

ON THE WRONG TRACK: LIGHT RAIL'S INTRODUCTION TO THE RAINIER VALLEY SYSTEMATICALLY EXCLUDES MINORITIES AND THE POOR

By: Loren Halstrom

I. Introduction

In 1996, voters in the tri-county Seattle Metro area approved a plan that significantly expanded transit options in the region.¹ As part of the plan, an electric light rail line would run between Seattle's University District neighborhood and the Seattle-Tacoma International Airport.² By November 1999, Central Puget Sound Regional Transit Authority's ("Sound Transit") board settled on its route, which included going through Rainier Valley along Martin Luther King Way.³

The Rainier Valley neighborhood, located in south Seattle, is considered one of the most diverse neighborhoods in the country.⁴ Since Rainier Valley's median income has always been lower than that of the rest of the city,⁵ the region's leaders saw the light rail route as an opportunity to tie Rainier Valley into the economic success of the Seattle region.⁶ However, on the basis of fairness and safety, many of Rainier Valley's residents did not welcome the light rail.⁷ The light rail would be put on surface level streets in Rainier Valley, whereas most of the rest of the route would be elevated above ground or built underground.⁸ As a result, most of the negative effects of the light rail would be borne by Rainier Valley residents.⁹

This article will trace how the introduction of the light rail in Seattle's Rainier Valley neighborhood systematically disadvantaged racial minorities by burdensome construction, increased costs of living, and exclusion from resulting benefits. Part II explains the *Save Our Valleys* suit, where Rainier Valley's residents sought to force the light rail underground. Part III briefly touches on the adverse effects of the light rail's construction. Part IV discusses the detrimental after-effects of light rail to the Valley's minority and poor populations. Finally, the article concludes in Part V with some suggestions for ensuring the inclusion

of the poor and minorities during and after the completion of large transportation projects.

II. Save Our Valley Suit

Residents of the Rainier Valley pointed to the results of the Sound Transit's first Environmental Impact Statement ("EIS"), which showed the significant disadvantages that Rainier Valley residents would incur when compared to other Seattle neighborhoods. The EIS included such factors as noise, disruption, and delayed travel time for motorists.¹⁰ Additionally, Sound Transit required takings of more than 300 properties in the Rainier Valley, compared to about 50 properties for the rest route north of downtown Seattle.¹¹ The Environmental Protection Agency also complained that most of the projects' downsides were concentrated in the Rainier Valley.¹²

As a result of these concerns, residents formed Save Our Valley ("SOV") to ask that the tracks be put below ground as they would be in the more affluent, largely white neighborhoods that are located north of downtown Seattle.¹³ After the Sound Transit board ignored these concerns, SOV sued.¹⁴ In *Save Our Valley v. Sound Transit*,¹⁵ SOV rooted its claims in the Civil Rights Act, which stipulates that:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress . . .¹⁶

SOV argued that, under various federal regulations, including the Department of Transportation's ("DOT") disparate-impact regulation,¹⁷ the residents of Rainier Valley had the right to receive no more disruption than neighborhoods with a majority of white residents.¹⁸ The district court held that regulations do not provide enforceable rights under the Civil Rights Act, and it gave summary judgment to Sound Transit.¹⁹

On appeal, the Ninth Circuit Court of Appeals upheld the District Court's ruling.²⁰ In *Save Our Valley*, the majority held that while statutes could create rights enforceable under the Civil Rights Act,²¹ regulations only serve to provide persuasive insight as to what Congress intended a particular statute to mean.²² Looking at DOT's disparate-impact regulation, promulgated through Title VI, sections 601-02,²³ the court found that Congress only authorized the right to be free from "intentional discrimination," and *not* "the right to be free from racially discriminatory effects."²⁴ The majority essentially concluded that even if Rainier Valley residents received harmful effects from the introduction of the light rail, the residents possessed no judicial remedy. As such, the majority managed to circumvent from the original intent of the Civil Rights Act, which was established to safeguard the rights of minority populations from abusive state action.²⁵

III. Construction

Many small businesses in Rainier Valley suffered significantly during the construction of the light rail, particularly on Martin Luther King Way. 286 businesses were directly affected by the light rail's construction.²⁶ For example, the construction forced Visions of Beauty, a beauty salon, to stay open only two days a week, down from five.²⁷ As a result, the salon lost more than half of its normal business.²⁸ There were additional disruptions, such as construction workers arriving without notice and tearing up the sidewalk in front of the salon.²⁹ Jessie Jones, owner of Visions of Beauty, aptly summarized the hardship small businesses like hers faced during the light rail's construction. In a note she sent to the local government, she said, "After all this is over you may have a nice light rail, but I will be another BLACK BUSINESS out in the cold."³⁰

In response to these concerns, the City of Seattle passed a resolution that set up the Rainier Valley

Community Development Fund to defray the costs that small business owners faced during the construction.³¹ The fund provided \$50 million to be used, in part, to boost small business during the construction of the light rail.³² By 2005, data showed that the median drop in sales among businesses receiving grants amounted to thirty-six percent, with forty-two percent of grantees having a decline in sales by a factor of fifty percent or higher.³³ Additionally, nearly three-fourths of all businesses affected were owned by minorities.³⁴ By 2007, when construction of the light rail ended, 165 businesses had received grants.³⁵ Even with the grants, merchants were still struggling, taking losses and debts to survive through the light rail's construction.³⁶

IV. Exclusion From the Benefits

In May 2012, the Puget Sound Sage, a community organization promoting the rights of workers,³⁷ released a controversial report about the detrimental effects of the light rail on minorities in the Rainier Valley community.³⁸ The report concluded that the light rail's transit-oriented development³⁹ ("TOD") did not successfully include low-income residents or people of color.⁴⁰ It noted that land values surrounding rail stations in Southeast Seattle – a region inclusive of the Rainier Valley – rose over fifty percent since 2005.⁴¹ Particular pockets have increased exponentially; for example, land value around Othello station (located in Rainier Valley) increased 513 percent between 2004 and 2011.⁴² The report reminds that "[u]nlike homeowners who can capture the increased value[,] . . . residents that rent cannot benefit from property value increases. Instead, they can be destabilized by housing costs that increase faster than their income."⁴³ In Rainier Valley, eighty-one percent of existing renters are already considered "housing cost burdened" – a condition where household incomes are less than \$35,000 and more than thirty percent of incomes go directly towards housing.⁴⁴

The increase in housing costs has sped up Rainier Valley's gentrification.⁴⁵ Residents of Rainier Valley were displaced and relocated to suburbs further away from the city core in order to find affordable housing.⁴⁶ Moving to the suburbs creates financial burdens,⁴⁷ reduces the amount of accessible jobs,⁴⁸ disrupts community cohesion,⁴⁹ and leads to poorer

health outcomes.⁵⁰ Chio Saeteurn, a displaced former resident of Rainier Valley, summarized these effects:

Our family was pushed to Kent [a South King County suburb] to find decent affordable housing to meet our growing family's needs, but all my friends, work and volunteer commitments are still in Seattle. Now, I have to commute quite a distance from the suburbs to Seattle, spending a lot of time in my car and money on gas—money that could be spent toward my family's groceries, paying down my student loans or saving toward my retirement.⁵¹

In sum, “displacement caused by gentrification unequivocally harms communities of color and low-income families.”⁵²

To the supporters of the light rail, displacement is simply a side effect of the larger success of the light rail as a whole. For example, Roger Valdez, a supporter of high-density development, stated:

The answer to economic disparity among people of color — which is real — isn't to put the Rainier Valley under glass, keeping property values low and imposing an ethnic mix on neighborhoods. Our society values mobility and change — usually. Often, however, change can be disturbing. What we should be focused on is not limiting the success of light rail. It's working. A symptom of that success is neighborhood change.⁵³

Supporters of high-density development believe that there are distinct tradeoffs to be made. These supporters view high-density development as paramount and see displacement as unfortunate collateral damage. Speaking specifically about the downtown district of Seattle, a local blogger wrote:

I reluctantly argue for outright gentrification, despite its social costs, only because the alternative (sprawl, greenfield development, flight of talent and capital away from the city) is even worse. . . . If we don't

take these new arrivals, the suburbs will. We need their talent, creativity, incomes, and the life they will bring to our city. Downtown's future will be bright if we let it be, but it will be a rich future. Despite the misgivings of our progressive consciences, isn't a rich future better than a poor one?⁵⁴

This process of affluent whites returning to the city at the expense of minorities has been dubbed as “bright flight.”⁵⁵ Light rail, along with TOD, has served to exacerbate the effects of displacement.⁵⁶ As such, “[w]ithout deliberate effort to address [racially discriminatory] legacies and focus on racial equity outcomes from TOD[,] it seems likely that continued gentrification will result in harm to communities of color.”⁵⁷

V. Conclusion

Concerned about disparate impact from the introduction of light rail in Rainier Valley, SOV brought suit to address concerns about fairness, safety, noise, and disruption to businesses.⁵⁸ However, the discriminatory effects most noticeably affected the community *after* the introduction of light rail, for rising property values increasingly displaced and continue to displace the low-income earners and poor from Rainier Valley.

Even in the absence of facially discriminatory purpose, courts need provide avenues for redress of discriminatory effects.⁵⁹ There ought to be more meaningful inclusion of low-income residents and people of color in the Rainier Valley to mitigate these effects. Such opportunities include better access to living-wage jobs,⁶⁰ and maintenance of affordable housing.⁶¹ With low-income residents and people of color's concerns being met, they can also benefit from the light rail and its resulting development. As such, Rainier Valley can be seen as a community that is revitalizing the neighborhood rather than simply gentrifying and displacing.⁶²

(Endnotes)

¹ David Schaefer, *Voters Back Transit Plan On Fourth Try*, SEATTLE TIMES, (Nov. 6, 1996), available at <http://community.seattletimes.nwsourc.com/archive/?date=19961106&slug=2358535>; see also CENT. PUGET SOUND REG'L TRANSIT AUTH., SOUND MOVE – THE TEN-YEAR REGIONAL TRANSIT SYSTEM PLAN

33 (Tim E. Healy ed., 1996), available at http://www.soundtransit.org/Documents/pdf/news/reports/Sound%20Move/199605_SoundMoveTheTenYearRegionalTransitSystemPlan.pdf (explaining that the Sound Move plan would include park-and-ride centers, commuter rails, express bus lines, and light rails).

² CENT. PUGET SOUND REG'L TRANSIT AUTH., SOUND MOVE – THE TEN-YEAR REGIONAL TRANSIT SYSTEM PLAN at 33.

³ Alex Fryer, *A Milestone For Light Rail – Regional Board Selects Station Sites, Alignment*, SEATTLE TIMES (Nov. 19, 1999), available at <http://community.seattletimes.nwsourc.com/archive/?date=19991119&slug=2996198> [hereinafter Fryer, *Milestone*].

⁴ See Neil Pierce, Editorial, *Seattle's Rainier Valley, One of America's 'Dynamic Neighborhoods'*, SEATTLE TIMES, (June 20, 2010), available at http://seattletimes.com/html/opinion/2012154231_peirce20.html (claiming that the Census Bureau reported 98118, ZIP code inclusive of Rainier Valley, as the most diverse ZIP code); John Hoole, *Rainier Valley by the Numbers: Parsing Census Data According to Race*, RAINIER VALLEY POST (Apr. 8, 2011), available at <http://rainiervalleypost.com/rainier-valley-by-the-numbers-parsing-census-data-according-to-race/> (finding census data from 2000 revealed that Rainier Valley was 27% white, 23% black, 38% Asian).

⁵ See generally, WILLIAM LYONS, COMMUNITY POLICING: REARRANGING THE POWER TO PUNISH, 60-69 (1999) (tracing the history of Rainier Valley's residents and concluding that the average income of the residents continued to decline in relation to the rest of Seattle).

⁶ See Rebecca Saldaña, *Getting Transit-Oriented Development Right in Rainier Valley*, CROSSCUT, (June 25, 2012), <http://crosscut.com/2012/06/25/urban/109309/transit-oriented-development-light-rail-rainier-sa/> (“When community leaders wanted the light rail to come through the Valley, their intention was to bring economic opportunity to an underinvested area.”).

⁷ See, e.g., Fryer, *Milestone* (“[Sound Transit's board does not] have my consent, and [Sound Transit's board] don't have the consent of the majority of the people in the valley”) (quoting George Curtis); see also, WILLIAM LYONS, COMMUNITY POLICING: REARRANGING THE POWER TO PUNISH, 68-69 (arguing that many Rainier Valley residents viewed governmental action as disrupting their community life).

⁸ *Save Our Valley v. Sound Transit*, 335 F.3d 932, 934 (9th Cir. 2003); see also Alex Fryer, *Showdown In Rainier Valley – Despite One Group's Signs, Some Others Favor Street-Level Rail*, SEATTLE TIMES (Oct. 4, 1999), available at <http://community.seattletimes.nwsourc.com/archive/?date=19991004&slug=2986866> (arguing that surface-level tracks are unsafe).

⁹ See *infra* Part II.

¹⁰ Tom Brune et al., *The Light-Rail Transit Plan – On Wrong Track? – Many People Who Live And Work Along Martin Luther King Jr. Way South Believe The Current Transit Plan Unfairly Favors Residents Of North Seattle*, SEATTLE TIMES (Jan. 27, 1999), available at <http://community.seattletimes.nwsourc.com/archive/?date=19990127&slug=2940938>.

¹¹ Brune, *The Light-Rail Transit Plan – On Wrong Track? – Many People Who Live And Work Along Martin Luther King Jr. Way South Believe The Current Transit Plan Unfairly Favors Residents Of North Seattle*.

¹² *Id.*

¹³ See *id.* (“Save Our Valley's opposition illustrates how many in Southeast Seattle believe resources and amenities are being divided unfairly in the light-rail project that will run from North Seattle to Sea-Tac airport.”).

¹⁴ See Alex Fryer, *A Milestone For Light Rail – Regional Board Selects Station Sites, Alignment*, SEATTLE TIMES (Nov. 19, 1999), available at <http://community.seattletimes.nwsourc.com/archive/?date=19991119&slug=2996198> (reporting an unanimous eighteen-seat Sound Transit approved the surface road-route through the Rainier Valley).

¹⁵ *Save Our Valley v. Sound Transit*, 335 F.3d 932, 934 (9th Cir. 2003).

¹⁶ 42 U.S.C. § 1983 (1996).

¹⁷ See 49 C.F.R. § 21.5(b)(2) (forbidding recipients of federal funds to “utilize criteria or methods of administration which have the effect of subjecting person to discrimination because of their race, color, or national origin”). The Department of Transportation had the authority to promulgate this regulation through Title VI of the Civil Rights Act of 1964. *Save Our Valley*, 335 F.3d at 934 n.2.

¹⁸ *Save Our Valley*, 335 F.3d at 934.

¹⁹ *Id.* at 935.

²⁰ *Id.* at 939.

²¹ *Id.* at 943.

²² See *id.* (“As an agency interpretation of a statute, a regulation may be relevant in determining the scope of the right conferred by Congress.”). Some circuits, including the District of Columbia Circuit and the Sixth Circuit have held that regulations, on their own ground, can create individual rights enforceable through the Civil Rights Act. See, e.g., *Samuels v. District of Columbia*, 770 F.2d 184, 198 (D.C. Cir. 1985) (holding that the District of Columbia's maladministration of federally-funded housing violated United States Department of Housing and Urban Development's regulations, which in turn violated § 1983); *Loschiavo v. City of Dearborn*, 33 F.3d 548, 553 (6th Cir. 1994), cert. denied, 513 U.S. 1150 (1995) (finding an individual right under Federal Communication Commission's regulations and enforcing it through § 1983); cf. *Save Our Valley*, 335 F.3d at 956 (Berzon, J., concurring) (“[T]here is no functional difference between statutes and regulations that would justify . . . that only the former may create rights.”).

²³ See *supra* note 16 and accompanying text.

²⁴ *Save Our Valley*, 335 F.3d at 944 (citing *Alexander v. Sandoval*, 532 U.S. 275, 280 (2003)).

²⁵ See John A. McBrine, Note, *The Selective Use of Administrative Regulations in Creating Rights Enforceable Through § 1983 Actions*, 46 B.C. L. REV. 183, 211-12 (2004) (arguing that claims asserting rights under regulations promote the democratic goal of preserving the rights and interests of the minority”).

²⁶ Mike Lindblom, *Light Rail Construction is a Tangle of Trouble in Rainier Valley*, SEATTLE TIMES (Apr. 4, 2007), available at http://seattletimes.com/html/localnews/2003650521_hairsalon04m.html.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Jim Brunner, *Millions OK'd for Rainier Valley to Mitigate Effects of Light Rail*, SEATTLE TIMES (Apr. 30, 2002), available at <http://community.seattletimes.nwsources.com/archive/?date=20020430&slug=rainierfund30m>.

³² *Id.*

³³ Eric Pryne, *Light rail Strains Small Businesses*, SEATTLE TIMES (Sept. 9, 2005), available at <http://community.seattletimes.nwsources.com/archive/?date=20050909&slug=rainiervalley09m>.

³⁴ *Id.*

³⁵ Mike Lindblom, *MLK Way Merchants See Light at the End of Rail Construction*, SEATTLE TIMES (Dec. 8, 2007), available at http://seattletimes.com/html/localnews/2004059983_rainier_valley08m.html.

³⁶ *Id.*

³⁷ See generally, *About Us*, PUGET SOUND SAGE, <http://pugetsoundsage.org/article.php?list=type&type=3> (last visited Mar. 30, 2013) (“Puget Sound Sage brings together labor, faith and community to build an economy based on shared prosperity.”).

³⁸ See, e.g., Cienna Madrid, *Railroaded: Is Light Rail Driving Racial Minorities Out of Rainier Valley?*, THE STRANGER (May 23, 2012), available at <http://www.thestranger.com/seattle/railroaded/Content?oid=13742136> (“The report comes as an unwelcome shock to light-rail advocates.”); Martin H. Duke, *Gentrification: The Cause of and Solution to, Displacement*, SEATTLE TRANSIT BLOG (May 23, 2012, 7:59 AM), <http://seattletransitblog.com/2012/05/23/gentrification-the-cause-of-and-solution-to-displacement/> (finding that the Sage report “applies a much more negative tone to the idea of gentrification”).

³⁹ Transit-oriented development is a “core planning model to increase sustainability at the community and regional level.” HOWARD GREENWICH ET AL., PUGET SOUND SAGE, TRANSIT-ORIENTED DEVELOPMENT THAT’S HEALTHY, GREEN, & JUST: ENSURING TRANSIT INVESTMENT IN SEATTLE’S RAINIER VALLEY BUILDS COMMUNITIES WHERE ALL FAMILIES THRIVE 2 (2012). It seeks preserve decrease the carbon footprint of areas by increasing the number of people who can walk, bike, or take public transit instead using automobiles. *Id.*; see also SOUND TRANSIT, SOUND TRANSIT TOD PROGRAM: STRATEGIC PLAN 2 (2012) (“TOD is compact public and private development that supports transit use by emphasizing pedestrian and transit access, such as the clustering of development and mixing land uses and activities at and around transit facilities.”).

⁴⁰ GREENWICH, *supra* note 39, at 2.

⁴¹ *Id.* at 10.

⁴² *Id.*

⁴³ *Id.* at 13

⁴⁴ *Id.*

⁴⁵ See GREENWICH, *supra* note 39, at 10 (arguing that as land prices continue to rise, due in part to the light rail’s influence, low-income Rainier Valley residents will be “priced out of new development”). A simple definition of gentrification is “an upward shift in income, house values, education and occupational levels – in other words, in class.” Henry W. McGee, Jr., *Seattle’s Central District, 1990-2006: Integration or Displacement?*, 39 URB. LAW. 167, 171 (2007) (quoting Richard Morrill, *Gentrification in Seattle*, 55 CENT. PUGET SOUND REAL EST. RES. REP. 81, 81 (Spring 2004)).

⁴⁶ See GREENWICH, *supra* note 39, at 13 (concluding that as rents rise, it becomes more likely that low-income renters will leave Rainier Valley).

⁴⁷ See *id.* at 17 (finding that moving and additional transportation costs can significantly burden low-income families).

⁴⁸ See *id.* (showing fifty-six percent of available jobs are in accessible in ninety minutes from Rainier Valley compared to forty percent and thirty-seven percent in the commonly relocated suburbs of Renton and Kent).

⁴⁹ See *id.* at 18 (“Relocation may unravel tight community networks that people rely on for everything from day-to-day support with childcare to emotional and financial support during crisis.”); see also Kathe Newman et al., *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD., No. 1, (Jan. 2006) at 23, 51 (finding that often relocated residents from gentrifying neighborhoods lose “rich local social networks of information and corporation”).

⁵⁰ See GREENWICH, *supra* note 39, at 19 (citation omitted) (arguing that displacement can lead to “emotional trauma and negative mental health consequences”).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Roger Valdez, *Troubling: Report Says Neighborhoods Along Sound Transit Line Should Stay The Same Ethnically*, CROSSCUT (June 19, 2012), <http://crosscut.com/2012/06/19/seattle-city-hall/109237/seattle-gentrification-minority-sound-transit/>

⁵⁴ Zach Shaner, *Downtown’s Inequality Problem*, SEATTLE TRANSIT BLOG, (Mar. 13, 2012, 6:00 AM), <http://seattletransitblog.com/2012/03/13/downtown-inequality/>.

⁵⁵ See Hope Yen, *Suburbs Losing Young Whites To Cities, Brookings Institution Finds*, HUFFINGTON POST, (May 25, 2011, 5:25 PM), http://www.huffingtonpost.com/2010/05/09/suburbs-losing-young-whit_n_569226.html (quoting William H. Frey) (“What used to be white flight to the suburbs is turning into ‘bright flight’ to cities that have become magnets for aspiring young adults who see access to knowledge-based jobs, public transportation and a new city ambiance as an attraction.”); see also WILLIAM H. FREY ET AL., BROOKINGS INST., STATE OF METROPOLITAN AMERICA: ON THE FRONT LINES OF DEMOGRAPHIC TRANSFORMATION, 62 (2010) (finding a “demographic invasion” of whites repopulating certain metropolitan areas at the expense of minorities move to the suburbs).

⁵⁶ See, e.g., JOHN HOOLE, THE RAINIER VALLEY’S DIVERSITY MYTH, 4 (2011), available at <http://www.seattle.gov/neighborhoods/preservation/southeastseattle/pdf/SE%20Essay%20-%20The%20Diversity%20Myth.pdf> (arguing that if the new six-story apartment building located near the Othello station is a success, “hundreds of new middle class residents will likely make their home there – and many will probably be white”).

⁵⁷ GREENWICH, *supra* note 39, at 16.

⁵⁸ See *supra* notes 9-13 and accompanying text.

⁵⁹ See *supra* note 24 and accompanying text.

⁶⁰ *Id.* at 35-36.

⁶¹ *Id.* at 34.

⁶² Revitalization is defined as “a renewed pride and investment in a community, mainly on the part of residents, without a big class shift.” Henry W. McGee, Jr., *Seattle’s Central District, 1990-2006: Integration or Displacement?*, 39 URB. LAW. 167, 171 (2007) (quoting Richard Morrill, *Gentrification in Seattle*, 55 CENT. PUGET SOUND REAL EST. RES. REP. 81, 81 (2004)).