments should be permitted by law in all residential construction.⁵⁶² If a homeowner wants to rent out his basement, he or she should be allowed to do so. Restrictions on rental use of homeowners' property increase housing prices,⁵⁶³ are far more intrusive than similar restrictions on commercial use, and increase auto dependency by artificially reducing population density.

(4) Municipalities should be required to permit home offices and telecommuting not involving show windows or exterior display advertising.⁵⁶⁴ Just as Americans should be allowed to walk to work, they should be allowed to work at home.

(5) Municipalities should not be allowed to require businesses to provide more free parking than the market would dictate.⁵⁶⁵ This rule would prevent government from subsidizing drivers by artificially increasing the supply of free parking, and would make streets more pedestrian-accessible by encouraging on-street parking (which buffers pedestrians from traffic).⁵⁶⁶ Similarly, streets should be narrower so that pedestrians could cross more safely,⁵⁶⁷ and on-street parking should be allowed as a matter of course.⁵⁶⁸

As a rule, metro areas with few zoning restrictions have cheaper housing.⁵⁶⁹ For example, Houston has no zoning at all and is more affordable than other big cities.⁵⁷⁰ It logically follows that in addition to

561. See Liebmann, *supra* note 557, at 13-14 (arguing certain stores with "limited signage . . . should be permitted as of right" in larger residential developments, as long as they do not exceed a specified low percentage of land area).

562. *Id.* at 14.

563. See KUNSTLER, *supra* note 211, at 131 (discussing that by prohibiting accessory apartments and similar housing types, zoning "zoned out the very conditions that made housing available to all income groups").

564. *Id.*

565. See Shoup, *supra* note 226 (criticizing municipalities' parking requirements); Litman, *supra* note 226 (same).

566. See *supra* notes 226-35 and accompanying text (describing consequences of parking requirements).

567. See Liebmann, *supra* note 557, at 15 (suggesting that municipalities be "required to scrap the extravagant street requirements imposed in the gas-guzzler era, possibly by imposition of a 26 foot maximum for collector and subcollector roads and an 18 foot maximum for dead end and cul-de-sac streets"); *supra* notes 246-48 and accompanying text (noting deadening effect of wide streets upon both commerce and pedestrian traffic).

568. See KUNSTLER, *supra* note 211 at 129 (arguing that cars parked on street "create a physical barrier, and a psychological buffer, that protects pedestrians").

569. See WILLIAM TUCKER, *THE EXCLUDED AMERICANS* 96-103, 114-21 (1990).

570. *Id.* at 119-20.

making American cities and suburbs more walkable and increasing property owners' freedom, zoning deregulation would have one other beneficial side effect: increasing the supply of low-rent, affordable housing and thereby limiting or even eliminating the demand for public housing⁵⁷¹ (which, as explained above, has turned cities into dumping grounds for the poor).

V. CONCLUSION

Suburban sprawl is not an invention of environmental extremists, but an issue that should cut across ideological lines. Sprawl exists in large part because of government policies favoring suburbia and forcing auto dependence, and can be at least partially remedied by policies that make government smaller and less intrusive. More importantly, sprawl reduces rather than enhances consumer choice—because when an American family moves to a suburb because they feel that they have to do so to educate their children decently, or buys an extra car because they think they cannot live without one, we are all a little less free.

571. See NORQUIST, *supra* note 53, at 121. Norquist notes,

Low-cost housing, not subsidized by the federal government, could be created if cottages and apartments over stores were allowed. If there were no prohibition on combining commercial and residential uses on streets intended for commercial use, developers could build low-cost housing on top of commercial venues such as video stores, supermarkets, fast-food outlets, or drugstores.