GUN VIOLENCE AND DE FACTO SEGREGATION: COULD ENVIRONMENTAL DISCRIMINATION BE FUELING CHICAGO’S SOARING GUN VIOLENCE?

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I. INTRODUCTION

Shirley Chambers is a Chicago resident who has experienced the unimaginable: her four children, three sons and one daughter, were all shot and killed in Chicago’s Lawndale neighborhood. After her first three children were murdered, Ms. Chambers recalled feeling “sadder” for her last remaining son more than she felt for herself. She reported, “I only have one child left, and I’m afraid that [the killing] won’t stop until he’s gone too.” Gun violence claimed Ms. Chamber’s fourth and last remaining child in 2013. Surprisingly, Ms. Chamber’s story is not unique considering many parents who reside in Chicago have lost multiple children to gun violence.

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2. Id.
3. Id.
4. Id.
5. Id.
Incidents of Chicago residents being shot and killed are rising.\(^7\) For instance, 4,368 people were shot in Chicago from January 1, 2016 to December 31, 2016, and following a small decline during 2017-2019, violent homicides have significantly increased in 2020.\(^8\) More alarming is the fact that the majority of gun violence is contained within defined geographical boundaries, and these boundaries most often correspond to minority communities riddled with poverty.\(^9\) Scholars, politicians, law enforcement, and society often attribute Chicago’s gun violence to legitimate, albeit incorrect, factors such as lack of morals, poor education, and inherent criminal propensities that are symptoms of the actual problem.\(^10\) This paper, however, will discuss a subtler element known as environmental discrimination, the underlying and systematic cause of Chicago’s current gun violence, which segregates Chicago’s poor and minority residents within geographically defined areas that are significantly lacking in resources.\(^11\) Such systemic barriers isolate and deny these persons access to the abundant resources and opportunities hoarded within Caucasian middle-class and more affluent communities.\(^12\) For instance, businesses often do not invest within these poor communities due to redlining; schools are low performing and lack the necessary resources to empower children through education; and transportation and employment are non-existent or severely limited.\(^13\) Thus, persons within these geographically determined poverty pockets often engage in high-risk lifestyles that contribute to the alarming statistics associated with Chicago’s gun violence.\(^14\)


\(^9\) See generally Natalie Moore, The South Side: A Portrait of Chicago and American Segregation (2016) (discussing how Chicago’s gun violence is contained within African American neighborhoods with high poverty and limited resources).

\(^10\) See id. at 163.

\(^11\) See id. at 161.

\(^12\) See id. at 161–62.


\(^14\) Moore, supra note 9, at 161.
One of Ms. Chambers’ sons had tombstone tattoos on his arm to commemorate his dead siblings; they eerily expressed the reality of many African Americans (and other minorities) contained within these congested and confined neighborhoods as a result of environmental discrimination.\footnote{Nickeas, supra note 1.}

This article discusses how addressing Chicago’s past land-use restrictions that segregated African Americans from European Americans will likely solve its gun violence problem. This Note proposes how the federal action of incorporating the language of Executive Order 12898 into the National Environmental Protection Act (“NEPA”) can likely prevent future instances of environmental discrimination in Chicago. This Note also discusses how a Chicago Community Based Reparations Program can mitigate existing environmental harms associated with past instances of environmental discrimination.

II. BACKGROUND

A. Environmental Racism

Environmental racism is a form of institutional racism that discriminates against persons of color in the implementation of environmental policy and decision-making.\footnote{GORDON WALKER, ENVIRONMENTAL JUSTICE: CONCEPTS, EVIDENCE AND POLITICS 66 (2012) (“Environmental racism is racial discrimination in environmental policy-making and enforcement of regulations and laws . . . and the history of excluding people of color from leadership of the environmental movement.” (quoting Benjamin Chavis)).} This concept extends to institutional discrimination in decision-making concerning placement of highways, railroads, and other infrastructure meant to divide and contain poor persons and minorities.\footnote{See Emily Badger & Darla Cameron, How Railroads, Highways, and Other Man-Made Lines Racially Divide America’s Cities, WASH. POST (July 16, 2015), https://washingtonpost.com/news/wonk/wp/2015/07/16/how-railroads-highways-and-other-man-made-lines-racially-divide-americas-cities/?utm_term=.e2880e6c6253 (discussing highways and other infrastructure that divides cities).}

The United States interstate highway system was originally constructed following the enactment of the Federal Aid Highway Act of 1956.\footnote{Bradford Sherman, Racial Bias and Interstate Highway Planning: A Mixed Methods Approach, C. UNDERGRADUATE RES. ELECTRONIC J., Spring 2014, at 3.} The purpose of this 46,876 mile system was (and is) to connect all parts of the United States through roads and highways that efficiently transport people and goods from one state to
Highway planners, however, have historically discriminated against poor minorities in urban settings by routing highways through these communities in an effort to shield Caucasian middle-class and affluent communities from the negative environmental impacts associated with infrastructure such as highways. As a result, poor minority communities have disproportionately absorbed the majority of these negative impacts, while Caucasian middle-class and affluent communities are free to enjoy the benefits of these highways absent any harmful environmental impacts.

Environmental discrimination is subtle; thus, people rarely question planning decisions that route highways through minority neighborhoods as opposed to middle-class and affluent ones, nor do people realize that such decision-making is a form of institutional discrimination. Such discriminatory practices went unchecked for decades due to misguided laws and regulations that were fueled by racism and prejudice, and because African Americans were considered socially repugnant and politically irrelevant.

Often the personal racism and prejudice of persons who occupied influential positions within society guided such discriminatory highway planning. Robert Moses, known as the “Master Builder of New York,” was a planner who is remembered for designing beautiful parks and recreational facilities throughout the state of New York. He is also remembered for designing barriers that

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19. David Pfeiffer, Anniversary of the Highway System Recalls Eisenhower’s Role as Catalyst, PROLOGUE MAG., Summer 2006, at X.
20. Badger & Cameron, supra note 17.
22. See Julie Hurwitz & E. Quita Sullivan, Using Civil Rights Laws to Challenge Environmental Racism: From Bean to Guardians to Chester to Sandoval, 2 J.L. SOCIETY 5, 13 (2001) (“The Toxics, Waste and Race study, and the numerous others conducted since 1987, have overwhelmingly confirmed that the burden of toxic and hazardous sources has fallen more heavily on residents of low income and minority communities.”).
23. See generally WASHINGTON, supra note 13 (discussing Chicago’s zoning and other restrictive covenants that restricted African Americans from housing outside of predeter mined ghettos).
prevented minorities from accessing these same public facilities through government sponsored infrastructure. Moses designed the infamous Long Island Bridge, which was intentionally designed to hang so low that buses could not drive under it. At that time, most African Americans relied on public transportation because they could not afford private vehicles. The bridge was intentionally designed to exclude African American participation on a publicly funded recreational facility. Ironically, no protests or other efforts to hold politicians, urban planners, or other influential institutions or persons accountable for this (and other) blatant forms of environmental discrimination occurred because at that time African Americans lacked political influence and social status.

Robert Moses also influenced the design of the nation’s interstate highway system. For instance, at the behest of affluent Caucasian residents of the Upper East Side, he authorized the placement of the Robert F. Kennedy Bridge exit ramp in Harlem, an African American neighborhood. This decision was made even though it made better sense to place the ramp in the Upper East Side where most of the incoming and outgoing traffic originated. Because of this planning decision, Harlem was constantly impacted by traffic and its resulting consequences including noise, accidents, and trash. Robert Moses’ influence reached beyond the state of New York as his discriminatory design influenced the interstate highway system. Mr. Moses referred to urban areas occupied by poor African Americans in Baltimore as “blighted” and “slums,”

26. See Schindler, supra note 25, at 1937 (describing one of Moses’ discriminatory projects).
27. Id. at 1953.
28. Id.
29. Id. at 1953–54.
30. Id. at 1960.
31. See id. at 1965–66 (discussing Mr. Moses’ influence on the discriminatory design of highways and bridges in the U.S.); see also Sarachan, supra note 25.
33. Id. It can be inferred that most traffic would originate from the Upper East Side considering its residents could afford private vehicles while Harlem, a poor African American neighborhood, would not originate as much traffic because its residents relied on public transportation. It would have been most logical to place the exit ramp within an Upper East Side neighborhood considering that was where most incoming and outgoing traffic originated. See id.
34. See id. at 2003 (discussing the arguments for closing a street to Hein Park, a black neighborhood, in Memphis, Tennessee).
35. See Halsey, supra note 21.
which was evidence of the Urban-Redevelopment Era that resulted in African American communities being decimated to accommodate the routing and construction of various highway projects.\textsuperscript{36} He also stated that "[t]he more of them [slums] that are wiped out the healthier Baltimore will be in the long run."\textsuperscript{37} This concept of slum clearance and urban development permeated the U.S. as well as empowered and justified planning decisions to route these highways through poor African American communities and the decimation of these communities was touted as an “all-purpose solution” that would renew these “blighted” neighborhoods while simultaneously improving traffic conditions for all.\textsuperscript{38}

These highways, however, did not renew these neighborhoods, but rather caused resources to flee, which resulted in greater instances of sustained poverty.\textsuperscript{39} Construction of these highways destroyed vast amounts of low-income housing that displaced large numbers of African American residents.\textsuperscript{40} These highways isolated residents of these neighborhoods by creating physical barriers that separated them from thriving communities on the opposite side of the highway.\textsuperscript{41}

\textbf{B. Chicago’s Environmental Discrimination and Injustice Problem}

From the late nineteenth century to 1954, African Americans in Chicago were relegated to horrendous living conditions that consisted of one-room residences within larger dwellings.\textsuperscript{42} For instance, Ida B. Wells, a public housing project, consisted of very small one-room units that housed multi-person families.\textsuperscript{43} Residents within each unit shared one common bathroom for the entire

\begin{itemize}
\item[36.] \textit{Id.}
\item[37.] \textit{Id.}
\item[38.] See \textit{id.}
\item[39.] See \textit{id.}
\item[40.] \textit{Id.}
\item[41.] See Halsey, supra note 21.
\item[42.] See \textit{WASHINGTON, supra note 13, at 173} (describing the abhorrent housing conditions low-income African American were forced to reside in while living in Chicago’s ghettos spanning from the great migration period until 1954).
\item[43.] \textit{Id.} at 173–74 (“[T]he stereotypical housing for African Americans living on Chicago’s South Side was the kitchenette apartment. These apartments were created from larger homes and apartments . . . .”).
\end{itemize}
complex. 44 African Americans were segregated and indisputably packed like sardines into congested and environmentally unsafe conditions that extended upward because (1) they were feared by the majority; (2) they were not valued members of society due to racism and prejudice; and (3) it was economically and socially efficient to cram this unwanted population into predetermined geographic locals that were severely lacking in square-footage so the majority could remain isolated from them and their problems.45

Chicago viewed the millions of African Americans relocating to its city in droves during the Great Migration Periods as a serious domestic and health problem.46 These migrations created what was known as the “Negro Problem” because African Americans were viewed by the scientific and medical communities as “health and moral hazards unfit to occupy the same geographical space as the white social body and body politic unless they were restricted, disciplined, and confined.”47 This naturally led to white Chicagoans

44.  Id.

45.  See id. at 135, 182.

46.  WASHINGTON, supra note 13, at 130, 134–35, 141 (describing the African American Great Migration experiences from Southern states to Northern states as well as the Northern states response to the influx of this unwanted population). Most African Americans in Chicago, Cleveland, Detroit, and Pittsburgh are descendants of Southern migrants who migrated to Chicago during the Great Migration periods. Id. at 134. African Americans, at that time, thought migrating to Northern states would open doors of opportunity that were non-existent in Southern states. Id. at 141. However, African Americans soon realized that Northern states substituted Southern Jim Crow laws with regulatory zoning, restrictive covenants, and even bombings to maintain the separation of the races. Id. at 131. Between 1917 and 1921, African Americans were terrorized with fifty-eight bombs used to dissuade them from attempts to reside in all-white neighborhoods. Id. at 141. Thus, African Americans soon recognized that their status and existence in Chicago was disturbingly similar to that of their Southern experience. Id.

47.  WASHINGTON, supra note 13, at 130 (introducing the concept of the “Negro Problem,” which explains how Chicago and other Northern states viewed African Americans who migrated from Southern states). One doctor stated at the 1913 Southern Medical Association:

[In so far as the negro is concerned in his relation to public health, it is but one phase of that sinister problem that looms large and low on the horizon . . . as a carrier and transmitter of disease he is a standing menace to the white race.” Id. Such comments from respected members of the larger society contributed to the myth that African Americans were “diseased bodies. . . . This high rate of contagious disease among African Americans then furred fear and prejudice among whites, who redoubled their efforts to keep them contained in the same degraded environments that had contributed to their health problems in the first place. Nowhere were the mechanics of this vicious cycle more clearly evident or the implications more bluntly expressed than in Chicago.]

Id. at 129–30.
being fearful of African Americans and regarding them as “undesired and unwanted environmental and public health nuisances.” This narrative also fueled efforts to create regulations aimed at isolating and confining this population to overcrowded ghettos. Chicago was not driven by a desire to solve its discriminatory and segregationist housing patterns, but rather its intent on maintaining and strengthening its legal and not-so-legal efforts to insulate its white residents from African Americans and their problems by isolating and confining them to predetermined geographic ghettos. This systemic containment and social control is what caused Chicago to become one of America’s most segregated cities—then and now.

The desire to protect white Chicagoans from African Americans and their problems birthed a new profession known as Urban Planning, which at the time was a form of race-based land-use planning. The profession’s mission was to improve physical living and working environments by using tactics that prevented a decrease in

48. *Id.* at 129. European Americans’ fear of African Americans was also misguided in the past; for example, susceptibility to tuberculosis was due to the environmentally hazardous conditions European American regulations created as opposed to an inherent criminal pathology or susceptibility to disease. *Id.* at 130, 132. These misguided fears contributed to toxic living conditions. *Id.* at 130.

49. *Id.* at 130. Moreover:

Nowhere was the policy of racial restriction more harshly developed and enforced in northern cities than in Chicago, Illinois, which had become a leader in racial planning policies in the first decades of the twentieth century. Chicago’s history is an exemplary history of how planning and planners created and formed separate geographical spaces for African American communities that would for generations be subjected to environmental disenfranchisement. *Id.* at 130–31. This environmental disenfranchisement exists today where African Americans have endured generational cycles of poverty that will likely continue until Chicago and the federal government addresses Chicago’s environmental justice problem. *Id.* at 196.

50. WASHINGTON, supra note 13, at 129–130. White institutions and persons used restrictive covenants and even violence to keep African Americans out of Chicago’s living spaces they felt were specifically reserved for their exclusive use. *Id.* at 131. Thus, redlining and other regulatory policies were highly effective at excluding African Americans from Chicago neighborhoods reserved for whites. *Id.* These exclusionary tactics also extended to places outside of Chicago. *Id.* at 194.

51. *Id.* at 130. Chicago was able to successfully control the movement and housing patterns of African Americans because its Caucasian residents approved of and desired such order. See generally Patrick Bergemann, *Denunciation and Social Control*, 82 AM. SOC. REV. 384 (2017) (discussing the need for the populace’s approval and cooperation in order for governments to achieve social control).

52. See WASHINGTON, supra note 13, at 130–31 (defining tactics specific to race-based planning).
property values and excluded certain groups. These groups included “undesirables” such as African Americans and immigrants. Race-based planning eventually created what is known as Chicago’s “Black Belt,” which at that time was an area that spanned from 22nd to 63rd streets. The Black Belt was bordered in by the Chicago River (northern border), 16th Street (southern border), the southern part of the Chicago River (western border), and Lake Michigan (eastern border). White people avoided these areas, which guaranteed that African Americans would remain poor and marginalized because people of European descent historically have enjoyed generations of wealth and resources, whereas people of African descent in the United States have suffered a different fate due to historical events that are beyond the scope of this Note. Unfortunately, African Americans were defenseless to these race-based planning tactics that spanned the early nineteenth century to 1954 due to lack of social relevance and political clout.

Chicago’s Urban Community Conservation Movement occurred from 1954 to 1967, where urban ghettos that African Americans called home were bulldozed in order to “Fight Blight”; but actually, African Americans were being displaced to make room for white America. African Americans were systematically moved from

53. Id. at 131.
54. Id.
55. Id. at 131–32. Historian Thomas Lee Philpott once said that “the Black Belt and its satellites . . . were great physical entities, sharply outlined, and the border all around them was the color line.” Id. at 140. Between 1871 and 1893, the African American population continued to increase and expand the Black Belt as white Americans moved to “more environmentally ‘desirable lake-front or . . . suburbs.’” Id.
56. Id. at 132.
58. WASHINGTON, supra note 13, at 139, 158 (“[T]he policy of locating vice in African American communities would continue for generations in Chicago because ‘Black people were helpless to prevent the authorities from locating the red-light district where they lived, just as they were unable to stop whites from segregating them.’”).
59. See id. at 194 (“[U]rban scholars . . . concluded that ‘the razing of neighborhoods near [racially] threatened areas did check the spread of “urban blight” and “saved” many areas, but black critics complained that “urban renewal” simply meant “Negro removal” and the evidence largely bears them out.””). Furthermore:

The slum clearance and urban redevelopment activities in Chicago were typical of many similar efforts across the country and caused thousands of African American communities to be bulldozed and their
their previous one-room unit homes to housing projects that vertically piled them on top of each other. Chicago’s Housing Authority (“CHA”) coordinated this massive effort that essentially shuffled poor African Americans from one bad situation to another. CHA built 10,300 public housing units, and only sixty-three of the units were built outside of racially segregated and economically devastated communities. African Americans and their leaders viewed these housing projects that extended up toward the sky as “almost utopian environments” they could use to escape Chicago’s ghettos and one-room unit apartments. One unseen problem was that the communities these housing projects were located in lacked resources in the form of employment, grocery stores, transportation, and other conveniences. These sites also became infamous for high-risk lifestyles such as gang violence, illegal drugs, and prostitution. Residents’ children suffered from high rates of asthma and life-threatening levels of lead poisoning due to congestion and other environmental hazards. One prominent example is Chicago’s Altgeld Gardens, a Chicago Housing Project that was built in the center of industry and toxic waste dumps. It was built on a former sewage farm, a site where municipal and industrial sewage sludge was formerly disposed. The landlord later began illegally disposing of polychlorinated biphenyls (“PCBs”) on the site. Residents suffered from rashes, cancers, chronic bronchitis, and other unexplained illnesses, which were later linked to environmental

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Id. at 194–95.
60. Id.
61. Id. at 194 (“Chicago’s slum clearance and its urban renewal programs were typical of those across the country that re-concentrated African Americans into even more racially concentrated geographical spaces.”).
62. Id.
63. WASHINGTON, supra note 13, at 196.
64. Id.
65. Id.
66. Id.
67. Id. at 197.
68. Id. at 199.
69. WASHINGTON, supra note 13, at 199
contamination. Altgeld Gardens was a direct result of Chicago’s race-based planning regulations that still haunts the city’s poor African American communities today.

Chicago remains segregated, and poor African Americans remain isolated and contained within poverty riddled communities. The containment today is based on residents’ socioeconomic status as opposed to race. Due to the advancement of federal actions such as the Fair Housing Act, middle-class African Americans often flee these urban ghettos in search of the tranquility and abundant resources located in areas predominately occupied by European Americans. This is problematic because resources flee when financially able African Americans relocate from these urban areas to more suburban and affluent areas. Chicago’s majority supports present day restrictions that separate them from the people and problems that are contained within its urban neighborhoods. One study showed that white people prefer to limit the number of African Americans in their neighborhood to twenty-percent or fewer. African Americans also have a preference, as they prefer no more than fifty-percent of their neighbors to be white.

Dr. Martin Luther King Jr. stated that “[f]or as long as there is residential segregation, there will be de facto segregation in every area of life.” People of European descent fear black Chicago neighborhoods—and black people—because of unconscious biases that fueled past racist policies, terms such as Chiraq that equate black Chicago neighborhoods with war zones, when it is the policies created by European Americans that fuel and maintain fear.

70. Id.
71. Id. at 200.
72. See Moore, supra note 9, at 1 (“Chicago is comprised by the sector of segregation, which is often swept under the rug. We can’t honestly talk about problems such as violence and unemployment without addressing segregation.”).
73. Id. Most African Americans are poor and live in poverty, which supports the argument that de facto segregation is occurring within Chicago. Id.
74. Id. at 5.
75. Id. at 4 (“The problem is that no other group wants to move into poor black neighborhoods. Well, except other blacks.”).
76. Id. at 3.
77. See Moore, supra note 9, at 3.
78. Id.
79. Id. at 159.
80. Id. at 160.
Solutions then focus on punishing these bad and dangerous black people, which is severely misguided.91 A Chicago activist stated:

When we adopt war metaphors to characterize how we live in our communities, we put a ceiling on our imaginations for how we might address violence and harm. After all, you can only respond to tanks with more artillery and not with a peace circle. Restorative or transformative justice requires us to build trust and to establish relationships. This is difficult to do in “war zones” where suspicion and lack of trust are the order of the day.92

Chicago’s gun violence stems from past instances of environmental discrimination and is directly correlated to its historically racially segregated housing patterns that lump poor African Americans (and other minorities) into tight quarters within predetermined geographic locales that suffer from extreme poverty and lack of resources.93 These neighborhoods are defined by visible borders that pinpoint where these residents are assigned.94 Lakes and rivers were past boundaries; but today, highways are a new kind of border that defines and contains Chicago’s Black Belt that has expanded since the early twentieth century.95

One reason Chicago remains segregated is because of white Chicagoans’ unconscious bias that African Americans are dangerous and fear that these dangerous people will bring violence to their neighborhoods if wide-scale integration occurred.96 The fact is that African Americans are not inherently dangerous humans; but rather, poor African Americans that are systemically contained within predetermined locales that are lacking in essential resources are driven to high-risk lifestyles that result in increased crime and other violence.97 Neighborhoods classified as Chicago’s most dangerous

91. Id.
92. Id.
93. See Washington, supra note 13, at viii; see also Moore, supra note 9, at 160–61 (“Violence in Chicago has long been misinterpreted, celebrated, and racialized when in fact it’s actually a symptom of inequity.”).
94. See Badger & Cameron, supra note 17.
95. See Halsey, supra note 21 (discussing highways as borders and the expansion of Chicago’s Black Belt).
96. See Moore, supra note 9, at 160.
97. See id. at 161 (describing how racial and economic segregation perpetuates violence in low-income African American communities).
share common characteristics: (1) high unemployment; (2) blighted conditions that include vacant homes and lack of greenery; (3) limited access to affordable and quality food; (4) underfunded, understaffed, and poor performing public schools; (5) high rates of disease; and (6) limited or non-existent economic development. Real change will not occur until these uncomfortable topics are openly discussed. Failure to engage in these hard discussions will result in continued efforts that do nothing but address symptoms in lieu of tackling the actual disease, because the root of the problem is continually being ignored. One author stated “[d]iversions sidetrack us from productive solutions or from focusing on the systemic problems of poverty and unemployment.” Although Chicago has more gun-related murders than both New York and Los Angeles, it is smaller and more racially segregated. Thus, Chicago’s gun violence is not due to the dangerous pathology of African Americans, but rather due to ingrained discriminatory housing and land use regulations as well as inequitable opportunities. African Americans are doing great things in these communities to try and stem the problem, but it is not enough; bigger guns are needed to create lasting systemic change.

C. Two Racially Segregated Chicago Neighborhoods Most Impacted by Gun Violence

A majority of the shootings that occur in Chicago are concentrated within poor and minority neighborhoods on the city’s West and South sides. For instance, Chicago’s Chatham and Fuller Park neighborhoods are both South Side communities that are

88. Id.
89. See id. (discussing how the term “black-on-black crime” is a red herring).
90. See id.
91. Id.
92. See MOORE, supra note 9, at 160.
93. See id. at 163 (arguing that black pathology is not the cause of Chicago’s gun violence).
94. See id. at 163–64 (demonstrating efforts everyday residents of Chicago’s most notorious neighborhoods are taking to end gun violence and build healthy communities through founding community centers in private homes, organizing block clubs and neighborhood improvement associations, and implementing community policing).
divided or walled off by Interstate 90.96 Similarly, Chicago’s West Englewood neighborhood is located on the city’s West Side and is divided by a railroad track.97

Chicago’s Chatham neighborhood is located between 79th Street and 91st Street, which parallels Interstate 90.98 Chatham is one of Chicago’s most dangerous neighborhoods, ranking 10th on Chicago’s crime index.99 Chatham is not a diverse neighborhood as 96.9% of its residents are African American.100 Chatham has high unemployment rates, low household incomes, and 53.8% of its residents with incomes below the poverty line receive food stamps.101 A majority of Chatham residents rent (sixty-two percent), as opposed to thirty-eight percent who own their homes.102 A number of public schools are low performing.103 For instance, Chatham’s Simeon Career Academy High School is ranked 3/10 and Oglesby

98. Chatham, supra note 96.
Elementary School ranks 1/10. Many Chatham youth are members of the Gangster Disciples, Black Disciples, Black P Stones, and Mickey Cobras, which are gangs that operate within the neighborhood. The criminal activity of these street gangs is why Chatham is considered one of the most violent neighborhoods in Chicago.

Fuller Park is a Chicago neighborhood located between East Pershing Street and West Garfield and runs parallel to and is divided by Interstate 90. Interestingly, there is one way to get into this neighborhood and one way to get out of it. Fuller Park is one of Chicago’s most dangerous neighborhoods and is ranked 5th on Chicago’s crime index. Fuller Park is comprised mostly of poor and minority persons, where 90.2% of its residents are African American, 7.4% are of Hispanic descent, and 2.1% are Caucasian. Most of Fuller Park’s residents are impacted by high unemployment and low household incomes. A high number of Fuller Park residents participate in the food stamp program which is evident by the fact that 60.1% Fuller Park residents with incomes below the poverty line receive food stamps. A majority of Fuller Park residents rent (fifty-six percent), as opposed to forty-four percent who own their homes. Public schools within Fuller Park boundaries are low-performing. For instance, the areas only remaining elementary school, Hendricks Elementary Community Academy, is

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105. Chatham, supra note 96.

106. Id.


108. Id.

109. Id.


114. See id.
ranked 4/10.115 The Cook County Sheriff’s office released nearly 2,000 inmates to the Fuller Park neighborhood in 2014.116 Gang activity and drug use became rampant in Fuller Park during the 1970s after the stock yards closed.117 The Black P Stones, Gangster Disciplines, Mickey Cobras, and Vice Lords are all active gangs that operate within Fuller Park.118 As a result of these factors, Fuller Park gained a reputation as one of Chicago’s most violent neighborhoods.119

Structures such as highways, railroad tracks, viaducts, and bridges have historically been routed to exclude African Americans from accessing Caucasian neighborhoods.120 Interstate 90 (the Dan Ryan Expressway) divided Bridgeport, a predominately Caucasian neighborhood, from various predominately African American neighborhoods to the east of the highway.121 The expressway reinforced boundaries that separated Caucasian and African American persons and communities.122 Construction of I-90 resulted in a “major relocation” of people of color to accommodate its route.123 This highway divides the Chatham neighborhood and literally walls off the Fuller Park neighborhood.124

Chicago has an environmental discrimination problem.125 Chicago is also a hotbed for gun violence, considering 4,331 people were shot in 2016.126 Chicago’s practice of using infrastructure to segregate and contain poor African Americans within predetermined geographic locales is allowing its soaring gun violence that is...
contained within its urban areas. Thus, Chicago’s gun violence crisis is correlated to its environmental discrimination problem.

D. Environmental Justice

The Environmental Justice Movement began in the 1980s. The movement originated from a recognition that environmental impacts are disproportionately imposed on poor and minority communities. Prior to the movement, in the 1970s, Congress implemented NEPA that “requires federal agencies assess the environmental impacts of their proposed actions prior to making decision.” NEPA, however, did not consider environmental impacts exclusive to poor and minority communities, which is a problem considering that these populations bear the majority of environmental impacts. Executive Order 12898 is the only federal action that has specifically addressed environmental injustice (also known as environmental discrimination) within poor and minority communities. President Clinton implemented the Order in response to the movement. Executive Order 12898 mandates all federal agencies “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . . .” Unfortunately, more than twenty years after its implementation, poor and minority communities still bear a majority of environmental impacts.

127. See Fuller Park, supra note 96.
130. Id.; see also Jacqueline Patterson & Jackie Smith, Environmental Justice Initiatives for Community Resilience, in Resilience, Environmental Justice and the City 217 (Beth Schaefer Caniglia et al. eds. 2016).
132. See id. (explaining NEPA’s broad applicability).
133. See Washington, supra note 13, at 65.
134. Id.
E. Testing for Environmental Discrimination

Although no official test exists for environmental discrimination, the consideration of certain factors can help to determine if a community is impacted by environmental discrimination.\(^{137}\) Factors that indicate environmental discrimination include, but are not limited to: (1) disparate impacts; (2) discriminatory intent; (3) enforcement disparities; and (4) decision making.\(^{138}\) If minorities have greater risk and exposure to environmentally-hazardous housing, then environmental discrimination has likely occurred.\(^{139}\) If housing or other policies and regulations possess a discriminatory intent, then environmental discrimination is likely.\(^{140}\) If environmental laws or regulations are laxly enforced in African American neighborhoods but highly enforced in white neighborhoods, then environmental discrimination likely exists.\(^{141}\) Lastly, environmental discrimination is more likely to occur when minorities are not represented amongst decision-making institutions such as the EPA and other environmental groups.\(^{142}\)

F. Solutions to Chicago’s Environmental Injustice

Changes at the federal level can be instrumental in changing the trajectory of environmental discrimination in Chicago because federal agencies have considerable influence over the approval of proposed highway and other projects that impact the environment.\(^{143}\) Also, NEPA is an important statute for environmental protections because it mandates federal agencies follow specific guidelines in evaluating potential environmental impacts associated with proposed projects.\(^{144}\) NEPA, the United States’ most


\(^{138}\) Id.

\(^{139}\) Id.

\(^{140}\) Id. at 109–10.

\(^{141}\) Id. at 108.

\(^{142}\) Id. at 127.

\(^{143}\) WASHINGTON, supra note 13, at 65.

\(^{144}\) See Robertson v. Methow Valley Citizens Council, 490 U.S. 1835, 1846 (1989) (explaining NEPA’s policy goals). Although NEPA’s procedural requirements impact the substantive decision-making of federal agencies, the statute is limited to dictating the guidelines federal agencies are mandated to follow for proposed projects. Id. NEPA does not
comprehensive environmental law, mandates federal agencies to prevent or eliminate damage to the environment and “encourage productive and enjoyable harmony between man and his environment.”145 Finally, Executive Order 12898 has been successfully incorporated into the mission of all federal agencies, including Federal Highway Administration (“FHWA”), which is the federal agency that oversees the nation’s interstate highway system.146 Each of these solutions alone are insufficient to solve Chicago’s environmental discrimination or gun violence problems.147 However, incorporating Executive Order 12898 into the NEPA statute will likely best prevent future instances of environmental injustice within poor and minority communities.148 These efforts combined with policy initiatives aimed at infusing these communities with resources will likely remedy past instances of environmental injustices.149

III. ANALYSIS

A. National – Future

Like President Clinton sought to ensure environmental justice for minority and poor persons through the implementation of Executive Order 12898, it is time for Congress to take the further step of incorporating the language of Executive Order 12898 into

145. See National Environmental Policy Act of 1969, 42 U.S.C. § 4321 (2018) (explaining the scope and purpose of the NEPA statute). The United States Environmental Protection Agency (EPA) drafted NEPA regulations that explain the “technical, operation, and legal details” necessary for federal agencies to implement NEPA guidelines. See Regulations, EPA, https://www.epa.gov/laws-regulations/regulations (last visited Mar. 31, 2020) (detailing the EPA’s role in drafting regulations that are necessary to the implementation of the NEPA statute); see also Madeline Gwyn, Monsanto Co. v. Geertson Seed Farms: Irreparable Injury to the National Environmental Policy Act?, 61 EMORY L.J. 349, 387 (2012) (“NEPA’s procedures are the only way to effectuate the Act’s purpose—informed and impartial agency decision making.”).

146. See Washington, supra note 13, at 65 (“It directed all federal agencies with an environmental and public health mission to make environmental justice an integral part of their mission.”); see also About, Fed. Highway Admin., https://www.fhwa.dot.gov/about (last modified Sept. 17, 2012).


148. See Gwyn, supra note 145, at 359 (discussing NEPA’s shortcomings).

149. See id. at 360 (noting that “[m]onetary damages [under NEPA] cannot undo an uninformed and biased agency decision-making process.”).
the NEPA statute, which will best protect minority and poor persons from future instances of environmental injustice. 150 Section III.A discusses and analyzes a national solution that will prevent future instances of environmental injustice in minority and poor neighborhoods. 151 First, Section III.A.i discusses strengths and weaknesses of the NEPA statute. 152 Next, Section III.A.ii discusses strengths and weaknesses of Executive Order 12898. 153 This section also discusses how NEPA and Executive Order 12898 work better together to prevent future instances of environmental injustice. 154 The following section discusses how previous legal remedies are inadequate to prevent environmental injustice and how such reforms will offset cost. 155 Finally, Section III.B considers policy initiatives that will remedy past instances of environmental injustice, however, this topic goes beyond the scope of this paper. 156

i. NEPA

NEPA is the nation’s leading environmental law. 157 All federal agencies are bound by the NEPA regulations. 158 Thus, federal agencies must abide by NEPA guidelines and regulations for the approval and implementation of proposed projects. 159 NEPA is therefore a powerful federal action because of its capacity to hold federal, state, and local governments environmentally accountable. 160 NEPA, however, has inherent limitations. 161 NEPA and the Council
of Environmental Quality ("CEQ") regulations do not include sanctions for non-compliance. However, federal courts are authorized to enforce NEPA guidelines, which creates a legal remedy when federal agencies are non-compliant with the statute. The most notable NEPA limitation is its incapacity to remedy past instances of environmental injustice.

**ii. Executive Order 12898**

Although President Bill Clinton’s motives for enacting Executive Order 12898 are admirable, this Executive Order is limited to improving the internal management of federal agencies under the “auspice” of the Executive Branch of government. Executive Order 12898 is largely symbolic, lacking any real legal or political authority, and is technically unenforceable because (1) federal courts are not obligated to review violations of the order and claimants are limited to administrative remedies; (2) there are no consequences for non-compliance; and (3) any presidential administration can easily repeal the order. Therefore, Congress should amend the NEPA statute to adopt the language of Executive Order 12898, which will oblige federal courts to review violations, sanction non-compliance, and dispense justice for environmental injustice ("EJ") complainants. Such an amendment will also guard against repeal.

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162. See Calvert Cliffs’ Coordinating Comm. v. U.S. Atomic Energy Comm’n, 449 F.2d 1109, 1115 (D.C. Cir. 1971) (“We conclude, then, that Section 102 of NEPA mandates a particular sort of careful and informed decision making process and creates judicially enforceable duties”); see also Gwyn, supra note 145, at 359, 387 (stating that NEPA and CEQ regulations fail to list “consequences” for an agency’s failure to comply with NEPA guidelines, so federal courts become the default NEPA enforcer).

163. See Gwyn, supra note 145, at 360 (inferring that NEPA is currently incapable of sufficiently redressing past instances of environmental harm, so courts are best positioned to avoid future instances).

164. See Exec. Order No. 12,898, supra note 135.

165. See Doyle, supra note 153; see also KENNETH R. MAYER, WITH THE STROKE OF A PEN: EXECUTIVE ORDERS AND PRESIDENTIAL POWER 59 (2001) (stating how claimants’ only relief is often within the administrative context of agency operations).

166. See MAYER, supra note 165, at 59–60 (illustrating courts’ refusal to weigh in on matters relating to internal management procedures).

167. Id. at 27, 58.

168. See Steven Ostrow, Enforcing Executive Orders: Judicial Review of Agency Action Under the Administrative Procedure Act, 55 GEO. WASH. L. REV. 659, 659, 662 (1987) (explaining that presidents can easily repeal executive orders, so courts “should enforce executive orders”); see also Calvert Cliffs’ Coordinating Comm., 449 F.2d at 1115 (implying that courts have a very limited ability to enforce any NEPA-related actions).
Executive Order 12898 is immune from judicial review.¹⁶⁹ This cohort is narrowly limited to administrative remedies that do not have the same deterrent effect as legal remedies.¹⁷⁰ Although executive orders directly impact the freedoms and obligations of citizens, federal courts have consistently held that private citizens cannot petition federal courts to compel the President or federal agencies to enforce executive orders.¹⁷¹ This is because executive orders only bind federal agencies, which are generally governed by administrative law.¹⁷² Thus, executive orders are not enforced in federal district courts but rather through the Administrative Procedures Act (“APA”), which would allow EJ advocates to pursue a legal remedy after the agency has rendered its final “adverse” decision and the claimant has successfully exhausted all administrative remedies.¹⁷³

Likewise, presidents often include disclaimers within executive orders that assert that the order does not create or alter the private rights of citizens, which exempts any presidential actions from judicial review.¹⁷⁴ Executive Order 12898 includes this language and is therefore immune from judicial enforcement. Thus, justice for EJ communities depends on each president’s motivation to enforce the order’s mandates.¹⁷⁵ Unfortunately, a president that is not interested in ensuring environmental justice is free to “revoke, modify, or supersede it.”¹⁷⁶ Finally, a president that is dismissive of the order can use his removal power to fire agency

¹⁶⁹. See Exec. Order No. 12,898, supra note 135, at 7632 (“This order shall not be construed to create any right to judicial review . . . .”).
¹⁷⁰. See Peter S. Menell, The Limitations of Legal Institutions for Addressing Environmental Risks, 5 J. ECON. PERSP. 93, 94, 102 (1991) (arguing that both administrative remedies and tort common law lack impactful deterrent effects).
¹⁷¹. See Ostrow, supra note 168, at 661 (discussing courts’ hesitancy to enforce executive orders); see also Mayer, supra note 165, at 34, 39 (stating that executive orders bind federal agencies, which are governed by administrative law).
¹⁷². See Ostrow at 659, 663, 687 (reinforcing the idea that federal agencies are administratively bound to follow the president’s executive order mandates).
¹⁷³. Id. at 661-63 (distinguishing how executive orders are enforced administratively as opposed to judicially).
¹⁷⁴. See Mayer, supra note 165, at 59–60 (explaining that presidents claim executive orders do not create or alter the rights of private citizens).
¹⁷⁵. See Exec. Order No. 12,898, supra note 135, at 7632 (discussing how Executive Order 12,898 is not subject to judicial review because its only purpose is to “improve the internal management of the executive branch” of government).
¹⁷⁶. See Vivian S. Chu & Todd Garvey, Executive Orders: Issuance, Modification, and Revocation 7 (2014) (listing the president’s authority to regard or disregard any executive order).
officials whose efforts result in agency compliance with the order. Executive Order 12898 should be afforded greater protections because of its capacity to protect the environmental interests of the nation’s most vulnerable and disadvantaged groups.178

Federal agencies are generally free to ignore the mandates of Executive Order 12898 without fear of sanctions or legal consequences.179 However, loopholes do exist that enable EJ communities to access the federal court system for judicial relief.180 EJ claimants should be able to access federal courts if (1) they prove that the agency rendered a final decision, (2) no other statute provides a judicial remedy, and (3) the claimant exhausted all administrative remedies.181 In such a case, judicial review would result in the court either issuing a legal consequence, levying a sanction, or requiring prompt compliance with the order.182 However, federal circuit courts are split on the issue of granting reviewability of EJ claims.183 Some Circuits allow judicial review under the APA’s arbitrary and capricious standard if the agency incorporated EJ guidelines into its EJ analysis.184 Other Circuits decline to review EJ claims because

177. See MAYER, supra note 165, at 38 (referring to the President’s removal power, which enables him to fire any agency official he believes does not coincide with the goals of his administration).

178. See Amanda Franzen, The Time is Now for Environmental Justice: Congress Must Take Action by Codifying Executive Order 12898, 17 PENN ST. ENVTL. L. REV. 379, 391–92, 406 (2009) (arguing that Executive Order 12898 must first be codified before it can achieve its intended result, which is to prevent environmental injustices that have historically and disproportionately impacted minority and poor groups). Codification of Executive Order 12898 will result in judicial remedies for private persons and groups negatively impacted by environmental risks and threats. Id. at 392. Codification of Executive Order 12898 would also empower Congress to allow Equal Protection mandates to the enforcement of the order, which will significantly equalize burdens associated with environmental risks and hazards. Id. at 406. Codification of Executive Order 12898 will result in judicial remedies for private persons and groups negatively impacted by environmental risks and threats. Id. at 392. Codification of Executive Order 12898 would also empower Congress to allow Equal Protection mandates to the enforcement of the order, which will significantly equalize burdens associated with environmental risks and hazards. Id. at 406.

179. See Ostrow, supra note 168, at 673 (describing how executive orders lack meaningful judicial review).

180. See id. at 673–74 (summarizing a judicial loophole that allows, albeit rarely, claimants to have their administrative claim heard in federal district court).

181. See id. at 673 (listing each element that must be satisfied before administrative claims can be heard in federal district court).

182. See id. at 674 (describing how such judicial review would enable the court to issue a legal consequence, levy a sanction, or mandate prompt compliance with the executive order).

183. Doyle, supra note 133, at 4.

184. Id.
Presidential disclaimers presumably destroy any right to judicial review. Still other Circuits decide reviewability on a case-by-case basis. The question of federal reviewability of EJ claims is still unsettled and may remain so considering that the Supreme Court denied certiorari to review a case that argued non-compliance with Executive Order 12898, NEPA, and APA guidelines adversely harmed an EJ community. The messages coming from government are conflicting, because on one hand, the executive branch enacts Executive Order 12898 to address environmental injustice, and on the other hand, the government has made the process for EJ claimants to obtain administrative or legal relief incredibly difficult, if not impossible. The current legal atmosphere feels hostile to these issues and set up to make achieving justice difficult or impossible, which is counter to the objective of Executive Order 12898. The federal government, which is tasked with protecting and enforcing the civil rights of all citizens, should be creating ways to simplify the road to justice as opposed to hindering it. Amending NEPA to incorporate the language of Executive Order 12898 will likely diminish this perceived government imbalance pertaining to environmental justice and EJ populations.

Executive Order 12898 is vulnerable to repeal. Some argue that environmental justice principles are ingrained within the culture of the federal government and are thus unlikely to be ignored or repealed. However, the fact remains that presidents
have unlimited autonomy to repeal, change, or replace their own executive orders or those of previous administrations.194 This power is exclusive to the president and cannot be appealed.195 Thus, any president that does not value diversity and is not moved by historic environmental injustices that have plagued poor and minority persons and communities can easily repeal the order.196 Repeal of Executive Order 12898 would be a devastating blow to poor and minority persons and the entire EJ movement.197

iii. Contribution

NEPA should be amended to incorporate the language of Executive Order 12898 because doing so is likely the best way to codify Executive Order 12898.198 This is because NEPA alone is incapable of mitigating past harms associated with environmental injustice and the Executive Order lacks any capacity to hold federal agencies liable for non-compliance with the order.199 Thus, NEPA and Executive Order 12898 work better together considering NEPA will extend judicial and other remedies to EJ communities.200 Furthermore, amending NEPA to incorporate the language of Executive Order 12898 will also best ensure the objectives of the Environmental Justice Movement will endure.201 This is because NEPA statutorily obligates federal agencies to comply with its guidelines.202 Thus, such an amendment would require all federal agencies, independent of the whims of the executive, legislative, or judicial branches, to evaluate the environmental impacts of all proposed projects on poor and minority communities.203

194. See JOHN CONTRUBIS, EXECUTIVE ORDERS AND PROCLAMATIONS 19 (1999) (outlining how easy an executive order can be repealed by the president).
195. CHU & GARVEY, supra note 176, at 1, 7–9.
196. See id.
198. See Gwyn, supra note 145, at 359 (illustrating that NEPA lacks the executive administrative agency branch enforcement necessary for a proper enforcement mechanism of its provisions).
199. Id.
201. Id.
203. Hernandez, supra note 147, at 207.
powerful because federal agencies could not skirt or hinder compliance or easily repeal or modify the statute without going through the proper checks and balances. Compliance would not be optional or discretionary and most importantly EJ populations adversely impacted by environmental injustices would be able to seek judicial relief without the burden of exhausting administrative remedies or proving insurmountable elements before accessing the courts.

The amended NEPA statute would read as:

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; [to achieve environmental justice by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States] and to establish a Council on Environmental Quality.

The NEPA statute should also be amended to better gather and incorporate public input from residents that reside within the communities where proposed infrastructure projects would be constructed. Federal agencies should balance such feedback against that of organizations that purport to represent the interests of these persons and communities.

204. See Checks and Balances, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining checks and balances as the three-branches of governments ability to check each other’s authority and decision-making in an effort to prevent one branch from acting as dictator of the government).


208. See id.
NEPA documents, such as Notices of Intent, Environmental Assessments, Environmental Impact Statements, and Records of Decision, invite the public to engage with federal agencies concerning proposed projects.209 NEPA should be amended to encourage federal agencies to better solicit and incorporate feedback from the people who are actual residents of the communities where proposed projects would occur.210 This is important because organizations and corporations have their own agendas that may not necessarily align with what is best for the community and its residents or with what the residents actually want or value.211 Organizations and corporations are guided by a need to raise capital in order to sustain operations and profit for owners and shareholders.212 People that live in the community are guided by different motives that center on improving the neighborhood they call home.213 Thus, federal agencies should aggressively solicit feedback and perspectives from the latter cohort and work to incorporate them into the proposed projects moving forward.214 One method agencies could try would include targeted commercial advertising that (1) informs the public of the proposed project, (2) educates the public on its right to engage and contribute to decision-making specific to the project, (3) briefly summarizes potential impacts, and (4) invites the public to participate either online or in person by providing relevant websites, times, and dates.215

These measures will also benefit poor and minority populations in Chicago by empowering these persons who otherwise are powerless to engage with the decision-making process of proposed projects that will impact their neighborhood.216 Such involvement may increase residents sense of ownership of their community, which can reap various positive benefits in the short and long

211 Id.
212 Id.
215 Id.
216 PETTIGREW, supra note 210, at 16–22.
term. For instance, participation may also build a sense of community within these areas, which is significant because community can be a safeguard against violence considering people who know each other are less likely to harm each other.

Incorporating the language of Executive Order 12898 into the NEPA statute will likely improve the long-term health and wellbeing of Chicago’s urban core by preventing future projects that disproportionately and adversely impact these areas. Chicago and the state of Illinois are free to choose the types of infrastructure project they believe will benefit the city and state, however, this amended NEPA statute would require Chicago and Illinois to evaluate, justify, and mitigate all proposed projects in order to receive federal funding for proposed projects. Discretion would not be an option, which is significant because federal agencies such as the Federal Highway Administration contribute funds for proposed projects. The possibility of losing such a significant funding source would likely be a major motivator to properly abide by all federal NEPA standards including the amended environmental justice mandate. This federal oversight will likely lead to fewer projects that result in poor and minority communities taking on unreasonable consequences associated with infrastructure projects. Thus, amending NEPA will likely protect Chicago and its surrounding areas from future instances of environmental injustice.

217. Id.
218. Id.
219. See Hernandez, supra note 147, at 207.
220. See 42 U.S.C. § 4321 (2018) (containing the original and current statutory language that does have these proposed requirements).
iv. Counterarguments

a. 14th Amendment & Due Process

Historically, the Civil Rights Act of 1964 and the 14th Amendment’s Equal Protection Clause have proven to be inadequate legal remedies at addressing and preventing environmental injustice. These legal remedies often fail to protect the interests of poor and minority persons in relation to environmental discrimination. The Court’s decision in *Memphis v. Greene* is a prime example of such inadequacies. The majority held that Memphis did not violate the Civil Rights Act of 1964 because the barrier erected by the city to deny poor African American residents of a neighboring community access to its neighborhood did not adversely affect African Americans ability to access resources within the majority Caucasian neighborhood. The Court reasoned that the barrier only slightly inconvenienced African Americans by requiring they drive “a little out of their way and thus will take a little longer to complete their trip.”

224. See Schindler, *supra* note 25, at 1941 (stating that the Civil Rights Act and Equal Protection Clause are inadequate protections against environmental injustice).

225. *Id.* at 2008.


227. See *id.* at 126–28 (holding that Memphis’ erection of the barrier wall did not violate the Civil Rights Act of 1964 or the Equal Protections Clause because discriminatory intent could not be shown and the wall only slightly inconvenienced African American motorists). According to *Greene*,

[T]he record demonstrates that the interests that did motivate the Council are legitimate... In this case, the city favored the interests of safety and tranquility... The interests motivating the city’s action are thus sufficient to justify an adverse impact on motorists who are somewhat inconvenienced by the street closing. That inconvenience cannot be equated to an actual restraint in the liberty of black citizens that is in any sense comparable to the odious practice the Thirteenth Amendment was designed to eradicate... The argument that the closing violates the Amendment must therefore rest, not on the actual consequences of the closing, but rather on the symbolic significance of the fact that most of the drivers who will be inconvenienced by the action are black... But the inconvenience of the drivers is a function of where they live and where they regularly drive – not a function of their race; the hazards and the inconvenience that the closing is intended to minimize are a function of the number of vehicles involved, not the race of their drivers or of the local residents.

*Id.* at 126, 128.

228. *Id.* at 137 (Marshall, J., dissenting).
The majority believed that the interests of the city outweighed any harm that may result from erection of the barrier wall.\textsuperscript{229} Justice White’s concurring opinion held that no violation of the Civil Rights Act occurred because African American citizens were unsuccessful in proving that Memphis possessed a discriminatory intent in its erection of the barrier wall.\textsuperscript{230} The concurrence failed, however, to consider that often people and systems that harbor racist and discriminatory intent disguise such beliefs with pretext, which in this case was preventing increased traffic as well as keeping the children within the predominantly Caucasian community safe from perceived outsiders.\textsuperscript{231}

The dissent, however, argued that the City of Memphis heeded to the racist request that a barrier be built to prevent people of color from accessing their neighborhood.\textsuperscript{232} Justice Marshall stated that the pretext used to justify the city’s discriminatory intent was familiar “protecting the safety and tranquility of a residential neighborhood by preventing undesirable traffic from entering it.”\textsuperscript{233} Justice Marshall went on to say that “too often in our nation’s history, statements such as these have been little more than code phrases for racial discrimination” and that the implications of this case reached beyond a city’s “race-neutral” decision to innocently erect a physical barrier across one of its streets.\textsuperscript{234} Rather:

the picture that emerges from a more careful view of the record is one of a white community, disgruntled over sharing its streets with Negros, taking legal measures to keep out the undesirable traffic, and of a city, heedless to the harm to its Negro citizens, acquiescing in the plan.\textsuperscript{235}

Finally, Justice Marshall stated “[n]ow the Negro drivers are being told in essence: You must take the long way around because you don’t live in this protected white neighborhood.”\textsuperscript{236} Residents of the Hein Park neighborhood felt like this was what the city was

\textsuperscript{229} Id. at 126–27.
\textsuperscript{230} Id. at 134–35.
\textsuperscript{231} Greene, 451 U.S. at 126–27, 134–35.
\textsuperscript{232} Id. at 135–36.
\textsuperscript{233} Id.
\textsuperscript{234} Id. at 136.
\textsuperscript{235} Id.
\textsuperscript{236} Greene, 451 U.S. at 138.
telling them. The Court upheld a city’s erection of a wall that pre-
vented African American pedestrians from entering the city and
made it especially inconvenient for African American drivers to ac-
cess its streets and abundant resources. Our nation’s Civil Rights
and Equal Protection laws were used to justify and protect the dis-
criminatory interests of the majority, which set a dangerous prece-
dent for environmental injustice that endures today.

b. Cost

Hillary Clinton said it best: “I don’t believe you change hearts.
I believe you change laws, you change allocation of resources, you
change the way systems operate.”

President Barack Obama’s administration was committed to
rectifying the effects of environmental discrimination on minority
and low-income communities. History shows that most poor and
even middle-class African American persons and communities
lacked the political and economic capital to prevent the govern-
ment from routing and building highways through their neighbor-
hoods. Former Secretary of Transportation Anthony Foxx envi-
nioned using transportation, including highways, to increase
opportunities within communities that have been disproportio-
nately harmed by government-sponsored and government-approved

237. Id.

238. Id. at 138–39.

239. See id. at 139 (“In my judgement, this message constitutes a far greater adverse
impact on respondents than the majority would prefer to believe.”).

240. See Russel Berman, Hillary Clinton’s Blunt View of Social Progress, THE ATLANTIC
blunt-view-of-social-progress/402020.


242. See id. at 1 (illustrating how most minority persons and communities lacked polit-
cical capital, which resulted in disproportionate environmental discrimination impacts).
Robert Moses proposed the construction of the Brooklyn Queens Expressway, but residents
resisted construction efforts and attempts to gerrymander the districts split by the Express-
way. See Brooklyn Heights Ass’n v. Macchiara, 584 N.Y.S.2d 393, 396–98 (N.Y. Gen Term
1992); see also Ginia Bellafante, Brooklyn Heights Is Fighting Robert Moses Again, NY.
TIMES (Oct. 5, 2018), https://www.nytimes.com/2018/10/05/nyregion/brooklyn-heights-is-
fighting-robert-moses-again.html (stating that “[d]ecades ago, residents of Brooklyn
Heights successfully fought Robert Moses’ plan to run the [Brooklyn Queens Expressway]
directly through the streets of the neighborhood”).
infrastructure. Thus, Chicago should focus on how its systems operate, which will financially benefit the city and its residents.

Chicago, Illinois, and the United States as a whole spend significant amounts of money to fund local jails and prisons. Chicago also spends significant resources on police and detective work due to increased participation in high-risk lifestyles in certain zip codes. Ending Chicago’s segregation problem will allow these governments to divert such punitive funding toward efforts to end segregation and cycles of poverty, which is more beneficial to society as a whole. Amending NEPA to incorporate the language of Executive Order 12898 and the creation of a Chicago based Community Reparations Program are key governmental efforts that will change how systems operate, which will inevitably end Chicago’s environmental discrimination problem and curb Chicago’s gun violence.

B. Local - Past

i. Policy

Chicago’s gun violence is analogous to a slow-growing cancer that over time has spread and become terminal due to years of justifying and ignoring the City’s pervasive environmental discrimination problem. Chicago’s poor African American population is being forced to reside within predetermined geographic boundaries that are severely lacking in resources. This population has inherited poverty and as such are doomed to exist in an environment where they are living not day-to-day, but rather second-to-

244. See Washington, supra note 13, at 129–30 (discussing the perceived needs for systemic control of a race of people).
246. See West Englewood, supra note 97; see also Chicago’s Most Dangerous Neighborhoods 2017, supra note 99 (discussing crime indexes of certain zip codes).
249. See Washington, supra note 13, at viii, 131; see also Moore, supra note 9, at 160–61.
250. See Washington, supra note 13, at viii; see also Moore supra note 9, at 4, 161.
second because of systemic segregation that can be traced back to the Great Migration Periods and an inability to access Chicago’s more desired zip codes due to generational poverty. Chicago refuses to address its environmental discrimination problem, but rather shuffles this population from one environmentally hazardous situation to another under the guise of fighting blight or gentrification.

Chicago has largely ignored its environmental discrimination problem by erroneously focusing on symptoms of environmental discrimination as opposed to the actual problem of environmental discrimination. The narrative has been hiring more police officers to combat the “thugs” and “criminals” who reside within these urban enclaves. Or, blaming the community for the violence due to a culture of silence concerning reporting crime. Society as a whole has silently accepted Chicago’s systemic segregation because it is convinced that the people in these neighborhoods are dangerous, and confining them to these economically unviable zip codes is what is necessary to protect them and their interests from the “thugs” and “criminals” and their problems, which today are gun violence, gangs, and illicit drug use. Furthermore, when the problems of these urban ghettos spill out into Chicago’s protected zip codes, resources spring into action ensuring that such ills remain contained within its ghettos, which ensures that middle-class and affluent Chicagoans never have to see or experience the harsh reality these poor minority citizens are subjected to each day. This apathy is what will ensure that Chicago’s status quo endures.

Thus, Chicago must admit that it has an environmental discrimination problem, and it must commit itself to addressing the root of the problem.

This Note has attempted to show that borders, regulations, and plain prejudice are why poor African Americans are contained

251. See Washington, supra note 13, at 130–31 (discussing the tragic realities of people directly impacted by Chicago’s environmental racism).
252. Id. at 195–96.
253. See Moore, supra note 9, at 160–61 (discussing harmful narratives and perceptions that maintain Chicago’s segregation and contained gun violence).
254. Id.
255. Id. at 3, 160–61.
256. Id. at 4; see also City of Memphis v. Greene, 451 U.S. 100 (1981).
257. See Moore, supra note 9, at 3–5.
in Chicago’s urban enclaves. As such, generations of poverty and violence ensue because of limited opportunities and lack of resources, which lead these persons to engage in high-risk lifestyles such as gangs, drugs, and prostitution. This is a systemic problem that was created and sustained by policies implemented and enforced by Chicago and the federal government. As such, Chicago and the federal government should fix the problem through a Chicago-Based Community Reparations program.

Interstate 90 divides Chicago’s Chatham neighborhood and walls off Chicago’s Fuller Park neighborhood. Railroad tracks are routed through Chicago’s West Englewood neighborhood. These are only three of numerous instances of physical structures that were intentionally built to serve as barriers to segregate Chicago’s poor and minority persons and communities from middle-class and affluent persons and communities. It is, however, impracticable to demolish or re-route these existing structures. Thus, Chicago and the federal government should consider various options to mitigate existing harm and ensure that poor and minority persons are not simply shuffled from one inequitable situation to another due to gentrification.

The federal government is tasked with creating and enforcing environmental and civil rights laws and regulations, however, these laws often permit the construction of projects that perpetuate environmental injustices within economically deprived and disadvantaged communities. Persons who reside in these Chicago

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258. See Washington, supra note 13, at 129–32.
259. See id. at 131–32, 139; see also Moore, supra note 9, at 160–61.
260. See Washington, supra note 13, at 130–32.
261. See Brophy, supra note 248, at 811, 816–17, 849 (“Reparations are programs designed to repair past injustice.”).
263. Id.
265. See Chatham, supra note 96; see also Fuller Park, supra note 96; West Englewood, supra note 97.
266. See Emily Chong, Examining the Negative Impacts of Gentrification, GEO. J. ON POVERTY L. & POL’Y (Sept. 17, 2017), https://www.law.georgetown.edu/poverty-journal/blog/examining-the-negative-impacts-of-gentrification (discussing the negative impacts of displacement due to gentrification).
neighborhoods are often incapable of recognizing that barriers to contain them exist and are even more powerless to achieve justice due to a lack of political and economic clout. Reparations are one way Chicago and the federal government can remedy adverse impacts associated with infrastructure. Reparation programs can include payments to communities. A Chicago-based reparations program would infuse these impacted poor and minority communities with needed resources, which likely could break perpetual cycles of poverty and violence that infrastructure have contributed to and even sustained.

First, a Model Community Based Reparations Program for Chicago would require the city to adequately address its history of approving construction of physical structures to divide via racial and socioeconomic classifications. Physical structures in this context refers to highways, railroad tracks, and other similar structures that segregate. Chicago must also take responsibility for how these predetermined physical boundaries isolate and contain poor and minority persons within economically devastated locales. Second, Chicago must acknowledge that its past projects have subjected poor and minority neighborhoods such as Chatham, Fuller Park, and West Englewood to environmental injustices that perpetuate current poverty and violence trends. Third, Chicago must garner perspectives and feedback from residents of these impacted communities and incorporate them into the creation and implementation of its Community Based Reparations Program.

Finally, Chicago, in collaboration with the federal government, must decide on an exact amount to be devoted to the

environmental laws fail to provide adequate protection against environmental injustice); see also Richard J. Lazarus, Pursuing Environmental Justice: The Distributional Effects of Environmental Protection, 87 NW. U. L. REV. 787, 792–806 (1992-1993).

268. See Lazarus, supra note 267, at 808.
270. Brophy, supra note 248, at 814.
274. Kaiman, supra note 270, at 1369-70; see also Brophy, supra note 248, at 836–39.
276. Id. at 1370.
program. Approved funds should be used to flood Chatham, Fuller Park, West Englewood, and similarly situated communities with resources and infrastructure aimed at meeting the needs of these communities and creating a culture of change. For instance, community centers that offer healthy alternatives for youth; drug rehabilitation programs to address rampant drug use; alternative school funding structures that guarantee public schools within these communities are adequately funded; improved public transportation alternatives; programs aimed at improving the relationship and interaction between law enforcement and members of the community; health and legal clinics; and programs that entice businesses to invest within these communities which will likely result in these once-disadvantaged persons and communities becoming healthily and productive citizens and communities.

The government’s financial investment into these communities through a Chicago Community-Based Reparations Program would likely result in financial gains not only for these communities but also the nation because such efforts will revitalize areas that were once economically depressed and ravaged by gun violence. These efforts would also break cycles of poverty, thereby, empowering once powerless populations to better access the American Dream. Such efforts would make Chicago safer for all its residents.

IV. CONCLUSION

Ms. Chambers’ story is devastating. If her experience had occurred in one of Chicago’s protected zip codes, sweeping

277. Id.


279. See id. at 20–38 (providing examples of various community initiatives and their outcomes); see also Brown & Robinson, supra note 274, at 16–26.


281. Brown & Robinson, supra note 274, at 15–26 (discussing how various community programs and initiatives can break the poverty cycle).

282. See Sharkey et al., supra note 283 (discussing how the presence of non-profit organizations reduces crime).
preventative change would have followed. However, Ms. Chambers’ tragedy occurred in the “hood” or “ghetto,” and as such did not spark any external outrage or change.

Chicago’s environmental discrimination problem can be traced back to the Great Migration Periods where regulations were used to segregate African Americans from the majority population. The results of this era are still evident in present-day Chicago. For instance, African Americans who reside in Chicago’s urban neighborhoods are impacted by high rates of environmental impacts, unemployment, poor performing public schools, and increased participation in high-risk lifestyles.

There are local and federal actions, however, that can be taken to prevent future instances of environmental injustice and mitigate past instances of environmental harm. NEPA and Executive Order 12898 are both federal actions that work better together to address environmental injustice. Amending NEPA to incorporate the language of Executive Order 12898 will best prevent future instances of environmental discrimination that plague Chicago’s urban neighborhoods. Likewise, a Chicago Community-Based Reparations Program will best mitigate past instances of environmental injustice that have segregated and marginalized disadvantaged groups. Chicago’s gun violence problem is solvable if decision-makers replace patch-work efforts that only combat symptoms with the above legal and policy initiatives aimed at directly addressing the issue of environmental discrimination and injustice, which is fueling Chicago’s gun violence. Change is needed because no American should be forced to live in a neighborhood where their survival depends on their ability to dodge death second by second.


285. See Chatham, supra note 96; see also Fuller Park, supra note 96; West Englewood, supra note 97.