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The Third Rail of San Francisco Politics: Transportation, Race, and the Central Subway

WENDELL LIN[†]

In the backdrop of intense political division, San Francisco is proud to be a beacon of diversity and inclusion. But the “sanctuary city” has an appalling history of racism and continues to relegate marginalized communities with transportation infrastructure decisions that exacerbate racial segregation and economic inequality. This Note exposes the racial bias underlying decisions with respect to transportation infrastructure, concluding that grassroots organizing, transparent decision making processes, and enhanced government accountability are three necessary means to protect the public’s interest.

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INTRODUCTION

The economic importance and social impact of transportation is well-documented.¹ Decisions about where interstate highways are built, which community groups are prioritized for transportation service, and the extent to which certain modes of transportation are subsidized have fundamentally shaped our society and economy.² Transportation plays an indispensable role in providing strength and vitality to all communities and neighborhoods. Accordingly, government decisions on transportation policy shape the fate and relative prosperity of communities. In making these decisions, issues such as race, segregation, politics, and the impact on minority communities often become outcome-determinative factors.³

This Note highlights San Francisco's Chinatown and the history of discriminatory planning it has endured, using the Central Subway transportation project as a case in point. Specifically, this Note addresses the critical role that race played in the conflicts and ultimate decisions leading up to the planning and construction of the Central Subway. Racial and community politics continue to impact the project's legacy and will remain a source of contention for San Francisco's Chinese community. Even though Chinatown has long been established as part of San Francisco's history and identity, government decisions

1. See, e.g., Paul Stephen Dempsey, *Transportation: A Legal History*, 30 *TRANSP. L.J.* 235 (2003).

2. *Id.* at 238.

3. See *infra* Part III.

respecting transportation policy continue to threaten the future of the community. This has been, and continues to be, a common occurrence in other ethnic and minority communities, where transportation service is compromised due to government favoritism and the prioritization of wealthier, more prominent neighborhoods. This Note concludes that the preservation of Chinatown, and other ethnic communities like it, will require continual transportation advocacy and organizing at the grassroots level to ensure its survival.

I. HISTORY OF URBAN TRANSPORTATION

The transportation system in the United States has a long history of evolution. From horses and wagons predating the Industrial Revolution, our transportation system evolved to include steamships and railroads, and in recent decades, incorporated modern day automobiles and aircrafts.⁴ Historically, transportation was a critical vessel for resource allocation throughout our economy. Transportation systems not only facilitated the necessary societal function of delivering goods and materials across markets, they also provided the working class with access to jobs, housing, and education—all of which are critical to a robust economy. Indeed, transportation impacted all aspects of our daily lives and few industries in our nation’s history have “play[ed] as broad and vital a role in the economy.”⁵

A. EARLY DEVELOPMENTS IN TRANSPORTATION INFRASTRUCTURE

With the formation of metropolitan areas, the transportation costs of goods, people, and ideas were dramatically reduced.⁶ By centralizing commerce and creating an ecosystem of economic activity, cities generated greater efficiency and innovation.⁷ With the rapid growth of urban cores, however, came urban problems associated with population density.⁸ In cities, common problems such as poor sanitation, congestion, and crime became prevalent.⁹ At the same time, as populations grew, demand for goods and services drove up prices and the cost of living in cities.¹⁰

With diminishing living standards and rising living costs, city homes became less desirable.¹¹ Consequently, sociologists observed the beginning of a

4. Dempsey, *supra* note 1, at 363.

5. *Id.*

6. *Urbanization and the Development of Cities*, LUMEN LEARNING, <https://courses.lumenlearning.com/boundless-sociology/chapter/urbanization-and-the-development-of-cities/> (last visited Mar. 19, 2019).

7. *See id.* (“Cities reduced transport costs for goods, people, and ideas by bringing them all together in one spot.”).

8. *Id.*

9. Maureen Klovers, *Inside America’s Democracy: Cities & Public Policy: The Nexus Between Sprawl, Neighborhood Effects and Urban Crime*, 11 GEO. PUB. POL’Y REV. 35, 36 (2006).

10. *Urbanization and the Development of Cities*, *supra* note 6.

11. Michael Lewyn, *Sprawl in Canada and the United States*, 44 URB. LAW. 85, 111 (2012).

societal phenomenon later coined as “suburbanization.”¹² As families started to look for housing, they increasingly began looking to rural areas and turning away from inner cities.¹³ At the same time, World War II soldiers were returning from war and were provided generous government support to finance new homes.¹⁴ At this point, families started moving into the outskirts of urban centers where they could find more spacious and desirable homes,¹⁵ which allowed them to benefit from inner-city opportunities without experiencing urban problems such as crime and congestion. Moreover, with the innovation and increasing availability of automobiles, suburban homes became more accessible as commuting to and from the city became a viable option¹⁶ As suburbs grew dramatically in the 1950s, the government saw the need to invest in transportation infrastructure to support this new social demand.¹⁷

In addition to responding to rural flight, then-President Dwight Eisenhower also saw the need to build a national system of interstate highways to link the country for purposes of national defense.¹⁸ Drawing inspiration from Germany’s Autobahn, Eisenhower envisioned an interstate highway system with multiple transport routes to facilitate expeditious military movement and, at the same time, to weather aerial attacks.¹⁹ As a result, the seventeen-year construction period of the U.S. Interstate Highway program began.²⁰ With the construction of the U.S. interstate system, an increasing demand for suburban living, and the availability of automobiles to the middle class, suburban sprawl began to take full flight.

B. THE EMERGENCE OF TRANSPORTATION INEQUALITY

The 48,000 miles of interstate highway paved across the country between the 1950s and the 1970s created a boon for many rural communities.²¹ The economy benefited from job creation and improved access to housing, schools, and various markets.²² However, the construction of the interstate highway was also detrimental for many cities.²³ Whole neighborhoods were torn down and

12. See William E. Nelson & Norman R. Williams, *Suburbanization and Market Failure: An Analysis of Government Policies Promoting Suburban Growth and Ethnic Assimilation*, 27 *FORDHAM URB. L.J.* 197, 197–98 (1999) (discussing the term).

13. See *id.*

14. *Urbanization and the Development of Cities*, *supra* note 6.

15. See PAMELA BLAIS, *PERVERSE CITIES: HIDDEN SUBSIDIES, WONKY POLICY, AND URBAN SPRAWL* 60–61 (2010).

16. See Nelson & Williams, *supra* note 12, at 212.

17. See Jeffrey Brown, *A Tale of Two Visions: Harland Bartholomew, Robert Moses, and the Development of the American Freeway*, 4 *J. PLAN. HIST.* 3, 8 (2005).

18. Dempsey, *supra* note 1, at 314.

19. *Id.*

20. *Id.*

21. Joseph Stromberg, *Highways Gutted American Cities. So Why Did They Build Them?*, *VOX* (May 11, 2016, 11:20 AM), <https://www.vox.com/2015/5/14/8605917/highways-interstate-cities-history>.

22. Dempsey, *supra* note 1, at 238–40.

23. See Katie Nodjimbadem, *The Racial Segregation of American Cities Was Anything but Accidental*, *SMITHSONIAN* (May 30, 2017), <https://www.smithsonianmag.com/history/how-federal-government->

isolated with the construction of asphalt highways and concrete interchanges.²⁴ In addition, as interstate highways facilitated the outmigration of jobs, wealth, and political power to the suburbs, they consequently drained cities of their tax bases.²⁵ City coffers steadily declined as families moved to rural areas, taking with them the tax revenue that cities would have received.²⁶ Soon, without adequate tax revenues, cities struggled to provide sufficient services for public safety, transportation, and health.²⁷ As a result, the quality of life in cities, particularly for families that could not afford to leave their metropolitan homes, began to deteriorate.²⁸

Over the next few decades, suburban sprawl and the continual decline of city services were exacerbated by government budgeting decisions to invest heavily in private transportation. In fact, the U.S. government continues to generously support highways. Between 2005 and 2009, the federal government spent \$201 billion on highways, compared to only \$46 billion on public transit.²⁹ Indeed, transportation advocates note that the lack of public transit investment disproportionately impacts low and middle-income families.³⁰ This is particularly true for blue-collar and night shift workers who live in neighborhoods not adequately accessible by public transportation.³¹

For instance, students from families with limited means may be forced to compromise their education because they have difficulty getting to school.³² Inner-city students especially depend on public transportation to attend school and college.³³ Indeed, with a growing push for neighborhood schooling, public school students are necessarily dependent on mass transit because many school districts lack sufficient funding for school buses.³⁴ This is similarly the case for students traveling cross-city to attend charter or magnet schools.³⁵ Thus, when public transportation becomes inaccessible or prohibitive, students from these communities are essentially deprived of educational opportunities.³⁶

intentionally-racially-segregated-american-cities-180963494/ (“In some cities, it’s a division based around infrastructure, as with Detroit’s 8 Mile Road.”).

24. Stromberg, *supra* note 21.

25. See Omer Kimhi, *Chapter 9 of the Bankruptcy Code: A Solution in Search of a Problem*, 27 YALE J. ON REG. 351, 376 (2010).

26. See *id.*

27. See Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451, 1472 (2000).

28. *Id.*

29. Lewyn, *supra* note 11, at 99–100.

30. See Stromberg, *supra* note 21.

31. See Mandy B. Seuffert, *Caught in a Cement Spider Web: Proposed Suburban Transportation Policies to Architecting Less Automobile Reliant Communities*, 15 PENN ST. ENVTL. L. REV. 295, 297–98 (2007).

32. See Sean B. Seymore, *Set the Captives Free! Transit Inequity in Urban Centers, and the Laws and Policies Which Aggravate the Disparity*, 16 GEO. MASON U. C.R.L.J. 57, 69–71 (2005).

33. *Id.* at 70–71.

34. *Id.*

35. *Id.*

36. *Id.* at 71.

Moreover, many communities also rely on public transportation to access healthcare.³⁷ Many individuals have no means of getting to a doctor's office for general care or preventive treatment, or getting to a hospital in an emergency situation without affordable transportation options. This can be particularly problematic for those most vulnerable to illness including elderly people who are no longer able to drive and those with young children and infants who cannot afford to own cars.

Further, since personal health and nutrition are closely linked, public transportation is also critical to healthcare because it provides many families with much-needed access to healthy food options.³⁸ Fast food chains and convenience stores often target low-income communities when choosing store locations.³⁹ In fact, the federal government has coined the term "food deserts" for low-income communities with poor access to supermarkets or grocery stores.⁴⁰ While many low-income communities may have access to non-nutritious fattening foods, they lack options for fresh produce.⁴¹ Indeed, quality of life and health for families living in marginalized communities is diminished when inadequate public transportation prevents them from accessing fresh and nutrient-rich food options.

Transportation equity also correlates directly with environmental justice.⁴² For example, air quality in affluent suburban areas is much better than in inner-city communities where city corridors are often crowded with traffic congestion.⁴³ Research has also linked high levels of air pollution present in urban communities to asthma, heart disease, lung cancer, birth defects, brain damage, and premature death.⁴⁴ In fact, the high rate of asthma in low-income neighborhoods, which is exacerbated and possibly caused by vehicle exhaust fumes, has garnered national attention.⁴⁵ In light of these disproportionate health effects on marginalized communities, many civil rights activists and environmentalists advocate for fairer distribution of the benefits and burdens of transportation among various income levels.⁴⁶ They believe that pollution protection should be extended, not just to those who can afford to live in the cleanest communities, but to every individual.⁴⁷

37. *Id.* at 61.

38. See Andrea Freeman, *The Unbearable Whiteness of Milk: Food Oppression and the USDA*, 3 U.C. IRVINE L. REV. 1251, 1253–54 (2013).

39. *Id.*

40. See Emily M. Broad Leib, *All (Food) Politics Is Local: Increasing Food Access Through Local Government Action*, 7 HARV. L. & POL'Y REV. 321, 324–25 (2013).

41. See generally Katherine D. Morris, *An Analysis of the Relationship Between Food Deserts and Obesity Rates in the United States*, 9 GEO. PUB. POL'Y REV. 65, 68 (2013) (stating that chain grocery stores are a proxy for access to nutritious food because they typically carry fresher products).

42. Seymore, *supra* note 32, at 58.

43. *See id.*

44. *Id.* at 71.

45. *Id.*

46. *Id.* at 58.

47. *See id.*

Yet, despite the fact that public transportation creates a disproportionate burden on low-income communities while generating wide-ranging benefits for society overall, many critics believe public transit riders should be primarily responsible for the costs of maintaining and developing public transportation.⁴⁸ This notion, however, overlooks the fact that a person's mode of travel is primarily determined by their income.⁴⁹ Overall, affluent individuals and families are much more likely to have access to private modes of transportation, making them less reliant on public buses and trains.⁵⁰ In fact, bus usage decreases sharply as income rises—the poor are eight times more likely than the affluent to ride the bus.⁵¹ Thus, public transportation is overwhelmingly utilized by working-class families.⁵² Proposing that public transportation infrastructure be self-sustained through transit fares is tantamount to asking traditionally disenfranchised communities and low-income families to shoulder the burden of funding public transportation. Yet, they are not the sole benefactors of public transportation.⁵³ Employers, developers, and society in general benefit from robust public transportation systems.⁵⁴ This notion is fundamental to the conversation around transit inequality and why many mass transit advocates believe public transportation needs to be subsidized through property taxes, income tax, and other revenue sources.⁵⁵

C. THE ROLE OF TRANSPORTATION IN THE EXACERBATION OF SEGREGATION

Transit inequity, at its core, is interconnected with rural flight, or “white flight,” and the racial polarization of urban areas.⁵⁶ Early transportation and metropolitan development plans devastated African-American communities, physically separating black residents from jobs and transportation.⁵⁷ These

48. See David Levinson & David King, *Here's How the Government Should Be Subsidizing Public Transit*, BUS. INSIDER (Apr. 22, 2013, 12:11 PM), <https://www.businessinsider.com/the-right-way-to-subsidize-public-transit-2013-4> (presenting arguments for and against public transit subsidies); see also Alex Richardson, *Why Does Everyone Want Public Transit to Pay for Itself?*, AQUICORE, <https://aquicore.com/blog/everyone-want-public-transit-pay/> (last visited Mar. 19, 2019) (acknowledging the “negative attention” and general “hopelessness” around public transit and its drain on tax revenues but concluding that public transit should not pay for itself directly).

49. See Seymore, *supra* note 32, at 64.

50. See Nicole Stelle Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 HARV. J. ON LEGIS. 173, 183–84 (2001).

51. Seymore, *supra* note 32, at 64.

52. See Garnett, *supra* note 50, at 180 (stating that the “working poor” are slightly more likely to commute between central city homes and suburban jobs than non-poor workers).

53. See Adrienne Zitka, *Road Work Ahead. Slow Down. What About Public Transit?: The Future of the Transportation Equity Act for the 21st Century*, 3 RUTGERS J.L. & URB. POL'Y 520, 540 (2006).

54. See Alice Kaswan, *Climate Change, Consumption, and Cities*, 36 FORDHAM URB. L.J. 253, 271 (2009).

55. PETER CALTHORPE, *THE NEXT AMERICAN METROPOLIS: ECOLOGY, COMMUNITY, AND THE AMERICAN DREAM* 104–14 (1993).

56. See generally Frank H. Wu, *From the “Perpetual Foreigner” to the “Model Minority” to the New Transnational Elite: The Residential Segregation of Asian Americans*, in *THE FIGHT FOR FAIR HOUSING: CAUSES, CONSEQUENCES, AND FUTURE IMPLICATIONS OF THE 1968 FEDERAL FAIR HOUSING ACT* 133, 142–46 (Gregory D. Squires ed., 2018) (discussing residential segregation of Asian Americans).

57. Seymore, *supra* note 32, at 69–70

policies and practices resulted in the formation of low-income minority enclaves, which were overwhelmingly concentrated in inner cities and dilapidated neighborhoods.⁵⁸ As transportation infrastructures were developed, engineers and planners historically ignored the negative effects of their proposals on African-American and other minority communities.⁵⁹ Thus, these communities shouldered a disproportionate share of the costs of urban road and freeway construction. Though some social commentators contend *de facto* segregation is the primary reason for racial segregation, many governmental policies have directly caused racial segregation in metropolitan areas.⁶⁰

For example, the federally supported program of urban renewal, which targeted African-American and low-income communities, ousted communities under the guise of removing blight.⁶¹ Those communities were destroyed to make room for interstate highways, which compounded racial segregation.⁶² Indeed, this form of residential segregation proved extremely difficult to remedy because individuals, even after desegregation, could not move their homes at whim, and financial restrictions limited their ability to live in different neighborhoods.

Yet another example of race-conscious government action comes from transit authorities. These government agencies decide—among many other things—where to place public transit routes, which neighborhoods are served by particular routes, which communities are served by trains and which are served by buses, what types of vehicles (for example, alternative fuel or clean energy vehicles) are assigned to particular routes or locations, and which routes are served with newer vehicles as they are purchased.⁶³ It is common in many cities to see newer, cleaner buses assigned to wealthier neighborhoods rather than minority communities.⁶⁴ In addition to being served with aged equipment and coaches, low-income communities are frequently subjected to overcrowded buses.⁶⁵

II. SAN FRANCISCO'S CHINATOWN

San Francisco's Chinatown serves as a case in point. It is a low-income community that endured race-conscious government decisions, which caused it

58. *Id.* at 65–66.

59. *See* Brown, *supra* note 17, at 8.

60. Some social commentators assert that many city neighborhoods are segregated because of preference and personal choices. *De facto* segregation, they maintain, is the primary reason for racial segregation in cities; that racial segregation is driven predominantly by income differences and private discrimination from employers, mortgage lenders, and real estate agents. While private acts of prejudice or discrimination are certainly a contributing factor, racial segregation was greatly driven by *de jure* segregation resulting from federal, state, and local policies. *See* Nodjimbadem, *supra* note 23.

61. Stromberg, *supra* note 21.

62. *See id.*

63. *See* Seymore, *supra* note 32, at 66–69.

64. *See id.* at 68–69.

65. *Id.* at 69.

to become segregated from its surrounding communities. In fact, the segregation of Chinatown as an ethnic enclave started in the mid-nineteenth century.⁶⁶ During the San Francisco gold rush in the mid-1800s, word of the opportunity to mine gold and “strike it rich” spread fast and far.⁶⁷ When the news reached China, it was the Chinese from the area of Canton, China who first received word.⁶⁸ Canton was a well-known hub for trade and served as a port for western merchants who were interested in Chinese imports and exports.⁶⁹ Before long, Cantonese men began sailing across the Pacific, hoping to find new opportunities at the “gold mountain.”⁷⁰

Unfamiliar with the foreign territory and language, the Chinese survived by forming their own community.⁷¹ This was particularly important at the time because Chinese immigrants were generally unwelcome and met with hostility.⁷² As job competition rose and the American economy declined, the Chinese were viewed as a threat to the predominantly white workforce.⁷³ Fueled by mainstream anger and rising unemployment, racist sentiments permeated throughout popular society.⁷⁴ Moreover, the fear that Asian “foreigners” would amass control of mineral wealth, agricultural production, and the fishing industry led white Americans to perceive the Chinese as a threat.⁷⁵ Indeed, the Chinese were cast as an economic, social, and racial threat to national integrity.⁷⁶ As a result, numerous pieces of discriminatory legislation were enacted by local, state, and federal governments against the Chinese.⁷⁷ By the end of the nineteenth century, the Chinese were prohibited by law, amongst other things,

66. See Lan Cao, *The Diaspora of Ethnic Economies: Beyond the Pale?*, 44 WM. & MARY L. REV. 1521, 1580 (2003).

67. See Andrew P. Morriss et al., *Between a Hard Rock and a Hard Place: Politics, Midnight Regulations and Mining*, 55 ADMIN. L. REV. 551, 562 (2003).

68. See *The Story of Chinatown*, PBS, <http://www.pbs.org/kqed/chinatown/resourceguide/story.html> (last visited Mar. 19, 2019).

69. See Li Chen, *Law, Empire, and Historiography of Modern Sino-Western Relations: A Case Study of the Lady Hughes Controversy in 1784*, 27 LAW & HIST. REV. 1, 8 (2009) (“By the 1740s, the EIC had already taken ‘the lion’s share of the Canton trade,’ which became a vital source of revenue for the British Empire.”).

70. See SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 28 (1991).

71. *The Story of Chinatown*, *supra* note 68.

72. See ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 24 (2d ed. 2013); see also John R. Wunder & Clare V. McKanna, Jr., *The Chinese and California: A Torturous Legal Relationship*, 2 CAL. SUP. CT. HIST. SOC’Y Y.B. 195, 195 (1995) (citing CHARLES J. MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* (1994)) (discussing nineteenth-century anti-Chinese violence in San Francisco and Sacramento).

73. See YAMAMOTO ET AL., *supra* note 72.

74. See *The Story of Chinatown*, *supra* note 68.

75. See Keith Aoki, “Foreign-ness” & Asian American Identities: *Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. 1, 27 (1996).

76. *ASIAN AMERICA: A PRIMARY SOURCE READER* 38 (Cathy J. Schlund-Vials et al. eds., 2017).

77. See *id.*

from testifying in court against white people,⁷⁸ owning real property,⁷⁹ and marrying non-Chinese.⁸⁰ In fact, for the first time in its history, the United States, through the Chinese Exclusion Act of 1882, denied entry to a group of aspiring immigrants on the basis of country of origin and socioeconomic status.⁸¹

To cope with this reality, the Chinese formed Chinatowns, communities consisting of family associations and social support networks.⁸² However, the existence of these communities was perceived as a threat to the American social morale and public health. Mainstream media frequently promoted negative stereotypes of Chinatowns, portraying them as containment zones of unbridled lawlessness, teeming with drugs, gambling, prostitution, and filth.⁸³ In fact, in 1870, the San Francisco Board of Supervisors declared that the “Chinese were considered ‘moral leper[s]’ whose habits encouraged disease wherever they resided.”⁸⁴ Over a decade later, the same board declared San Francisco’s Chinatown a “moral cancer on the city.”⁸⁵ This anti-Chinese sentiment and American “Orientalism”⁸⁶ gave birth to “yellow peril”⁸⁷ and discriminatory laws⁸⁸ such as the Page Act of 1875, which was the first federal restrictive immigration statute passed by Congress.⁸⁹ The text of the law, under the guise of banning the importation of prostitutes, provided enforcement mechanisms to control the Chinese population by specifically targeting Chinese women.⁹⁰

As a result of this anti-immigration policy, Chinatown, in its earliest days of inception, was predominantly a bachelor society.⁹¹ For this reason, housing in Chinatown was not built to accommodate families but, rather, to shelter single men who only intended to stay temporarily.⁹² Thus, from the 1850s to the early

78. *People v. Hall*, 4 Cal. 399, 399 (1854).

79. See Editorial, *Anti-Alien Land Legislation*, 31 YALE L.J. 299, 299–305 (1922) (discussing state statutes preventing aliens ineligible for citizenship from acquiring interests in real property).

80. See Deenesh Sohoni, *Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities*, 41 LAW & SOC’Y REV. 587, 596–97 (2007).

81. K. Scott Wong et al., *Asian American History: An Introduction*, in ASIAN AMERICA: A PRIMARY SOURCE READER, *supra* note 76, at 1, 4.

82. See Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verité and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347, 362–64 (1996) (discussing discriminatory treatment of Chinese immigrants laboring in the mines during the nineteenth century).

83. Aoki, *supra* note 75, at 29.

84. *Id.* at 31 (alteration in original) (internal quotation marks omitted) (quoting Daina C. Chiu, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism*, 82 CALIF. L. REV. 1053, 1076 (1994)).

85. *Id.*

86. Teemu Ruskola, *Legal Orientalism*, 101 MICH. L. REV. 179, 215–16 (2002).

87. See Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 ASIAN AM. L.J. 57 (2007).

88. See generally Gabriel J. Chin, “A Chinaman’s Chance” in Court: *Asian Pacific Americans and Racial Rules of Evidence*, 3 U.C. IRVINE L. REV. 965 (2013) (discussing the special treatment of Asians as witnesses).

89. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 643 (2005).

90. See *id.*

91. See Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1, 9–10, 9 n.46 (2000).

92. See *id.*

1900s, most of the housing units built in Chinatown were Single Room Occupancies, or SROs.⁹³ The average size of an SRO unit was about eight by ten square feet.⁹⁴ Every floor housed around ten to fifteen men who shared one communal bathroom and kitchen.⁹⁵ Though the living conditions were cramped, they were all that immigrant laborers could afford at the time.

A. DEMOGRAPHICS

Today in San Francisco, there are still hundreds of SRO buildings, housing more than 30,000 tenants.⁹⁶ Many of the SRO buildings, which were built at the end of the nineteenth century, still exist in Chinatown.⁹⁷ However, these units no longer solely house single men. Instead, entire families live in these cramped dorm-room-like living quarters.⁹⁸ Although many of the buildings are dilapidated, they provide much-needed housing for immigrant families who cannot afford San Francisco's notoriously expensive rents.⁹⁹ These cramped living conditions also explain why San Francisco's Chinatown is America's second most densely populated neighborhood.¹⁰⁰ Today, over 15,000 residents live within a four by six block neighborhood.¹⁰¹ Although Chinatown is no longer a bachelor society, seniors comprise a large part of Chinatown's population; many of whom are dependent on the resources and services within the community due to language and financial barriers as well as mobility issues.¹⁰² Chinatown's median household income hovers around \$20,000, with 28% of residents below the national poverty threshold.¹⁰³ To be sure, access to

93. See Barbara E. Koh, *Alterations Needed: A Study of the Disjunction Between the Legal Scheme and Chinatown Garment Workers*, 36 STAN. L. REV. 825, 836–38 (1984) (discussing the overcrowding in Chinatown residences).

94. SRO FAMILIES UNITED COLLABORATIVE, 2015 SRO FAMILIES REPORT: LIVING IN THE MARGINS: AN ANALYSIS AND CENSUS OF SAN FRANCISCO FAMILIES LIVING IN SROs 17 (2015), http://www.chinatowncdc.org/images/stories/NewsEvents/Newsletters/sro_families_report_2015_.pdf.

95. *Id.* Indeed, these living conditions facilitated the spread of tuberculosis, perhaps exacerbating the perception that the Chinese were disease-ridden. See, e.g., FREDERICK J. SIMOONS, *FOOD IN CHINA: A CULTURAL AND HISTORICAL INQUIRY* 475 (1991) (“In San Francisco in 1930, more Chinese died from tuberculosis (261 per 100,000) than from any other cause, and their tuberculosis mortality rates were three times those of the city population as a whole.”).

96. SRO FAMILIES UNITED COLLABORATIVE, *supra* note 94, at 17.

97. GORDON CHIN, *BUILDING COMMUNITY, CHINATOWN STYLE: A HALF CENTURY OF LEADERSHIP IN SAN FRANCISCO CHINATOWN* 111 (2015).

98. *Id.* at 7.

99. *Id.* at 9, 11–12.

100. See *Chinatown Broadway Street Design*, S.F. PLANNING DEP'T, <https://sf-planning.org/chinatown-broadway-street-design> (last visited Mar. 19, 2019).

101. *Id.*

102. See S.F. PLANNING DEP'T, *SAN FRANCISCO NEIGHBORHOODS: SOCIO-ECONOMIC PROFILES: AMERICAN COMMUNITY SURVEY 2005–2009*, at 14–15 (2011), <https://sf-planning.org/sites/default/files/FileCenter/Documents/8501-SFProfilesByNeighborhoodForWeb.pdf>.

103. See S.F. PLANNING DEP'T, *SAN FRANCISCO NEIGHBORHOODS: SOCIO-ECONOMIC PROFILES: AMERICAN COMMUNITY SURVEY 2010–2014*, at 14–15 (2017), http://default.sfplanning.org/publications_reports/SF_NGBD_SocioEconomic_Profiles/2010-2014_ACS_Profile_Neighborhoods_v3AH.pdf [hereinafter S.F. PLANNING DEP'T, 2010–2014].

open space is a huge priority for the community,¹⁰⁴ but just as important is access to transportation. Many residents commute to schools and worksites outside the neighborhood.¹⁰⁵ Thus, since roughly 80% of Chinatown's households do not own vehicles—partly because they have no place to park but primarily because they cannot afford car ownership—the community is vastly dependent on public transit.¹⁰⁶

B. LOMA PRIETA EARTHQUAKE

On October 17, 1989, at 5:04 p.m., a 6.9 magnitude earthquake shook Santa Cruz County and the San Francisco Bay Area.¹⁰⁷ The quake lasted only fifteen seconds but was incredibly destructive and left a death count of sixty-seven.¹⁰⁸ San Francisco's Marina district was left in shambles.¹⁰⁹ A portion of the Bay Bridge famously collapsed, and much of the Bay Area was forever changed.¹¹⁰ Particularly, the 1989 Loma Prieta Earthquake had a major long-term impact on the city's Embarcadero waterfront and Chinatown's transportation infrastructure.¹¹¹ One of the largest controversies resulting from the Loma Prieta Earthquake was how the City of San Francisco would handle the tearing down of the Embarcadero Freeway which, at the time, was a two-story tall freeway lining the Embarcadero waterfront.¹¹²

104. See generally Edwin M. Lee, *Displacement and Dislocation of Low-Income Asians from Low-Cost Housing Units Due to Urban Redevelopment—San Francisco and Oakland Experience*, in *A SHELTERED CRISIS: THE STATE OF FAIR HOUSING IN THE EIGHTIES* 200, 200–03 (1983) (discussing the overcrowded housing situation in San Francisco and Oakland Chinatown).

105. See SRO FAMILIES UNITED COLLABORATIVE, *supra* note 94, at 29–35.

106. See S.F. PLANNING DEP'T, 2010–2014, *supra* note 103, at 15.

107. See generally JOSEPH F. C. DIMENTO & CLIFF ELLIS, *CHANGING LANES: VISIONS AND HISTORIES OF URBAN FREEWAYS* 223–25 (2013) (discussing how the 1989 Loma Prieta Earthquake damaged the Bay Area's freeway system).

108. Carl Nolte, *Up from the Rubble, 20 Years After Loma Prieta*, S.F. CHRON. (Oct. 11, 2009), <https://www.sfchronicle.com/bayarea/article/Up-from-the-rubble-20-years-after-Loma-Prieta-3214855.php>.

109. See generally Bill Van Niekerken, *An Ode to the Embarcadero Freeway, the Blight by the Bay*, S.F. CHRON. (Aug. 15, 2018, 9:35 PM), <http://www.sfchronicle.com/thetake/article/An-ode-to-the-Embarcadero-Freeway-the-blight-by-11543621.php> [hereinafter Van Niekerken, *An Ode to the Embarcadero Freeway*] (discussing the repairs to the Embarcadero Freeway, which was damaged by the 1989 Loma Prieta Earthquake); Bill Van Niekerken, *Long-Forgotten Loma Prieta Quake Photos Show Disaster's Depths*, S.F. CHRON. (Oct. 16, 2018, 1:27 PM) https://www.sfchronicle.com/chronicle_vault/article/Loma-Prieta-quake-at-28-Long-forgotten-photos-12281981.php [hereinafter Van Niekerken, *Long-Forgotten Loma Prieta Quake*] (discussing the devastation to the Marina District).

110. See generally Benjamin Pimentel, *Ghosts of Loma Prieta Haunt S.F.'s Chinatown, Freeway Demolition Cut Off Easy Access—Stores Still Hurting*, S.F. CHRON., Oct. 14, 1994, at A4 (discussing how the February 1991 demolition of the Embarcadero Freeway affected the business in San Francisco Chinatown); Bay Area News Group, *Photos: Loma Prieta Earthquake Scarred Bay Area 29 Years Ago*, MERCURY NEWS (Oct. 18, 2018, 4:27 AM), <https://www.mercurynews.com/2018/10/17/photos-loma-prieta-earthquake-scarred-bay-area-29-years-ago/> (“A large section of the Cypress Freeway in Oakland collapsed, as did a portion of the Bay Bridge.”).

111. See Dan Levy, *Chinatown Groups Criticize Embarcadero Roadway Plan—They Want More Traffic Sent Their Way*, S.F. CHRON., Oct. 12, 1995, at A17.

112. See Raymond A. Mohl, *Stop the Road: Freeway Revolts in American Cities*, 30 J. URB. HIST. 674, 678 (2004).

Because of its size and relative proximity to the waterfront, the Embarcadero Freeway had a history of opposition from citizens and planners enraged by its obtrusiveness of open space and obscuration of waterfront views.¹¹³ The freeway's double-deck structure ran along the northern waterfront, through industrial, waterfront, and low-income mixed-use areas, and ended at Broadway.¹¹⁴ The freeway was initially built in the 1950s as a six-lane elevated highway that transitioned to a four-lane two-story structure which connected various parts of the city with Highway 101.¹¹⁵ Over the next few decades, the freeway remained a source of contention around city planning and transportation funding, particularly between freeway proponents, transit advocates, neighborhood activists, and politicians.¹¹⁶

Through extensive lobbying, a proposition supporting the demolition of the freeway was eventually placed on the local ballot in 1986.¹¹⁷ However, many middle-class families that owned vehicles wanted to keep the highway and voters decidedly rejected the proposition.¹¹⁸ Temporarily defeated, freeway opponents did not give up and eventually received a second chance at demolishing the freeway. This occurred when the Loma Prieta Earthquake struck in 1989, leaving the Embarcadero Freeway severely damaged.¹¹⁹ Many transit advocates saw this as an opportunity, not only to tear down the concrete double-decker highway which blocked the waterfront views of the bay, but also rebuild the waterfront and improve public transportation.¹²⁰ Further, the Department of Transportation released a study in 1991, which confirmed that the costs of fixing the Embarcadero Freeway would be nearly as expensive as completely rebuilding it from scratch.¹²¹ This assessment sparked a change in public opinion about getting rid of the freeway.

Chinatown, however, remained unwavering in its support for the freeway and fought vehemently against its demolition. Although most Chinatown residents did not own cars, many of the neighborhood merchants and businesses relied on the freeway for transporting goods.¹²² The freeway also provided an avenue for visitors and regular customers to come into Chinatown to shop.¹²³

113. DIMENTO & ELLIS, *supra* note 107, at 223 (discussing how the plan for the Embarcadero Freeway to connect the Golden Gate Bridge with the Bay Bridge was abandoned due to a citizen-initiated "freeway revolt").

114. *See id.*

115. *Id.*

116. Mohl, *supra* note 112, at 678–79.

117. Van Niekerken, *An Ode to the Embarcadero Freeway*, *supra* note 109.

118. GORDON CHIN, *BUILDING COMMUNITY, CHINATOWN STYLE: A HALF CENTURY OF LEADERSHIP IN SAN FRANCISCO CHINATOWN 170–77* (2015).

119. *See id.*

120. *See id.*

121. *See* Van Niekerken, *An Ode to the Embarcadero Freeway*, *supra* note 109 ("A heated discussion continued, until finally, on Jan. 2, 1991, state Department of Transportation engineers conceded what local leaders had been saying all along: fixing the Embarcadero Freeway would be nearly as expensive as rebuilding it from scratch.")

122. *See* Pimentel, *supra* note 110.

123. *See id.*

Merchants reported an estimated 30% decline in customers after the highway was closed by the earthquake.¹²⁴ Before the earthquake, the Embarcadero Freeway provided a convenient route to Chinatown for those coming from the East Bay or South San Francisco.¹²⁵ However, after the earthquake, those who previously relied on the Embarcadero were forced to exit from Interstates 80 and 280 and Highway 101 at Fremont or Ninth streets, winding their way through downtown traffic to get to Chinatown.¹²⁶ This not only affected Chinatown businesses, but merchants in adjacent neighborhoods such as North Beach and Fisherman's Wharf were also negatively impacted.¹²⁷

C. TEARING DOWN THE EMBARCADERO FREEWAY

The controversy surrounding the Embarcadero Freeway pitted neighborhoods against mass transit interests and city residents against suburban commuters.¹²⁸ It was a complex battle that implicated environmental, aesthetic, historic preservation, and business interests.¹²⁹ Many Chinatown advocates viewed the demolition of the Embarcadero Freeway as a closing of a major artery for the community.¹³⁰ It created a hardship for Chinatown businesses and threatened the livelihood of many residents.¹³¹ Without a steady influx of visitors and tourists, many merchants would have to close their stores, creating a façade of vacant storefronts in the Chinatown community. The resulting blight would have drained the community's political base, making the neighborhood vulnerable to gentrification. Community members believed that Chinatown's future would be uncertain if the Embarcadero Freeway was torn down.¹³²

Drawing on grassroots organizing and knowledge of San Francisco's history of discrimination against the Chinese, Chinatown rallied its residents and

124. Mark A. Stein & Norma Kaufman, *Future of Embarcadero Freeway Divides San Francisco: Cityscape: Many Call the Quake-Damaged Structure Ugly and Want It Razed. But a Powerful Group of Merchants Favors Reopening It.*, L.A. TIMES (Apr. 13, 1990), http://articles.latimes.com/1990-04-13/news/mn-1211_1_embarcadero-freeway.

125. At the time, there were roughly 60,000 motorists using the Embarcadero Freeway daily. Christopher Elliott, *End of the Road Arrives for Embarcadero Freeway*, L.A. TIMES (Feb. 28, 1991), http://articles.latimes.com/1991-02-28/news/mn-2838_1_embarcadero-freeway.

126. See Bill Van Niekerken, *SF's 'Foolish Freeway': The Battle to Tear Down the Embarcadero Freeway*, S.F. CHRON. (Feb. 6, 2019, 4:00 AM), https://www.sfchronicle.com/chronicle_vault/article/SF-s-foolish-freeway-The-battle-to-tear-13586347.php; see also Elliot, *supra* note 125 (“[T]he Embarcadero freeway served the Chinatown community well by handling 60,000 cars per day and keeping traffic off surface streets.”).

127. See generally Stein & Kaufman, *supra* note 124 (stating that merchants from Fisherman's Wharf, North Beach, and Chinatown argued that the Embarcadero Freeway was essential to bringing customers into the city).

128. See CHIN, *supra* note 118, at 174–75 (discussing Chinatown's arguments against the tear down of the Embarcadero Freeway and other debates about where the new freeway off-ramp should extend).

129. *Id.* at 175.

130. See Beatrice Motamedi, *Chinatown Shuts Down over Freeway Plan—Merchants Attend Supervisors' Meeting*, S.F. CHRON., Apr. 17, 1990, at A3 (discussing that the businesses in Chinatown went on strike to protest the proposed demolition of the Embarcadero Freeway).

131. *Id.*

132. See Stein & Kaufman, *supra* note 124 (“She said this is a measure of how important the freeway is to merchants, who report an estimated 30% decline in customers since the highway was closed by the earthquake.”).

merchants to revolt and lobby against the demolition of the Embarcadero Freeway.¹³³ Community groups organized petition drives, gathering and submitting thousands of signatures from residents and showing up *en masse* to City Hall to confront local representatives.¹³⁴ Merchants organized their own strikes by closing businesses along Stockton Street, the neighborhood's main thoroughfare, during peak business hours.¹³⁵ By forming coalitions in and outside of Chinatown and generating media attention, the community exerted pressure on local government officials to reconsider the future of the freeway. Alas, although the community stood together and coalesced to fight for this cause, the freeway was eventually torn down. Consequently, as many community advocates predicted, business for Chinatown merchants subsequently declined.¹³⁶

To address the void of business revenue, merchants worked together to organize a weekly Chinatown Night Market, aimed to stimulate nightlife in Chinatown and draw visitors throughout the Bay Area to shop and dine in the neighborhood.¹³⁷ With the help of the Chinese Chamber of Commerce and support from local government officials, merchants rented space in Chinatown's Portsmouth Square to sell artwork, souvenirs, small eats, and imported goods.¹³⁸ Many nearby restaurants benefited from the increased foot traffic and extended store hours to accommodate the additional business.¹³⁹

However, the success was short-lived. Though it was initially met with great hype, many visitors found transportation to Chinatown inconvenient. Visitors who drove into the area were frustrated with the lack of available parking. Although the night markets were novel and of general interest, the experience did not justify the inconvenience of driving there and finding parking. Thus, the crowds became thinner as the weeks passed, and the night market eventually closed. Chinatown was forced to seek other avenues to stimulate the local economy and bring business back to the neighborhood.

A silver lining to the Embarcadero Freeway demolition was that it forced the Chinatown community to unite. Contrary to historic and popular perceptions that Asian Americans are politically passive and apathetic, the community came

133. See Ingfei Chen & Susan Sward, *Political Clout of Asians in S.F.*, S.F. CHRON., Dec. 26, 1991, at A1.

134. CHIN, *supra* note 118, at 171–72.

135. Beatrice Motamedi, *Chinatown Merchants Protesting Freeway Plan*, S.F. CHRON., Apr. 14, 1990, at B1.

136. See Rachel Gordon & Ray Delgado, *Chinatown Hopes to Add Free Parking—Merchants Talking with City Officials; Night Coupons Would Lure Shoppers, Diners*, S.F. EXAMINER, Apr. 19, 2000, at A4 (quoting one owner as saying it was a very bad time for business owners and that it was “very quiet at night”).

137. See Venise Wagner, *Fair Brings Back Chinatown's Night Market—Fair Draws Hundreds During Typically Slow Time*, S.F. EXAMINER, Oct. 17, 1999, at D1.

138. See Edward Epstein, *Chinatown Sells Idea of Weekly Night Market / Supervisors' Backing Gives Project Oomph*, S.F. GATE (Aug. 20, 1999, 4:00 AM), <https://www.sfgate.com/news/article/Chinatown-Sells-Idea-of-Weekly-Night-Market-2912137.php>.

139. See Wagner, *supra* note 137.

together to advocate on its own behalf in the political and electoral process.¹⁴⁰ Specifically, various community organizations rallied at City Hall to lobby the Board of Supervisors and applied political pressure by attending public hearings en masse.¹⁴¹ Community development groups came together to conduct transportation studies and became intimately involved with the city's planning process.¹⁴² San Francisco's population is about 36% Asian-American, with the largest subgroup being of Chinese descent at around 21%.¹⁴³ The Chinese also represent about 18% of the city's registered voters.¹⁴⁴ Not surprisingly, local politicians and government officials over the years have become aware of the Chinese community's ability to impact the electoral process.¹⁴⁵ Indeed, Chinatown has become an important voting bloc for supervisorial and mayoral candidates since the 1990s.¹⁴⁶ And since Chinatown's rise in political influence, one of the demands the community constantly makes is better access to transportation.

D. BUILDING THE CENTRAL SUBWAY

Through Proposition K,¹⁴⁷ San Francisco proposed a one-half cent sales tax to fund a thirty-year transportation spending plan in 2003.¹⁴⁸ That plan included allocations for the maintenance of local streets, support for regional transportation systems, and the construction of the Central Subway.¹⁴⁹ The subway would bring light-rail service into Chinatown from the Bayview-Hunters Point neighborhood, connecting Chinatown and residents from the southern sector of the city to Downtown, South of Market, and the Mission

140. See Bill Ong Hing, *Nonelectoral Activism in Asian Pacific American Communities and the Implications for Community Lawyering*, 8 UCLA ASIAN PAC. AM. L.J. 246, 247–49 (2002).

141. See CHIN, *supra* note 118.

142. See *id.*

143. Kevin Fagan, *Asian Population Swells in Bay Area, State, Nation*, S.F. GATE (Mar. 22, 2012, 4:00 AM), <https://www.sfgate.com/bayarea/article/Asian-population-swells-in-Bay-Area-state-nation-3425777.php>.

144. Robert Hsu, *Race as Politics in San Francisco's Mayoral Election*, ASIA SOC'Y (Nov. 15, 2011), <https://asiasociety.org/race-politics-san-franciscos-mayoral-election>.

145. See Monica Campbell, *The Power of San Francisco's Chinese Press*, PUB. RADIO INT'L (Nov. 7, 2011, 1:40 PM), <https://www.pri.org/stories/2011-11-07/power-san-franciscos-chinese-press>; Hsu, *supra* note 144 (“Asians are the fastest-growing racial group in the United States.” (internal quotation marks omitted) (quoting Janelle Wong, a professor of political science and ethnic studies at the University of Southern California)).

146. See Phil Matier, *Chinese American Vote up for Grabs in SF Mayoral Election*, S.F. CHRON. (Jan. 15, 2018), <https://www.sfchronicle.com/bayarea/article/Chinese-American-vote-up-for-grabs-in-SF-mayoral-12495220.php>; see also Gerry Shih, *In Mayoral Election, Chinese-Americans' Growing Power Is on Display*, N.Y. TIMES (Nov. 5, 2011), <https://www.nytimes.com/2011/11/06/us/in-mayoral-election-chinese-americans-growing-power-is-on-display.html>.

147. See S.F., Cal., Proposition K, Sales Tax for Transportation (Nov. 4, 2003), <http://www.amlegal.com/pdffiles/sanfran/2003-11-04-PropK.pdf> (passed by San Francisco County voters in the November 4, 2003 election).

148. S.F. DEP'T OF ELECTIONS, SAN FRANCISCO VOTER INFORMATION PAMPHLET: CONSOLIDATED MUNICIPAL ELECTION NOVEMBER 4, 2003, at 151 (2003), https://sfpl.org/pdf/main/gic/elections/November4_2003.pdf.

149. *Id.*

Bay.¹⁵⁰ This service, by providing a connection to the city's civic, business, and cultural centers, is critical to Chinatown residents who work outside of the neighborhood because existing public transportation is overcrowded and substandard.¹⁵¹

Furthermore, the proposed light-rail service would have connected many geographically separated Asian Americans with Chinatown as San Francisco's southeastern neighborhoods, including Bayview-Hunters Point, the Potrero, and Visitacion Valley, are home to many Asian Americans. Specifically, Asian Americans make up over 38% of the population in those communities and are the largest single ethnic group in the area.¹⁵² In other neighborhoods near the southern sector such as Excelsior, Oceanview, Ingleside, and Outer Mission, Asians make up a majority of the residents at 51%.¹⁵³

The Central Subway would become the San Francisco Municipal Transportation Agency's (SFMTA) single largest capital project.¹⁵⁴ Throughout different stages of planning, the 1.7 miles of construction had estimated costs ranging from \$648 million in November 2003, to \$1.578 billion in 2011.¹⁵⁵ Because of the sharply rising estimates, government watchdogs criticized the government's management and funding assessment of the project.¹⁵⁶ Opponents of the project argued that the transit needs addressed by the project would not benefit all San Franciscans, and thus did not justify the steep costs.¹⁵⁷ Given the uncertainty of costs and the ballooning price tag, critics cast doubt on whether the City could even afford to finance the Central Subway.¹⁵⁸

Chinatown community members worried that the future of the Central Subway was in jeopardy, and the City was concerned it would lose a critical opportunity to improve its transportation infrastructure.¹⁵⁹ This prompted the Municipal Transportation Agency to commit to issuing revenue bonds as

150. See *Central Subway Project: San Francisco's T Third Line Light Rail Extension to Downtown*, S.F. MUN. TRANSP. AGENCY, <https://www.sfmta.com/projects/central-subway-project> (last visited Mar. 19, 2019); S.F. CTY. TRANSP. AUTH., *CENTRAL SUBWAY PROJECT: FACT SHEET* (2017), https://www.sfcta.org/sites/default/files/content/CapitalProjects/images/Central_Subway/CentralSubway_factsheet_042017.pdf.

151. See S.F. CTY. TRANSP. AUTH., *CHINATOWN NEIGHBORHOOD TRANSPORTATION PLAN: FINAL REPORT 13-16* (2015), <https://www.sfcta.org/sites/default/files/content/Planning/ChinatownNTP/Chinatown%20NTP%20Final%20Report.pdf> (overview of Chinatown Neighborhood Transportation Plan including study focus and findings from previous transportation projects and studies).

152. John Wildermuth, *Asian American SF Political Clout Grows*, S.F. GATE (Sept. 19, 2011, 4:00 AM), <https://www.sfgate.com/politics/article/Asian-American-SF-political-clout-grows-2309047.php#item-85307-tbla-7>.

153. *Id.*

154. See S.F. CIVIL GRAND JURY, *CENTRAL SUBWAY: TOO MUCH MONEY FOR TOO LITTLE BENEFIT 4* (2010-2011), http://civilgrandjury.sfgov.org/2010_2011/Central_SubwayToo_Much_Money_for_Too_Little_Benefit.pdf.

155. *Id.* at 4-5

156. *Id.* at 5-11.

157. *Id.* at 39.

158. See Associated Press, *SF Chinatown Fears New Subway Could Be Scrapped*, MERCURY NEWS (Sept. 17, 2011, 7:26 AM), <https://www.mercurynews.com/2011/09/17/sf-chinatown-fears-new-subway-could-be-scrapped>.

159. See *id.*

assurance funding for the project in the event of additional cost overruns, and the Board of Supervisors passed a resolution on May 2012 in support.¹⁶⁰ At the time, it was estimated that a majority of the funding, 61% or \$966 million, would come from the federal government, 31% or \$488 million would come from the state, and 8% or \$124 million would come from the revenues derived through Proposition K.¹⁶¹

Despite opposition, the Central Subway is much-needed and long overdue, especially since Chinatown is the most densely populated area of the country not served by modern rail transportation.¹⁶² Before the Central Subway, San Francisco residents depended heavily on the 30 Stockton, 45 Union-Stockton, or 8 San Bruno bus lines to commute to and from Chinatown.¹⁶³ The SFMTA estimates that the 30 Stockton bus route serves about 28,000 customers daily, making it one of Muni's busiest bus routes.¹⁶⁴ The 45 Union-Stockton had 12,086 average daily boardings, putting it at the upper-middle echelon of Muni's bus ridership.¹⁶⁵ The City's goal for the Central Subway system was to alleviate much of that congestion and to improve mass transit for this heavily public-transit-dependent community. However, many viewed the subway system as a costly investment that would do little to address the city's transit needs.¹⁶⁶

III. RACIAL CONTROVERSIES

From the early days of Chinese immigration to the United States, San Francisco has had a history of discrimination against the Chinese.¹⁶⁷ The Chinese were perceived as "perpetual foreigners"¹⁶⁸ and the state passed legislation to discourage the Chinese from entering California altogether. In 1855, a tax on foreign miners was enacted, which disproportionately targeted the Chinese.¹⁶⁹ That same year, a "capitation tax" was enacted, which required

160. See S.F. Bd. of Supervisors Res. 146-12, Supporting Assurance Funding for the Central Subway Project (May 2, 2012), <http://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions12/r0146-12.pdf>.

161. See S.F. CIVIL GRAND JURY, *supra* note 154, at 4.

162. See generally S.F. MUN. TRANSP. AGENCY, CALENDAR ITEM NO. 10.5 (2012), <https://www.sfmta.com/sites/default/files/agendaitems/6-19-12item10.5resolutionofnecessity.pdf> (discussing the addition of 1.67 miles of light rail track from the Third Street Light Rail to a terminal in Chinatown).

163. See S.F. CTY. TRANSP. AUTH., *supra* note 151, at 32.

164. *30 Stockton Transit Priority Project: Expanded Service, Bigger Buses, and Quick Trips to Downtown*, S.F. MUN. TRANSP. AGENCY, <https://www.sfmta.com/projects/30-stockton-transit-priority-project> (last visited Mar. 19, 2019).

165. *Transit Effectiveness Project (TEP) Data*, S.F. MUN. TRANSP. AGENCY, <https://archives.sfmta.com/cms/rtep/tepdataindx.htm> (last visited Mar. 19, 2019).

166. See J.J. Barrow, *The Central Subway Project: San Francisco's Railway to Nowhere?*, U.C. BERKELEY GRADUATE SCH. JOURNALISM (July 9, 2012), <https://escholarship.org/uc/item/387160wq>.

167. See generally YAMAMOTO ET AL., *supra* note 72, at 24–25 (discussing the discrimination against Chinese immigrants in the 1800s).

168. Wu, *supra* note 56, at 146.

169. Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850–1870*, 72 CALIF. L. REV. 529, 539–40 (1984).

“any ship bringing into the state persons ineligible to become citizens to pay a tax of fifty dollars each for such passengers.”¹⁷⁰

Between 1870 and 1890, San Francisco passed a series of anti-Chinese laws that restricted where Chinese people could live and adversely impacted Chinese people’s economic stability, ability to work, and cultural and social lives.¹⁷¹ For example, in 1870, San Francisco passed the Cubic Air Ordinance, which required every lodging-house to provide five hundred cubic feet of airspace for every lodger.¹⁷² This ordinance disproportionately targeted Chinatown and the SROs Chinese immigrants were living in. Both landlords and lodgers who violated the ordinance were liable for a penalty of a fine or imprisonment in county jail.¹⁷³

That same year, San Francisco passed an ordinance that prohibited people who carried baskets or bags suspended from or attached to poles across or upon the shoulder from using any sidewalk.¹⁷⁴ The Chinese relied on this method of carrying and delivering goods for their jobs and businesses.¹⁷⁵ This was an especially common method of transporting clothing for the Chinese who were in the laundry business, an occupation often reserved for the Chinese¹⁷⁶ because white Americans opted for more profitable trades such as cigar and shoe manufacturing.¹⁷⁷ To further limit economic competition from the Chinese, San Francisco passed an ordinance in 1873 which required licenses for people operating laundries.¹⁷⁸ The fee schedule for these licenses included \$2 for one-vehicle laundries, \$4 for two-vehicle laundries, and \$15 for laundries employing no vehicles.¹⁷⁹ This fee schedule, by imposing a lower fee for laundries who employed vehicles and a higher fee for laundries who did not operate vehicles, may seem counterintuitive since employing vehicles increases efficiency from the business’s standpoint and increases the burden on other taxpayers due to additional road usage. However, the fact that most Chinese launderers could not afford vehicles at the time and relied mostly on manual transport may shed some light on San Francisco’s intentions in enacting the licensing requirement.

170. Christopher Chou, *Land Use and the Chinatown Problem*, 19 UCLA ASIAN PAC. AM. L.J. 29, 31 (2014).

171. *See id.* at 39–40.

172. *See* S.F. BD. OF SUPERVISORS, SAN FRANCISCO MUNICIPAL REPORTS FOR THE FISCAL YEAR 1871–1872, ENDING JUNE 30, 1872, at 592 (San Francisco, Cosmopolitan Printing Co. 1872); *see also* Chou, *supra* note 170, at 40.

173. Chou, *supra* note 170, at 40.

174. *Id.*

175. *See generally* Lori A. Nessel, *Instilling Fear and Regulating Behavior: Immigration Law as Social Control*, 31 GEO. IMMIGR. L.J. 525, 531 (2017) (stating that when the “sidewalk ordinance” criminalizing the act of walking through the city carrying a pole with baskets over one’s shoulder was passed, only the Chinese engaged in that act).

176. *See generally* David E. Bernstein, *Lochner, Parity, and the Chinese Laundry Cases*, 41 WM. & MARY L. REV. 211, 211 (1999) (discussing the discrimination against Chinese laundries).

177. *See* Chou, *supra* note 170, at 40.

178. *See id.*

179. *Id.*

Then, in 1880, San Francisco passed an ordinance that required operators of laundries in buildings not made of brick or stone to apply for a permit to continue operation.¹⁸⁰ At the time, of the approximate 320 laundries in San Francisco, 310 were constructed of wood.¹⁸¹ Yick Wo and 200 other laundry owners of Chinese descent (plaintiffs) sought permits to continue their operations.¹⁸² While all of their petitions were denied, 80 of 81 petitions by similarly situated laundry operators who were not of Chinese descent were granted permits.¹⁸³ The plaintiffs were fined and imprisoned after they continued to operate their laundries without permits.¹⁸⁴ Yick Wo petitioned for habeas corpus in state court.¹⁸⁵ This case, *Yick Wo v. Hopkins*, made it all the way to the United States Supreme Court, where the ordinance was struck down on equal protection grounds given the ample evidence of the discriminatory intent behind the ordinance.¹⁸⁶

San Francisco's denigration of the Chinese continued when the City passed the Queue Ordinance, which required male prisoners to have their hair cut or clipped within an inch of the scalp.¹⁸⁷ This ordinance disproportionately affected Chinese prisoners who wore queues, a traditional hairstyle for Han and Manchu Chinese in which the front portion of the head is shaved and the hair on the back of the head is grown long and braided.¹⁸⁸ The queue, for the Chinese men who wore it, symbolized Chinese tradition, culture, and pride.¹⁸⁹ As such, the Chinese viewed the Queue Ordinance as a demasculating attempt to shame Chinese men. Additional disparaging ordinances aimed at important aspects of Chinese culture included a prohibition of gongs, a limitation of theater hours, and the prohibition of firecrackers in areas that included Chinatown.¹⁹⁰

Over a century later, San Francisco considered taking action to regulate food consumption that would have disproportionately affected Chinatown and the city's larger Chinese community. In 1996, the San Francisco Commission of Animal Control and Welfare proposed a ban on the sale of live animals for food consumption.¹⁹¹ Such an ordinance would have been detrimental to the Chinese and other racial minorities who have prepared meals in traditional ways for

180. See *Yick Wo v. Hopkins*, 118 U.S. 356, 357 (1886).

181. *Id.* at 358–59.

182. *Id.* at 359.

183. *Id.*

184. *Id.* at 357.

185. *Id.* at 356–57.

186. *Id.* at 373–74.

187. *Ho Ah Kow v. Nunan*, 12 F. Cas. 252, 252 (C.C.D. Cal. 1879).

188. Michael R. Godley, *The End of the Queue: Hair as Symbol in Chinese History*, CHINA HERITAGE Q. (Sept. 2011), http://www.chinaheritagequarterly.org/features.php?searchterm=027_queue.inc&issue=027.

189. *Id.*

190. Chou, *supra* note 170, at 41.

191. See Edward Epstein, *Supervisor Calls Animal Rights Lawsuit Biased / Chinatown Merchants Sued for Selling Live Foodstuffs*, S.F. GATE (Apr. 22, 1997, 4:00 AM), <https://www.sfgate.com/news/article/Supervisor-Calls-Animal-Rights-Lawsuit-Biased-2844455.php>.

generations, and particularly for merchants such as those in Chinatown who have sold live animals as a livelihood for decades.¹⁹²

Today, San Francisco has a reputation of being a liberal city of acceptance that champions equality and welcomes diversity.¹⁹³ As a city that celebrates its large tourism industry and position as an international city, many believe that San Francisco's history of racial discrimination and anti-Asian violence is a matter of the past. However, events around the planning and construction of the Central Subway highlight the fact that racial insensitivity still exists in San Francisco, and bring to light lessons of historical discrimination against the Chinese,¹⁹⁴ which the city may have failed to learn.

A. "SUBWAY TO NOWHERE"

Chinatown has been one of the most openly persecuted neighborhoods in the history of San Francisco.¹⁹⁵ The Chinatown community remains incredibly underserved, particularly with respect to housing and transportation.¹⁹⁶ Transportation is especially important to Chinatown because the four corners of this densely populated community are surrounded by the neighborhoods of North Beach, Nob Hill, the Financial District, and Downtown Union Square. North Beach, also known as Little Italy, shares a border with Chinatown, and although the two communities co-exist in harmony today, they have had a history of contention and hostility.¹⁹⁷ On top of the hill adjacent to Chinatown is Nob Hill, home to the Fairmont and Ritz-Carlton Hotels. In the mid-1800s, railroad barons built their mansions in Nob Hill, overlooking Chinatown where the coolies and Chinese railroad laborers lived.¹⁹⁸ Bordering Chinatown on the opposite side is San Francisco's Financial District, which is home to the city's largest concentration of corporate headquarters, law firms, real estate firms, and banking institutions.¹⁹⁹ Finally, on the southern border of Chinatown is Downtown Union Square, which serves as San Francisco's central shopping,

192. Ming-Han Liu, *Reconsidering Animal Rights: Should Selling Live Animals for Food Consumption Be Banned?*, 6 DICK. J. ENVTL. L. & POL'Y 279, 297 (1997).

193. See Carolyn Hoecker Luedtke, *On the Frontier of Change: A Legal History of the San Francisco Civil Rights Movement, 1944–1970*, 10 TEMP. POL. & C.R.L. REV. 1, 2 (2000) ("San Francisco has long held a reputation as a liberal, cosmopolitan city full of diverse populations living in harmony.").

194. See generally Victor M. Hwang, *The Interrelationship Between Anti-Asian Violence and Asian America*, 21 CHICANO-LATINO L. REV. 17 (2000) (discussing how anti-Asian violence lead to the development of an Asian American identity and a community).

195. See Mary Szto, *From Exclusion to Exclusivity: Chinese American Property Ownership and Discrimination in Historical Perspective*, 25 J. TRANSNAT'L L. & POL'Y 33, 66–68 (2015–2016).

196. See Lee, *supra* note 104, at 200 (discussing the overcrowding in low-cost housing in Chinatown).

197. See Jessica Kwong, *SF Noodle Fest Dishes Up North Beach, Chinatown*, S.F. GATE (Apr. 30, 2011, 4:00 AM), <https://www.sfgate.com/bayarea/article/SF-Noodle-Fest-dishes-up-North-Beach-Chinatown-2373788.php>.

198. See generally *Nob Hill—a Touch of Class*, S.F. TRAVEL, <http://www.sftravel.com/article/nob-hill-touch-class> (last visited Mar. 19, 2019) (discussing the history of Nob Hill).

199. *Financial District, San Francisco*, WIKIPEDIA, https://en.wikipedia.org/wiki/Financial_District,_San_Francisco (last visited Mar. 19, 2019).

hotel, and theater district.²⁰⁰ Thus, Chinatown is caged-in by its surrounding landmark districts and occupies valuable land. Consequently, its residents have frequently been met with discrimination and ignorance when advocating for zoning ordinances²⁰¹ or transportation funding.²⁰²

The San Francisco Civil Grand Jury chose to investigate the Central Subway project in 2011.²⁰³ The Civil Grand Jury is comprised of 19 members and functions to investigate the operations of government officers, departments, and agencies in the City and County of San Francisco.²⁰⁴ The jury is impaneled by the Presiding Judge of the Superior Court and has jurisdiction to return criminal indictments.²⁰⁵ After a seven-month investigation, the Civil Grand Jury released a report stating that the project required “too much money for too little benefit,” and criticized its design for advancing the interests of only a single community, Chinatown, instead of the broader Downtown to North Beach area.²⁰⁶

During the 2011 mayoral election, the Democratic County Central Committee Chair and former district supervisor of Chinatown spoke out against the Central Subway project, saying it was too expensive and would not substantially improve public transit in the downtown area.²⁰⁷ Many opponents criticized the Central Subway as a “subway to nowhere.”²⁰⁸ Those sentiments were echoed by the City Attorney and mayoral candidate, Dennis Herrera.²⁰⁹ Many in the Chinese community were offended by the implication that Chinatown was not a place worth going as evidenced by the use of the term “nowhere”.²¹⁰ The Chinese community found the implication both factually

200. See *Union Square, San Francisco*, WIKIPEDIA, https://en.wikipedia.org/wiki/Union_Square,_San_Francisco (last visited Mar. 19, 2019).

201. See J.K. Dineen, *Chinatown Clash: Co-Working Space, Other Tech Uses Violate Zoning*, S.F. CHRON. (Apr. 30, 2015, 6:20 PM), <https://www.sfchronicle.com/bayarea/article/Chinatown-clash-Co-working-space-other-tech-6234741.php>.

202. See Matthew Roth, *As Central Subway Funding Deadline Looms, Chinatown Rallies Support*, STREETS BLOG SF (Nov. 17, 2010), <https://sf.streetsblog.org/2010/11/17/as-central-subway-funding-deadline-looms-chinatown-rallies-support>.

203. S.F. CIVIL GRAND JURY, *supra* note 154, at 1.

204. *About Us*, S.F. CIVIL GRAND JURY, <http://civilgrandjury.sfgov.org/aboutus.html> (last visited Mar. 19, 2019).

205. *Id.*

206. See S.F. CIVIL GRAND JURY, *supra* note 154.

207. See Matt Smith, *Central Subway Denounced by Former Supporter, Aaron Peskin*, S.F. WKLY. (Aug. 31, 2011, 9:15 AM), <https://archives.sfweekly.com/thesnitch/2011/08/31/central-subway-denounced-by-former-supporter-aaron-peskin>.

208. See Stephen L. Taber, *Opinion, San Francisco's Central Subway to the Future*, S.F. GATE (Sept. 1, 2011, 4:00 AM), <https://www.sfgate.com/opinion/openforum/article/San-Francisco-s-Central-Subway-to-the-future-2311300.php>; see also Peter Rogoff, Letter to the Editor, *The Billion Dollar-a-Mile Subway Makes Perfect Sense*, WALL ST. J. (Sept. 3, 2011), <https://www.wsj.com/articles/SB10001424053111904583204576542691025904076>.

209. See Aaron Sankin, *Dennis Herrera Slams Central Subway Project He Previously Supported*, HUFFINGTON POST (Sept. 8, 2011, 7:41 PM), https://www.huffingtonpost.com/2011/09/08/dennis-herrera-slams-central-subway-project_n_954778.html.

210. See Associated Press, *supra* note 158.

invalid—as Chinatown is one of San Francisco’s top tourist destinations²¹¹—and offensive and racially insensitive given the city’s history of discrimination against the Chinese.

As part of his mayoral candidacy, Herrera made the Central Subway a key issue and authored a nine-page opposition to the project, deeming it a “fiasco.”²¹² However, some question whether Herrera genuinely opposed the project, arguing that his opposition was a mere political maneuver—a guise to consolidate support from conservative non-Chinese voters.²¹³ During the election, Ed Lee, who was the interim Mayor, enjoyed popular support within the Chinese community.²¹⁴ Lee began his public service career in Chinatown and was a staunch supporter of the Central Subway project.²¹⁵ Numerous polls deemed Lee the front-runner in the mayoral election, which his victory in the election confirmed,²¹⁶ as well as the thriving political might of San Francisco’s Chinese community.

Nevertheless, opponents of the Central Subway argued that the project would make public transit worse for the rest of San Francisco because construction and the diversion of transportation funding would overburden Muni.²¹⁷ In response, Ed Lee, who became the first Chinese-American mayor of San Francisco, persistently advocated for the Central Subway, highlighting the benefits it would bring to the city’s long-term transportation infrastructure, and the fact that it would generate some 33,000 jobs for the city.²¹⁸ Lee also balked at the notion that the Central Subway, providing an essential transportation service to the Chinatown community, was a “subway to nowhere.”²¹⁹

B. MITIGATING CONSTRUCTION EFFECTS

In addition to dealing with hostility and ignorance during the funding and planning stages of the Central Subway, Chinatown faced significant hurdles during the construction phases of the Central Subway. On February 9, 2010,

211. See *Spotlight: San Francisco*, VISIT CAL., <http://www.visitcalifornia.com/destination/spotlight-san-francisco> (last visited Mar. 19, 2019).

212. See DENNIS HERRERA, IT’S TIME TO RETHINK THE CENTRAL SUBWAY 1, 9 (2011), <https://savesfmuni.files.wordpress.com/2012/08/herrera2011.pdf>.

213. See John Diaz, *SF Plans a Subway to...Somewhere*, S.F. GATE (Sept. 4, 2011, 4:00 AM), <https://www.sfgate.com/opinion/diaz/article/Diaz-SF-plans-a-subway-to-hellip-somewhere-2311041.php>.

214. See Shih, *supra* note 146.

215. See Barbara Taylor, *San Franciscans Rally to Support Central Subway*, CBS LOCAL (Sept. 9, 2011, 9:20 PM), <http://sanfrancisco.cbslocal.com/2011/09/09/san-franciscans-rally-to-support-central-subway>.

216. Aaron Sankin, *San Francisco Mayor Poll Shows Ed Lee with Massive Lead*, HUFFINGTON POST (Dec. 17, 2011), https://www.huffingtonpost.com/2011/10/17/san-francisco-mayor-poll-ed-lees-big-lead_n_1016247.html.

217. Jake McGoldrick, *S.F. Must Stop the Central Subway from Being Built*, S.F. CHRON. (Aug. 18, 2011, 4:00 AM), <https://www.sfgate.com/opinion/openforum/article/S-F-must-stop-Central-Subway-from-being-built-2334935.php>.

218. Associated Press, *supra* note 158.

219. See *id.*

ground was officially broken for the Central Subway.²²⁰ After four years, the tunnel boring process for the subway, from South of Market to the North Beach neighborhood, was finally complete.²²¹ Although the Central Subway had an estimated completion date in 2018, construction delays changed the forecasted opening date to the public to 2019.²²² Further infrastructure complications were reported towards the end of 2017, which pushed the Central Subway further behind schedule with a new completion date in 2021.²²³ Throughout this time, merchants in surrounding neighborhoods were affected by street closures and construction dust, which negatively impacted their businesses.²²⁴ As a result, merchants threatened to sue the City, and many businesses lobbied City Hall.²²⁵ Situations worsened when subway construction led to a water-main break in the Union Square district, leaving many businesses' basements flooded.²²⁶ This prompted representatives from Downtown Union Square, including Neiman Marcus, Chanel, Barneys New York, Dior, and Bulgari to meet personally with the Mayor to relay their concerns about the Central Subway.²²⁷

The Union Square businesses' lobbying efforts proved successful, prompting the City to support the erection of a pop-up pedestrian plaza.²²⁸ To bring business back to Union Square, the City closed two blocks of lower Stockton street within the construction zone to traffic and opened the streets to food vendors, entertainers, and shoppers.²²⁹ While the pedestrian plaza was a boon for Union Square businesses, the street closure essentially cut off Chinatown's access to lower Stockton Street, forcing drivers coming in and out of the neighborhood to find detours.²³⁰ Reminiscent of the events following the Embarcadero Freeway closure, the City's decision to block off lower Stockton

220. Michael Rhodes, *City Leaders Gather for Central Subway Groundbreaking Ceremony*, STREETS BLOGSF (Feb. 9, 2010), <https://sf.streetsblog.org/2010/02/09/city-leaders-gather-for-central-subway-groundbreaking-ceremony/>.

221. See Michael Cabanatuan, *S.F. Central Subway's Big Dig Done*, S.F. GATE (June 25, 2014, 8:03 AM), <https://www.sfgate.com/bayarea/article/Big-dig-done-on-S-F-s-Central-Subway-5576650.php>.

222. Joe Fitzgerald Rodriguez, *Central Subway Project Faces up to 10-Month Delay*, S.F. EXAMINER (July 10, 2017, 1:00 AM), <http://www.sfexaminer.com/central-subway-finances-hole>.

223. Phil Matier, *SF's Central Subway Falling Further Behind Schedule, Builder Warns*, S.F. CHRON. (Dec. 6, 2017, 6:00 AM), <https://www.sfchronicle.com/bayarea/article/SF-s-Central-Subway-falling-further-behind-12408123.php>; see also Joe Fitzgerald Rodriguez, *Central Subway Completion Date Delayed Again*, S.F. EXAMINER (July 25, 2017, 1:00 AM), <http://www.sfexaminer.com/central-subway-completion-date-delayed>.

224. See Michael Cabanatuan, *Central Subway Work Starts amid Problems*, S.F. GATE (July 19, 2012, 12:08 AM), <https://www.sfgate.com/bayarea/article/Central-Subway-work-starts-amid-problems-3714932.php>.

225. See Adam Brinklow, *Union Square Wants Stockton Closure, Chinatown Power Player Says No*, CURBED S.F. (Aug. 10, 2016, 8:44 AM), <https://sf.curbed.com/2016/8/10/12421346/union-square-stockton-closure-chinatown>.

226. *Id.*

227. *Union Square Merchants Not Digging New Subway*, S.F. GATE: MATIER & ROSS (Sept. 29, 2014, 10:00 AM), <https://blog.sfgate.com/matierandross/2014/09/29/union-square-merchants-not-digging-new-subway>.

228. Michael Cabanatuan & Evan Sernoffsky, *Stockton Street Becomes Holiday Pedestrian Plaza—Should Closure Be Permanent?*, S.F. GATE (Nov. 22, 2016, 3:27 PM), <https://www.sfgate.com/bayarea/article/Stockton-Street-becomes-holiday-pedestrian-plaza-10629065.php>.

229. See *id.*

230. See *id.*

Street was history repeating itself. Yet again, another closure of a main Chinatown artery was being implemented to benefit other neighborhoods, but without the input of the Chinatown community.

Proponents of the pedestrian plaza argued the closure would only be temporary and was necessary because of the holiday shopping seasons. City officials believed the pedestrian plaza was appropriate, especially during the Thanksgiving and winter holiday season when foot traffic from holiday shoppers is incrementally increased.²³¹ However, the same level of consideration was not offered for Chinatown merchants. Chinese New Year is one of the most celebrated holidays around the world and the most important of the traditional Chinese holidays.²³² During this time of the year, Chinatown transforms into a shopping center for Chinese throughout the city to purchase fruits, vegetables, baked goods, and gifts during the New Year's celebration.²³³ Stockton Street is often flooded with shoppers during this holiday season, and vendors require additional sidewalk space for stalls to display produce and goods.²³⁴ Another popular shopping holiday is the Autumn Moon Festival, which brings thousands of people into Chinatown's Grant Avenue.²³⁵ Construction for the Central Subway impacted the Chinatown community and forced businesses to close, but city officials did not offer similar accommodations to Chinatown merchants as was afforded to Union Square businesses.²³⁶ Making matters worse, the SFMTA proposed to make the Union Square pedestrian plaza permanent, effectively closing off lower Stockton Street to through traffic for good.²³⁷

Hoping not to let history repeat itself, Chinatown lobbied City Hall to prevent the Stockton Street closure.²³⁸ Chinatown community leaders threatened to act by organizing merchants to blockade City Hall with hundreds of delivery trucks.²³⁹ Although the future of Stockton Street remains unclear, the Chinatown community successfully advocated for the allocation of funding in the form of stipends to Chinatown merchants whose businesses have been negatively

231. *See id.*

232. Ejaz Khan, *10 Most Celebrated Annual Holidays Around the World*, WONDERSLIST, <https://www.wonderslist.com/10-most-celebrated-annual-holidays-around-the-world> (last visited Mar. 19, 2019).

233. *See* John Wildermuth, *Stockton Street's Sidewalks Get a Twist*, S.F. GATE (Feb. 5, 2013, 4:29 PM), <https://www.sfgate.com/bayarea/article/Stockton-Street-s-sidewalks-get-a-twist-4253383.php>.

234. *Id.*

235. Steve Rubenstein, *Autumn Moon Festival Brings Crowds to Chinatown's Grant Avenue in SF*, S.F. GATE (Sept. 30, 2017, 2:59 PM), <https://www.sfgate.com/bayarea/article/Autumn-Moon-Festival-brings-crowds-to-12243505.php>.

236. *See generally* Joe Fitzgerald Rodriguez, *Chinatown Businesses Shutter in Face of Central Subway Construction*, S.F. EXAMINER (Aug. 9, 2017, 1:00 AM), <http://www.sfexaminer.com/chinatown-businesses-shutter-face-central-subway-construction> (discussing the Central Subway construction's negative impact on Chinatown businesses).

237. *See* C.W. Nevius, *Closing Stockton Street Won't Be a Walk in the Park*, S.F. CHRON. (Aug. 8, 2016, 5:28 PM), <https://www.sfchronicle.com/bayarea/nevius/article/Closing-Stockton-Street-won-t-be-a-walk-in-the-9130120.php>.

238. Brinklow, *supra* note 225.

239. *Id.*

impacted during the construction of the Central Subway.²⁴⁰ However, this provoked frustration among city department heads who were concerned about opening the door to more “public handouts.”²⁴¹ They feared it would create the precedent for other neighborhood merchants to demand city aid for other similar situations.²⁴²

C. STATION NAMING

While construction was still underway, yet another controversy arose when the Chinese community sought to provide input into the naming of the Chinatown subway station. As per common practice to name landmarks, streets, boulevards, and parks after civic leaders, the Chinese community sought to name the Chinatown station after one of the community’s leaders. On September 18, 2016, Rose Pak, who was a leader in the Asian-American community and one of the strongest and most visible advocates of the Central Subway project, passed away.²⁴³ In her memory, the Chinatown community came together and lobbied the San Francisco Board of Supervisors to pass a resolution urging the SFMTA to name the Chinatown Central Subway Station after Rose Pak.²⁴⁴ However, these efforts were met with opposition and stalled.²⁴⁵ Although the Board of Supervisors passed the resolution unanimously,²⁴⁶ the SFMTA refused to do so, reasoning that naming a station after a person would confuse riders.²⁴⁷ In an official statement released less than two months after the board’s resolution, the transportation agency reasoned that stations and stops “need[ed] to be named in a way that clearly communicates the location to frequent, infrequent and prospective transit users and visitors to the area.”²⁴⁸ The agency

240. See Rachel Swan, *SF Ponies Up Money for Chinatown Merchants Suffering from Subway Build*, S.F. CHRON. (Dec. 1, 2017, 3:27 PM), <https://www.sfchronicle.com/politics/article/City-ponies-up-225k-to-help-Chinatown-merchants-12396697.php>.

241. *See id.*

242. *Id.*

243. See John Wildermuth, *Rose Pak, SF Political Powerhouse, Dies*, S.F. GATE (Sept. 21, 2016, 4:24 PM), <https://www.sfgate.com/news/article/Rose-Pak-SF-political-powerhouse-dies-9230594.php>.

244. Caleb Pershan, *Supes Pass Resolution Urging SFMTA to Name Chinatown Central Subway Station After Rose Pak*, SFIST, (Oct. 10, 2016, 11:30 AM), http://sfist.com/2016/10/10/board_of_supervisors_urges_to_name.php.

245. See Will Carruthers, *Citizens’ Advisory Council Discovers Muni Has No Policy for Naming Central Subway After Late Chinatown Activist Rose Pak*, INGLESIDE-EXCELSIOR LIGHT (Oct. 12, 2016), <http://ielightsf.com/2016/10/12/citizens-advisory-council-discovers-muni-has-no-policy-for-naming-central-subway-after-late-chinatown-activist-rose-pak/>; Emily Green, *Supes Want Chinatown Subway Station Named for Rose Pak*, S.F. CHRON. (Oct. 12, 2016, 5:48 PM), <https://www.sfchronicle.com/bayarea/article/Supes-want-Chinatown-subway-station-named-for-9967351.php>.

246. S.F. Bd. of Supervisors Res. 436-16, *Urging the San Francisco Municipal Transportation Agency’s Board of Directors to Consider Naming the Central Subway’s Chinatown Station the Central Subway’s “Rose Pak Station”* (Oct. 4, 2016), <https://sfgov.legistar.com/View.ashx?M=F&ID=4734461&GUID=8E0BDFB7-5D71-461A-9AAA-A35367712A3F>.

247. See S.F. Mun. Transp. Agency Bd. of Dirs. Res. 16-168 (Dec. 6, 2016), <https://www.sfmta.com/sites/default/files/agendaitems/2016/12-6-16%20Item%2017%20-%20Station%20Naming%20Policy%20RESOLUTION.pdf>.

248. *Id.*

further provided that transit stations and stops should “highlight the geographic location of the stop,” and in the event of an emergency, the name of the stop should be “clearly understood by the general public and first responders.”²⁴⁹

Although the SFMTA’s rationale seems reasonable when considered in isolation, the fact that so many of San Francisco’s streets and Muni stations are named after individuals sheds light on the pretextual nature of the agency’s explanation. Since so many of San Francisco’s major streets are dedicated to white men, if the city were to follow SFMTA’s rationale in naming stations, any station erected along major streets would necessarily be named after those same white men. For example, numerous transit stations and stops are prominently named after individuals including James Van Ness, John W. Geary, James Polk, John Montgomery, and George Hyde;²⁵⁰ none of these station names indicate the geographic location of the stop. In Chinatown specifically, examples of individuals with streets named after them include Henry Clay, Stephen W. Kearny, Richard F. Stockton, William J. Powell, Ulysses S. Grant, George Washington, and Andrew Jackson.²⁵¹ While SFMTA’s station naming policy may seem reasonable from a logistical standpoint, whether it makes sense from a social and public policy perspective is debatable. One obvious distinguishing factor between these individuals, who have transit stops named after them, and Rose Pak is the fact that the former had long passed away before modern day mass transit. Another distinguishing factor is the fact that the former were all white men of privilege, whereas Rose Pak was a woman of Chinese descent. It is unclear whether the SFMTA contested naming the subway station after a white, male civic leader; however, the Transbay Joint Powers Authority quickly contradicted the SFMTA’s transparent naming policy when it sold the naming rights of the Transbay Transit Center to a billion-dollar software company only a few months later.²⁵²

On July 13, 2017, the Transbay Joint Powers Authority voted to approve a naming and signage rights agreement with salesforce.com to name the new Transit Center the “Salesforce Transit Center.”²⁵³ The agreement was for a twenty-five-year term and consisted of an aggregate escalated fee of over \$110 million.²⁵⁴ Although the two transportation agencies are different bodies, the contradictory actions and policies of the city’s government officials are glaring. On one hand, the SFMTA crafted a naming policy that discriminated against a historically disenfranchised community, which had engaged in a grassroots

249. *Id.*

250. Samuel L. Lupton, *The Making and Naming of the Streets of San Francisco*, S.F. GENEALOGY, <http://www.sfgenealogy.org/sf/history/hgstr.htm> (last visited Mar. 19, 2019).

251. *Id.*

252. John King, *Salesforce Buys Naming Rights to Transbay Transit Center*, S.F. CHRON. (July 7, 2017, 9:01 PM), <https://www.sfchronicle.com/bayarea/article/Salesforce-buys-naming-rights-to-Transbay-Transit-11274011.php>.

253. Bd. of Dirs., Transbay Joint Powers Auth., *Notice of Meeting and Calendar: Thursday, July 13, 2017*, <http://tjpa.org/calendar-items/board-meeting-july-13-2017> (last visited Mar. 19, 2019).

254. *Id.*

campaign to name a subway station after one of its community leaders. On the other hand, the Transbay Joint Powers Authority willingly sold the naming rights of a major transit center to a billion-dollar software company for a fee of \$110 million dollars.²⁵⁵

These separate but related incidents provide a stark contrast and an example of how money-backed interests in San Francisco can be successful in gaining public naming rights, whereas the efforts of grassroots community advocacy do not yield the same result. Particularly surprising is the fact that the two incidents occurred within a year of one another, and the director of the SFMTA at the time served concurrently on the board of the Transbay Joint Powers Authority.²⁵⁶

For Chinese Americans, the controversy around the naming of the Chinatown Central Subway station may serve as a reminder of a time in San Francisco's history when the Chinese were blatantly discriminated against. A time when anti-Chinese sentiment and racial discrimination were a result of a fear of so-called foreigners. A time when American society felt that Chinese immigrants posed a threat to the status quo and what white Americans perceived as normalcy. Indeed, this fear served as a justification for racism and biases, both explicit and implicit, against the Chinese.

CONCLUSION AND RECOMMENDATIONS

Federal, state, and local governments' decisions regarding transportation policy have historically been, and continue to be, influenced by race. The resulting impacts on minority communities—segregation, social ostracism, the reinforcement of stereotyping and racism, disenfranchisement, and economic harm—are undeniable. Transportation infrastructure is vital for any economy; it is a powerful engine for profit and a valuable amenity for real estate developers. And yet, transportation investments often conflict with racial and social justice. What serves as a boost for the economy does not always promote social justice. The San Francisco Chinatown community and its history with the Central Subway project provides just one of many examples.

Advocacy for social justice remains necessary for marginalized communities across the country. The preservation and prosperity of Chinatown and other historically disenfranchised communities will require continual grassroots organizing and advocacy, particularly around investments to transportation infrastructure. Community-based organizations *must* organize community members and encourage civic engagement, especially with respect to the decision-making processes of transportation agencies. This is particularly important because transportation officials who make these decisions likely do

255. See Riley McDermid, *SFMTA Director Says Naming Site Salesforce Transit Center Is 'Distasteful'*, S.F. BUS. TIMES (July 17, 2017, 11:17 AM), <https://www.bizjournals.com/sanfrancisco/news/2017/07/17/sfnta-salesforce-transit-center.html>.

256. See Jay Barmann, *'Salesforce Transit Center' Is Now Officially a Thing; SFMTA Head Calls It 'Distasteful'*, SFIST (July 14, 2017), http://sfist.com/2017/07/14/salesforce_transit_center_is_now_of.php.

not live in the communities that will be adversely affected by their decisions. Often, they are disconnected from the community, and base funding and infrastructure decisions on limited or incomplete information or on explicit or implicit racial biases. In contrast, community residents who are directly impacted by infrastructural decisions have a much better sense of the needs of their communities. Therefore, it is critical that they play a part in shaping the transportation policies that affect their neighborhoods.

In addition to organizing, community members should coordinate and advocate for transit plans that promotes equity. Working with transportation agencies, residents must create plans that address the specific needs of their individual neighborhoods. Beyond traffic routes and bus stops, a transit equity plan should consider variables such as population densities, socioeconomic classes, and employment patterns throughout different neighborhoods. Through this process, marginalized communities can be involved in addressing transportation funding needs and determining development outcomes. A coordinated plan that includes community input ensures transportation projects are not prioritized based solely on economic development hotspots or affluent communities, which have more access to decision-makers.

Transit agencies must also be held accountable for ensuring that equity plans are properly implemented and that community input is continually sought before important infrastructure decision are made. After all, the utility of a transit equity plan is limited if it is never actually executed. Moreover, agencies may be better-positioned to serve communities if all employees, commissioners, and directors engage in implicit bias training. This training would teach decision-makers to challenge deeply-ingrained learned stereotypes, and bring to light methods and procedures for ensuring that the decision-making process is not unintentionally tainted by implicit biases. San Francisco's Department of Human Resources has taken meaningful steps in this arena by delivering implicit bias workshops to over 1,050 city employees.²⁵⁷ Other municipalities and agencies would be well-served to follow similar steps.

Because transparency and oversight of transportation agencies are necessary to protect the public interest, communities must also be organized in the political process. To hold agencies accountable, voters must elect government officials who truly understand the needs of their communities. Residents should continue to lobby at town hall hearings, advocate at city hall rallies, and support propositions at the ballot. Additionally, having an elected representative who has the community's interests at heart in office greatly helps to ensure accountability.

In sum, because transportation planning has a profound impact on all aspects of our economy, it plays a critical role in ameliorating or exacerbating social inequality. To ensure that racial and social equality are promoted by our

257. CITY & CTY. OF S.F., DEP'T OF HUMAN RES., ANNUAL REPORT 2016-2017, at 15 (2017), <https://sfhr.org/sites/default/files/documents/Reports/DHR-Annual-Report-FY16-17.pdf>.

transportation infrastructures, communities must be organized and involved in the decision-making processes of transportation agencies. Needs and concerns of neighborhoods, especially those that have been historically disenfranchised, must be addressed in transportation policies and plans. Finally, residents must be involved in the political process to elect into office people who truly represent the interests of their communities and will hold other governmental agencies accountable.