

# EqualiTEA: A Proposal for the Next Federal Surface Transportation Bill to Help Address Poverty and Climate Change

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Darren and Vicki Hiers live in Bunker Hill, West Virginia, northwest of Washington, DC.<sup>1</sup> Every weekday morning, Darren wakes at 5:30 a.m. and drives his 1996 Ford Probe sixty miles to his job in the Washington, DC, suburb of Sterling, Virginia.<sup>2</sup> Meanwhile, Vicki drives her 1999 Honda Accord about the same distance to Gaithersburg, Maryland, another Washington suburb.<sup>3</sup> The Hierses burn more than eight gallons of gasoline every day to make their separate commutes, which together total approximately 240 miles.<sup>4</sup> The Hierses can afford this lifestyle in part because their annual income is roughly equal to six times the federal poverty threshold.<sup>5</sup>

In comparison, Donald Alford lives in the Petworth neighborhood of Washington, DC, and commutes out of the city to work.<sup>6</sup> To reach his temporary job thirteen miles away in Falls Church, Virginia, Alford takes two buses and one Metrorail train for a total cost of \$8 and a travel time exceeding two hours.<sup>7</sup> The first forty minutes of his workday pay for

the commute to work, and the last forty minutes pay for the commute home.<sup>8</sup>

The Hierses and Donald Alford each get up very early for their long morning commutes.<sup>9</sup> The Hierses' commutes are typically quicker than Alford's, despite being more than four times the distance, because Darren and Vicki drive themselves, whereas Alford relies on public transportation and a schedule set by the Washington Metropolitan Area Transit Authority.<sup>10</sup> The Hierses choose to commute,<sup>11</sup> but the options available to low-income workers like Alford are limited by the accessibility of employment.<sup>12</sup>

Given the relative hardship that Alford and similarly situated individuals face, one might expect that federal transportation policy would favor them in an effort to help them stay out of poverty. Similarly, because the commutes of Alford and similarly situated individuals burn far less fossil fuel than the Hierses' commute,<sup>13</sup> one might expect policy to encourage public transportation relative to driving in an effort to conserve energy and protect the environment. Instead, the way in which the federal government has overseen and conducted public transportation planning and distributed federal transportation funds has encouraged or failed to discourage drivers like the Hierses and discouraged or failed to encourage commuters like Alford.<sup>14</sup> This reinforces a preference for personal car use, increasing fuel consumption and atmospheric greenhouse gas ("GHG") emissions that drive

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1. The Hiers couple's commutes are described in Michael Leahy, *Driven to Extremes*, WASH. POST MAG., June 3, 2007 at 18, 23, 40–44.  
2. *Id.* at 23.  
3. *Id.* at 23, 40.  
4. The most fuel-efficient model of 1996 Ford Probe is rated at thirty miles per gallon on the highway, when new. See U.S. DEPT OF ENERGY & EPA, *Side-by-Side Comparison*, FUELECONOMY.GOV, <http://www.fueleconomy.gov/feg/sbs.htm> (last visited Oct. 15, 2011) (select 1996, then Ford, then Probe, then the manual five-speed, four-cylinder option). The most efficient model of 1999 Honda Accord is rated at twenty-eight miles per gallon on the highway, when new. See *id.* (select 1999, then Honda, then Accord, then the manual five-speed, four-cylinder option).  
5. The Hierses' combined income in 2007 was between \$80,000 and \$90,000. Leahy, *supra* note 1, at 41. The poverty threshold for a family of two in 2007 was \$13,690. Annual Update of the HHS Poverty Guidelines, 72 Fed. Reg. 3147 (Jan. 24, 2007).  
6. Donald Alford's commute is described in Dana Hedgpeth, *In Ward 8, Recovery is a World Away*, WASH. POST, June 13, 2010, at A1.  
7. *Id.*

8. See *id.* ("Alford . . . makes \$12 an hour.")  
9. See Leahy, *supra* note 1; Hedgpeth, *supra* note 6.  
10. Alford takes the 62 and 1A bus lines, and the orange Metrorail line, Hedgpeth, *supra* note 6, all of which are operated by the Washington Metropolitan Area Transit Authority, WASH. METRO. AREA TRANSIT AUTH., 1A, B, E, F, Z: WILSON BOULEVARD LINE TIMETABLE (Jun. 26, 2011), <http://www.wmata.com/bus/timetables/va/01.pdf>; WASH. METRO. AREA TRANSIT AUTH., 62, 63: TAKOMA-PETWORTH LINE TIMETABLE (Dec. 28, 2008), <http://wmata.com/bus/timetables/dc/62.pdf>; WASH. METRO. AREA TRANSIT AUTH., METRO SYSTEM MAP (Sept. 8, 2008), [http://wmata.com/rail/docs/colormap\\_lettersize.pdf](http://wmata.com/rail/docs/colormap_lettersize.pdf).  
11. Leahy, *supra* note 1, at 42 ("It's a trade-off . . . . We couldn't have all we have here if we lived somewhere else." "We couldn't get this size of a home if we lived closer in . . . .")  
12. See Hedgpeth, *supra* note 6.  
13. See *infra* Part II.  
14. See *infra* Part III.

climate change.<sup>15</sup> It makes access to a personal vehicle a virtual prerequisite to many employment opportunities, helping to trap people in poverty and perpetuating domestic wealth disparity.<sup>16</sup>

As enacted on August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) represented the largest surface transportation spending commitment in U.S. history by guaranteeing more than \$240 billion in funding for roads, safety, and public transportation.<sup>17</sup> The appropriations in SAFETEA-LU were originally set to expire on September 30, 2009, but Congress has repeatedly reauthorized funding,<sup>18</sup> which is currently set to expire on March 31, 2012.<sup>19</sup>

This note synthesizes and extends policy arguments of various scholars<sup>20</sup> and transportation industry leaders<sup>21</sup> and argues that Congress should adopt legislation that abandons the historical funding preference for personal-vehicle use and encourages use of public transportation. The benefits of such legislation include (1) reducing transportation barriers that contribute to poverty, and (2) reducing GHG emissions to mitigate the risks associated with climate change. To accomplish this shift, this note proposes EqualiTEA, a collection of four statutory provisions that would revise planning requirements for federal transportation grants and make existing money available for programs that encourage end users to adopt public transportation and programs that enable local transit providers to improve operations. Enacted together, the EqualiTEA provisions would encourage a transportation mode shift away from the single person car of commuters like Darren and Vicki Hiers towards the use of public transportation of commuters like Donald Alford.

This note identifies the problems that EqualiTEA is designed to address, provides the specific statutory language to be implemented, discusses how the provisions would fit within existing law, and considers possible alternatives. Part I discusses the relationship between personal-vehicle use and poverty in the United States. Part II explains the impact of GHG emissions on global climate change and quantifies the benefits of reducing those emissions through a transportation mode shift. Part III explains how funding under SAFETEA-LU favors individual drivers and discusses the five statutory amendments that constitute the EqualiTEA proposal and modify the existing approach to transportation funding to encourage a shift to public transportation. Part

IV addresses potential criticism of EqualiTEA and considers possible alternatives. Finally, this note concludes by arguing that EqualiTEA would be a feasible addition to transportation legislation.

## I. Transportation and Poverty

Wealth disparity<sup>22</sup> and poverty<sup>23</sup> are significant problems in the United States that continue to worsen. In 2009, 43.6 million Americans lived in poverty, the largest total the government had ever recorded.<sup>24</sup> A small fraction of this population,—only six percent of welfare recipients—own cars.<sup>25</sup> These statistics indicate that transportation and poverty may be related and that solutions to the poverty problem should consider the role that transportation plays in creating and perpetuating need.

The importance of automobiles to U.S. culture, and their dominance in policy, exacerbates poverty by disadvantaging individuals who are already impoverished in several ways. First, contemporary land-use patterns create an urban-suburban divide in most metropolitan areas.<sup>26</sup> Poverty is typically concentrated in urban areas,<sup>27</sup> and is structurally reinforced by factors that encourage urban residents with sufficient financial means to relocate to suburban neighborhoods.<sup>28</sup> Second, the urban-suburban divide limits transportation mode choices.<sup>29</sup> Public transportation remains concentrated in urban areas.<sup>30</sup> Suburban areas, in contrast, are largely automobile-centered because they have less dense housing, which

15. See *infra* Part II.

16. See *infra* Part I.

17. FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANSP., SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS: A SUMMARY OF HIGHWAY PROVISIONS 2 (2005), available at [http://www.fhwa.dot.gov/safetealu/safetea-lu\\_summary.pdf](http://www.fhwa.dot.gov/safetealu/safetea-lu_summary.pdf).

18. E.g., Surface and Air Transportation Programs Extension Act of 2011, Pub. L. No. 112-30, § 111(a), 125 Stat. 342, 343 (2011); Surface Transportation Extension Act of 2011, Pub. L. No. 112-5, § 201, 125 Stat. 14, 15–16 (2011).

19. Surface and Air Transportation Programs Extension Act of 2011 § 111(a).

20. See, e.g., HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY (Robert D. Bullard et al. eds., 2004); Keith Bartholomew, *Cities and Accessibility: The Potential for Carbon Reductions and the Need for National Leadership*, 36 FORDHAM URB. L.J. 159 (2009).

21. See, e.g., *Sustainable Transportation Solutions: Investing in Transit to Meet 21st Century Challenges: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 111th Cong. (2009) [hereinafter *Sustainable Transportation Hearings*].

22. See Lisa A. Keister & Stephanie Moller, *Wealth Inequality in the United States*, 26 ANN. REV. SOC. 63, 67 (2000). In 1995, the wealthiest 20% of Americans held over 80% of the country’s net wealth, while the poorest 40% of the population held as little as 0.2%. *Id.* at 68 tbl.2.

23. Poverty can be assessed in various ways. The U.S. Census Bureau uses a family income-based measure that it adjusts annually to allow for inflation. CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS P60-238, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2009, at 55 (2009). For example, in 2009, a family of four with two minor children was considered to be “in poverty” if the total family income was below \$21,756. *Id.*

24. *Id.* at 14. This is the largest number of Americans in poverty since tracking began in 1959, and represents a larger portion of the national population than at any time since 1994. *Id.*

25. See Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, § 3037(a)(5), 112 Stat. 107, 387 (1998) (“94 percent of welfare recipients do not own cars . . .”).

26. MOLLY O’MEARA SHEEHAN, CITY LIMITS: PUTTING THE BRAKES ON SPRAWL 19 (2001).

27. ROBERT W. BURCHELL ET AL., SPRAWL COSTS: ECONOMIC IMPACTS OF UNCHECKED DEVELOPMENT 116 (2005); Michael Lewyn, *Campaign of Sabotage: Big Government’s War Against Public Transportation*, 26 COLUM. J. ENVTL. L. 259, 280 (2001); SHEEHAN, *supra* note 26, at 19. The concentration of poverty in urban areas is partially due to federal requirements that have prevented suburbs from developing public housing. Lewyn, *supra*, at 279–80. The concentration is also due to policy choices by suburban governments, including construction quality standards that raise housing costs, refusal to subsidize housing, and exclusionary zoning. BURCHELL ET AL., *supra*, at 120–21.

28. One factor commonly cited as reinforcing the urban-suburban divide is assigning students to public schools based on residence. See SHEEHAN, *supra* note 26, at 19–20; Lewyn, *supra* note 27, at 281–82. A second factor is the diminished tax base caused by wealth leaving urban areas, which necessitates a reduction in government services and further encourages flight. See BURCHELL ET AL., *supra* note 27, at 116; SHEEHAN, *supra* note 26, at 19–20.

29. See Robert H. Freilich, *The Land-Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. LAW. 547, 548 (1998).

30. See *id.*

discourages walking to transit stops and the use of public transportation.<sup>31</sup> Suburban areas may not offer public transit at all.<sup>32</sup> This structure perpetuates poverty because most new jobs are located in suburban areas,<sup>33</sup> but very few people in poverty—those most in need of gainful employment—own cars that would allow them access to those jobs.<sup>34</sup> This creates an oppressive catch-22 in which the poverty-stricken urban resident needs a car to travel to work but cannot afford one due to inadequate income.<sup>35</sup>

Through mechanisms such as those described above, the dominance of personal-vehicle transportation in suburban communities reinforces urban-suburban inequalities.<sup>36</sup> Reducing the dominance of automobiles in suburban areas could ease those inequalities by allowing the urban resident greater access to suburban opportunities.<sup>37</sup> Linking urban centers to their suburban peripheries with adequate public transportation is one means of reducing automobile dependence.<sup>38</sup> Implementing legislation that requires comprehensive transportation planning would facilitate the expansion of public transportation and improve its utility to the urban poor.

## II. Climate Change and Transportation Emissions

Changing Americans' preference for driving would also have an environmental impact. Automobiles contribute a significant percentage of total GHG emissions in the U.S.,<sup>39</sup> with negative effects on global climate<sup>40</sup> and human health.<sup>41</sup> The risks associated with climate change due to increased atmospheric GHG concentrations could motivate legislation to encourage greater use of public transportation, thereby reducing emissions. The following section discusses the severity of climate change, the way in which personal-vehicle travel has contributed to its underlying causes, and the potential to mitigate risk through a shift in perspective on preferred transportation modes.

There is a strong scientific consensus that the global climate is warming, and that the consequences of this warming threaten human health.<sup>42</sup> Climate change can lead to increased risk of hunger, water scarcity, flooding, and diarrheal and cardio-respiratory diseases,<sup>43</sup> as well as increased severity and frequency of extreme weather events.<sup>44</sup>

Several recent natural disasters illustrate the potential human consequences of climate change. In 2010, Haiti experienced weather-related flooding, which exacerbated an outbreak of cholera that claimed more than 3,500 lives by the end of the year.<sup>45</sup> Pakistan also experienced devastating floods that left millions homeless and triggered an outbreak of waterborne diseases in the summer of 2010.<sup>46</sup> Although Haiti and Pakistan are among the nations most vulnerable to climate change, in part due to their levels of poverty,<sup>47</sup> climate-related suffering is not limited to these regions. Increased sea surface temperatures caused by atmospheric warming are thought to have contributed to the ferocity of Hurricane Katrina when it made landfall along the Mississippi coast in August 2005.<sup>48</sup>

Changing how people use transportation resources can reduce emissions of GHGs like carbon dioxide that contribute to increased air and ocean temperatures.<sup>49</sup> Such a cut will

31. BURCHELL ET AL., *supra* note 27, at 119; Lewyn, *supra* note 27, at 279.

32. Lewyn, *supra* note 27, at 273–75.

33. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, § 3037(a)(1), 112 Stat. 107, 387 (1998) (“[T]wo-thirds of all new jobs are in the suburbs . . .”).

34. See *id.* § 3037(a)(5). Those who do have access to vehicles, however, drive to work, often out of necessity. Patrick Moulding, Note, *Fare or Unfair? The Importance of Mass Transit for America's Poor*, 12 GEO. J. ON POVERTY L. & POL'Y 155, 165 (2005).

35. See § 3037(a)(3) (“[I]n 1991, the median price of a new car was equivalent to 25 weeks of salary for the average worker, and considerably more for the low-income worker . . .”). Public transit often provides insufficient access to employment even in metropolitan areas with relatively developed transit systems. See *id.* § 3037(a)(2) (“[E]ven in metropolitan areas with excellent public transit systems, less than half of the jobs are accessible by transit . . .”); Lewyn, *supra* note 27, at 263.

36. See Lewyn, *supra* note 27, at 263.

37. See § 3037(a)(8)–(9).

38. See *id.* § 3037(a)(9).

39. See EPA, EPA 430-R-11-005, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990–2009 at 2-16 tbl.2-12 (2010).

40. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT 33, 36–37 (2007), available at [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf).

41. See *id.* at 48, 51.

42. *Id.* at 30–33 (“Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level.”).

43. *Id.* at 48–49.

44. *Id.* at 52–53.

45. MINISTERE DE LA SANTE PUBLIQUE ET DE LA POPULATION [MINISTRY OF PUBLIC HEALTH AND POPULATION], RAPPORT DE CAS 31 DECEMBRE 2010 [CASE REPORT DECEMBER 31, 2010] (Dec. 31, 2010), available at <http://www.msp.gov.ht/site/download.php?file=downloads/Rapport%20journalier%20MSP%20du%2031%20decembre%202010.pdf>; Randal C. Archibold, *Cholera Moves Into the Beleaguered Haitian Capital*, N.Y. TIMES, Nov. 10, 2010, at A8; Joseph Guyler Delva, *Floods Kill 10 People in Haiti, Three Missing*, REUTERS, Oct. 19, 2010, available at <http://in.reuters.com/article/2010/10/19/idINIndia-52304520101019>; Donald G. McNeil Jr., *Cholera Outbreak Kills 150 in Haiti, Raising Fears of Epidemic in Crowded Camps*, N.Y. TIMES, Oct. 23, 2010, at A5.

46. Carlotta Gall, *Thousands More Flee Flooding in Southern Pakistan*, N.Y. TIMES, Aug. 28, 2010, at A8. See also Ban Ki-moon, Op-Ed., *Pakistan Needs Our Help*, N.Y. TIMES, Aug. 18, 2010, <http://www.nytimes.com/2010/08/19/opinion/19iht-edban.html?scp=1&sq=%22Pakistan%20Needs%20Our%20Help,%20Now%22&st=cse> (“The sheer scale of the disaster almost defies comprehension. Around the country, an estimated 15 to 20 million people have been affected. That’s more than the entire population hit by the Indian Ocean tsunami and Kashmir earthquake in 2005, the 2007 Cyclone Nargis and this year’s earthquake in Haiti—combined. An area as big as Italy and larger than more than half the countries in the world—some 160,000 square kilometers, or 62,000 square miles—is under water.”).

47. Alister Doyle, *Bangladesh, India Most at Risk From Climate Change*, REUTERS, Oct. 19, 2010, available at <http://www.reuters.com/assets/print?aid=USTRE6916LE20101019>.

48. See Kevin E. Trenberth & Dennis J. Shea, *Atlantic Hurricanes and Natural Variability in 2005*, 33 GEOPHYSICAL RES. LETTERS L12704, ¶ 1–3 (2006) (“Theory and modeling suggest that the intensity, not the frequency, of tropical storms should increase with warming, higher SSTs and associated increases in water vapor in the atmosphere.”) (emphasis added). Scientists argue that even if global warming did not cause Katrina, storms of similar intensity will become more common as ocean temperatures continue to rise. See Joel Lang, *Hot Debate Over Hurricanes: Global Warming Gaining Credence as Factor in Storms*, HARTFORD COURANT, Oct. 15, 2006 at A1.

49. See *infra* notes 54–73 and accompanying text. Increased atmospheric concentrations of GHGs due to human activity since the Industrial Revolution are “very likely” responsible for increased global temperature average (with greater than ninety percent confidence). INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 40, at 27, 37, 39.

mitigate some damage because any reduction in total warming will reduce the severity of its effects.<sup>50</sup> The transportation sector accounts for more than a quarter of total GHG emissions in the United States,<sup>51</sup> and its emissions continue to increase faster than any other energy-using sector.<sup>52</sup> Passenger cars and light duty trucks alone contribute approximately one-sixth of all domestic emissions.<sup>53</sup> Reducing emissions from these sources, therefore, would be an effective way to mitigate the effects of climate change.

There are three interrelated ways to reduce emissions from vehicles: (1) reducing miles traveled, (2) increasing fuel economy, and (3) using fuels that produce lower emissions.<sup>54</sup> Whereas the second and third factors primarily involve technology,<sup>55</sup> the number of vehicle miles traveled reflects consumer behavior.<sup>56</sup> The second factor, fuel economy, can be influenced by improvements in traditional engine technology<sup>57</sup> and manipulated by changes in fuel economy standards.<sup>58</sup> The third factor, fuel source, can be influenced by adopting new technology including electric and hybrid gas-electric powertrains.<sup>59</sup> As for the impact of drivers, the number of miles travelled in the United States has increased dramatically over the past two decades, due to various cultural, social, and economic factors.<sup>60</sup> This increase has essentially offset the reductions in emissions achieved through technology improvements.<sup>61</sup>

Shifting transportation use to alternative modes, such as public buses and rail, is one way to reduce the mileage and

emissions from personal-vehicle use.<sup>62</sup> Calculating emissions per passenger-mile provides an estimate of the net emissions reduction achieved by shifting to public transportation.<sup>63</sup> Because a greater number of passengers leads to lower emissions per passenger-mile, the benefits of public transportation depend on level of use.<sup>64</sup> Based on 2008 energy-use patterns,<sup>65</sup> buses have lower emissions per passenger mile than single-occupancy cars when average bus load is greater than 7.3 passengers.<sup>66</sup> At an average load of 15 passengers, bus transportation consumes 51% less energy per passenger mile.<sup>67</sup> Similarly, commuter rail becomes more efficient than single occupancy vehicles when average vehicle load is greater than 17.3 passengers, and at an average load of 35 passengers it consumes 51% less energy per passenger mile.<sup>68</sup> This suggests two important takeaways about mode-shifting as a path to GHG-emission reduction. First, shifting to traditional public-transportation options including buses and commuter rail can provide a significant reduction in total energy use and emissions. Second, the magnitude of this reduction is dependent on the level of use of the public transportation system.

A shift to alternative modes of transportation would also indirectly reduce emissions.<sup>69</sup> Fewer cars on the road would reduce congestion, thereby improving efficiency of the remaining vehicles.<sup>70</sup> Similarly, a general shift in favor of public transportation could encourage changes in land-use patterns that reduce the need to travel.<sup>71</sup>

The threats associated with global climate change are real and imminent.<sup>72</sup> Because emissions from personal vehicles are a significant contributing cause of climate change, reduc-

50. See *id.* at 51 fig. 3.6 (showing that the severity of effects increases with the amount of warming).

51. In 2009, total GHG emissions in the United States were 6633.2 teragrams of carbon dioxide-equivalent, of which 1812.4 teragrams (27.3%) came from the transportation sector. EPA, *supra* note 39, at 2-16 to -18 tbl. 2-12.

52. H-HOLGER ROGNER ET AL., *Introduction*, in CLIMATE CHANGE 2007: MITIGATION: CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 95, 105 (Bert Metz et al. eds., 2007).

53. See EPA, *supra* note 39, at 2-21 (“The largest sources of transportation greenhouse gases in 2009 were passenger cars (35 percent), light duty trucks, which include sport utility vehicles, pickup trucks, and minivans (30 percent), freight trucks (20 percent) and commercial aircraft (6 percent).”). Considering the total emissions attributed to the transportation sector, *id.* at 2-16 tbl.2-12, cars and light duty trucks account for about 17.7% of total emissions (65% of 27.3%).

54. Emissions are the product of vehicle miles travelled (factor 1), gallons of fuel per mile travelled (factor 2), and emissions per gallon of fuel (factor 3). FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANSP., TRANSPORTATION AND GLOBAL CLIMATE CHANGE: A REVIEW AND ANALYSIS OF THE LITERATURE 29 (1998).

55. *Id.* at 63–65.

56. See Leahy, *supra* note 1.

57. FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANSP., *supra* note 54, at 64–65.

58. *Id.* at 69.

59. *Id.* at 67, 71–72.

60. See EPA, *supra* note 39, at 2-21 (“The number of vehicle miles traveled by light-duty motor vehicles (passenger cars and light-duty trucks) increased 39 percent from 1990 to 2009, as a result of a confluence of factors including population growth, economic growth, urban sprawl, and low fuel prices over much of this period.”); STACY DAVIS ET AL., U.S. DEP’T OF ENERGY, OAK RIDGE NAT’L LAB., ORNL-6985, TRANSPORTATION ENERGY DATA BOOK 4-2 tbl.4.1, 4-3 tbl.4.2 (29th ed. 2010).

61. See EPA, *supra* note 39, at 2-21. Between 1990 and 2008, average fuel economy increased slightly despite an increase in the market share of light duty trucks, largely due to the retirement of older, less-efficient vehicles. *Id.*; DAVIS ET AL., *supra* note 60, at 4-2 tbl.4.1, 4-3 tbl.4.2. Emissions from light-duty motor vehicles increased by more than twenty-six percent over this period, however, reflecting increased demand for travel. DAVIS ET AL., *supra* note 60, at 4-2 tbl.4.1, 4-3 tbl.4.2.

62. See FED. TRANSIT ADMIN., U.S. DEP’T OF TRANSP., PUBLIC TRANSPORTATION’S ROLE IN RESPONDING TO CLIMATE CHANGE 1–2 (Jan. 2010).

63. See *id.* at 2.

64. See *id.*

65. Using 2008 data produces conservative estimates of the benefits of a transportation mode shift because it ignores potential emissions reductions within the public transportation sector due to adoption of new technology. See e.g., DAVID L. GREENE & STEVEN E. PLOTKIN, REDUCING GREENHOUSE GAS EMISSIONS FROM U.S. TRANSPORTATION 23 (2011) (“New York City has obtained about a 45 percent improvement in fuel economy as well as improved acceleration by using hybrid buses.”)

66. See DAVIS ET AL., *supra* note 60, at 2-14 tbl. 2.12.

67. See *id.*

68. See *id.*

69. See Phillip A. Hummel, *Next Stop—A Cleaner and Healthier Environment: Global Strategies to Promote Public Transit*, 35 TRANSP. L.J. 263, 265 (2008).

70. *Id.* (arguing that “[t]raffic congestion only exacerbates the amount of gasoline used by an automobile”). But see FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANSP., *supra* note 54, at 40 (noting that some believe that the benefit is illusory because reductions in congestion also encourage increases in vehicle miles traveled); *infra* notes 89–97 and accompanying text.

71. Compare OFFICE OF TECH. ASSESSMENT, OTA-ETI-589, SAVING ENERGY IN U.S. TRANSPORTATION 190 (1994) (“[T]he Natural Resources Defense Council (NRDC) and the Sierra Club claim that each new transit trip can reduce four or more auto trips, because ‘the availability and usage of transit services also changes the location of trip origins and destinations in a way that reduces the need to travel by car, and reduces the distance of travel required by the majority of people who will continue to drive their cars, , , ,’”), with *id.* at 191 (questioning the existence and magnitude of the relationship between public transportation and land use).

72. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY, CONTRIBUTION OF WORKING GROUP II TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 11–18 (2007).

ing vehicle emissions would mitigate those threats.<sup>73</sup> The advances made through technological improvements have been undermined by a concurrent increase in vehicle use such that a net reduction in use appears to be necessary.<sup>74</sup> Shifting transportation modes from personal vehicles to public transit could yield significant and readily quantifiable reductions in emissions.<sup>75</sup>

### III. The EqualiTEA Proposal

As discussed in Parts I and II, poverty and climate change are very different problems, but both are exacerbated by the nature of transportation in the United States. This Part identifies specific examples of federal transportation legislation that contribute to these problems, and proposes a collection of legislative changes to address them by encouraging a transportation mode shift away from personal-vehicle travel and to public transportation.

#### A. Considering the Transportation Needs of People Without Cars

The U.S. Department of Transportation (“USDOT”) distributes a significant portion of federal transportation funding through grants from the Highway Trust Fund.<sup>76</sup> These grants are conditioned on certain requirements set forth in titles 23 and 49 of the United States Code.<sup>77</sup> For instance, the Intermodal Surface Transportation Efficiency Act of 1991 imposed extensive transportation planning requirements on grant applicants<sup>78</sup> that have been maintained by subsequent legislation.<sup>79</sup> The Secretary of Transportation must certify at least once every four years that grant recipients continue to meet planning requirements,<sup>80</sup> and the Secretary is authorized to withhold up to twenty percent of grant funds for failure to meet those requirements.<sup>81</sup>

73. See EPA, *supra* note 39, at 2-16 tbl.2-12; INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 40, at 33, 36-37.

74. See *supra* notes 60-61 and accompanying text.

75. See FED. TRANSIT ADMIN., U.S. DEP’T OF TRANSP., *supra* note 62, at 1-3.

76. See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-06-572T, HIGHWAY TRUST FUND: OVERVIEW OF HIGHWAY TRUST FUND ESTIMATES 2-3, 6 (2006). Two main sources of funding the Highway Trust Fund are excise taxes on fuel and truck-related taxes. *Id.*; FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANSP., PRIMER: HIGHWAY TRUST FUND 4 (1998), available at <http://www.fhwa.dot.gov/aap/PRIMER98.pdf>. Despite its name, the Highway Trust Fund is not limited to highways but also funds public transit. FED. HIGHWAY ADMIN., U.S. DEP’T OF TRANSP., *supra*, at 3.

77. Title 23 governs highway funds, and title 49 governs funding for nonhighway transportation, including public transportation.

78. Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Pub. L. No. 102-240, §§ 1024-25, 105 Stat. 1914, 1955-65 (1991) (codified as amended at 23 U.S.C. §§ 104, 134-35 (2006 & Supp. II 2008)). See generally Bartholomew, *supra* note 20, at 191-93 (discussing the development of transportation systems planning in response to federal requirements).

79. Bartholomew, *supra* note 20, at 192 (“Many of ISTEA’s innovations were carried forward, first into the Transportation Equity Act for the 21st Century (‘TEA-21’) and then into the current transportation statute—the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (‘SAFE-TEA-LU’).”). For the current statutory text, see 23 U.S.C. §§ 134-35 (2006 & Supp. II 2008).

80. 23 U.S.C. § 134(k)(5)(A); 49 U.S.C. § 5303(k)(5)(A) (2006).

81. 23 U.S.C. § 134(a)(1); 49 U.S.C. § 5303(h)(1)(D).

Imposing additional planning requirements is one mechanism through which the government could ensure that local transportation agencies consider the needs of all individuals, not just those who own personal vehicles. The next two subsections of this note propose two transportation planning requirements that would (1) obligate funding applicants and recipients to address the needs underlying travel instead of merely facilitating point-to-point travel, and (2) require planners to consult with representatives of people living in poverty. Compliance with these requirements would be enforced through statutorily authorized judicial review of federal transportation grants.

#### I. Avoiding a Transportation Planning Bias Towards Personal-Vehicle Travel by Focusing on Accessibility

Two important and related metrics used in transportation planning are mobility and accessibility.<sup>82</sup> Mobility measures the ability to move from one location to another, regardless of the nature of the destination, whereas accessibility measures the ability to reach a location, taking into consideration the nature of the destination.<sup>83</sup>

To illustrate the difference, consider a hypothetical Ms. Walker who does not own a car and cannot use public transportation. Ms. Walker’s mobility is therefore a function of her ability to walk from place to place.<sup>84</sup> Buying a car would increase her mobility because it would allow her to travel greater distances regardless of the desire to actually reach other locations. In contrast, the car would only increase Ms. Walker’s accessibility if she could reach a greater number of desirable locations by car than she could as a pedestrian.<sup>85</sup> Ms. Walker’s accessibility would also increase if a new grocery store were to open in her neighborhood as an additional location that she could reach on foot. Similarly, her accessibility would decrease if a grocery store within walking distance closed. In contrast, the store opening or closing would not affect Ms. Walker’s mobility.

The preceding example illustrates the general principle that changes in accessibility can be made with or without accompanying changes in mobility.<sup>86</sup> It also demonstrates that accessibility may be a helpful indicator of quality of life because it captures an individual’s capacity to accomplish necessary tasks of everyday life, such as shopping for groceries.<sup>87</sup> In contrast, mobility may be a poor indicator of quality

82. Susan Hanson, *Getting There: Urban Transportation in Context*, in THE GEOGRAPHY OF URBAN TRANSPORTATION 3-4 (Susan Hanson ed., 2d ed. 1995); Bartholomew, *supra* note 20, at 161-62.

83. Hanson, *supra* note 82, at 4.

84. This simplification ignores some other common sources of mobility, such as riding in another person’s car.

85. The assumption that cars provide increased mobility and/or accessibility may not hold in all cases, for example in cases of heavy road congestion or a road layout that permits only indirect travel between locations in close physical proximity. See Susan Handy, *Planning for Accessibility: In Theory and in Practice*, in ACCESS TO DESTINATIONS 131, 132 (David M. Levinson & Kevin J. Krizek eds., 2005).

86. Hanson, *supra* note 82, at 4.

87. See *id.* at 5.

of life because it ignores the desirability of the locations that an individual can reach.<sup>88</sup>

While transportation planners may focus on increasing mobility or increasing accessibility, the consequences differ depending on which metric is most important.<sup>89</sup> Plans that prioritize increased accessibility focus on making it possible for individuals to travel to meet their needs.<sup>90</sup> Plans that aim to increase mobility focus on the ease of travel rather than its purpose, which may cause unintended and undesirable consequences.<sup>91</sup> In a typical American metropolitan environment, focusing on mobility instigates a self-reinforcing cycle of road building.<sup>92</sup> Planners project expected travel levels, determine the road capacity necessary to maintain a target amount of congestion, and build roads as required to accommodate that capacity.<sup>93</sup> The resulting increase in capacity reduces road congestion, thus encouraging more road-based travel.<sup>94</sup> Planners consequently project increased travel levels at each planning iteration and build more and more roads at escalating costs.<sup>95</sup> If construction does not keep pace with the actual travel level, congestion can increase, making road travel more difficult and decreasing individual accessibility.<sup>96</sup> Further, the failure of many transportation planners to be explicit about which metric they are addressing often exacerbates planning deficiencies by obfuscating the different outcomes and relative merits of planning for accessibility versus planning for mobility.<sup>97</sup>

Federal legislation typically has encouraged transportation planners to focus on mobility despite the negative impact on accessibility.<sup>98</sup> In 1998, the Transportation Equity Act for the 21st Century (“TEA-21”) became the first surface-transportation act to identify accessibility as a relevant factor in transportation-planning.<sup>99</sup> Despite this identification, the statutory language is problematic because accessibility remains secondary to mobility,<sup>100</sup> and an explicit bar on judicial review<sup>101</sup> effectively makes it an optional factor that planners may ignore.

With respect to accessibility and mobility, TEA-21 outlines a general policy statement that “[i]t is in the national interest to . . . encourage and promote . . . surface transportation systems that will serve the mobility needs of people,”

omitting any reference to accessibility.<sup>102</sup> Given this focus on mobility, the statute encourages planners to prioritize mobility, with accessibility as only a secondary consideration.<sup>103</sup> The language implicitly discourages increasing accessibility through means other than mobility,<sup>104</sup> leading to cyclic and perpetual road-building, as discussed above.<sup>105</sup>

Further, although TEA-21 lists various factors relevant to planning, it expressly prohibits judicial review of planning decisions made absent such consideration,<sup>106</sup> effectively making these factors optional.<sup>107</sup>

The courts have not yet interpreted this language regarding accessibility, but relevant precedent exists for other factors. Specifically, in *Lundeen v. Minetta*, a Houston bicyclist challenged a Texas transportation project under the Administrative Procedure Act (“APA”)<sup>108</sup> on the grounds that the USDOT did not accord sufficient weight to a TEA-21 provision requiring that “[b]icyclists and pedestrians shall be given due consideration”<sup>109</sup> in its decision to grant funding.<sup>110</sup> The Fifth Circuit interpreted TEA-21 to preclude review of USDOT funding decisions in such instances, and held that the provision did not create a private cause of action.<sup>111</sup> Challenging a funding decision based on inadequate consideration of accessibility would likely be more difficult than in the situation presented in *Lundeen*. While the provision at issue in *Lundeen* is separate from TEA-21’s general transportation planning provisions, the provision on accessibility is not.<sup>112</sup> Thus, it would be difficult to argue that the provision barring review does not apply.<sup>113</sup> Both shortcomings, the prominence of mobility and the bar on judicial review, were preserved by SAFETEA-LU, the currently binding successor to TEA-21.<sup>114</sup>

### EqualiTEA § 1: Requirement to Consider Accessibility in Transportation Planning

The first provision in this note’s proposed EqualiTEA would modify the language introduced in TEA-21 to (1) mandate consideration of individual accessibility in any federally funded transportation plan, independent of mobility, and (2) enforce this requirement by creating a private cause of action to challenge USDOT funding decisions on the grounds that

88. See Handy, *supra* note 85, at 132–33.

89. See *id.* at 133–34.

90. *Id.* at 134.

91. See *id.* at 134–35, 137–45.

92. See *id.* at 133; see also VUKAN R. VUCHIC, TRANSPORTATION FOR LIVABLE CITIES 114–17 (1999) (discussing the cyclic road-building effect of adding high-occupancy-vehicle lanes to existing roads).

93. Handy, *supra* note 85, at 133.

94. *Id.*

95. *Id.*

96. *Id.* at 134.

97. *Id.* at 135.

98. See Bartholomew, *supra* note 20, at 191–92.

99. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, § 1203(f), 112 Stat. 107, 174 (1998) (codified as amended at 23 U.S.C. § 134(h) (2006)) (“The metropolitan transportation planning process for a metropolitan area under this section shall provide for consideration of projects and strategies that will . . . increase the accessibility and mobility options available to people and for freight . . .”).

100. See 23 U.S.C. § 134(a)(1) (2006).

101. *Id.* § 134(h)(2).

102. *Id.* § 134(a)(1).

103. See Handy, *supra* note 85, at 131, 145 (reviewing several transportation plans likely influenced by TEA-21 and finding that accessibility is “an additional aim rather than . . . a replacement for . . . mobility”).

104. See *id.* at 145–46 (finding that none of the reviewed plans “commit[s] to . . . the notion[] . . . that plans can enhance accessibility without increasing mobility”).

105. *Id.* at 133.

106. 23 U.S.C. § 134(h)(2) (“The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court . . .”).

107. See Bartholomew, *supra* note 20, at 195.

108. Administrative Procedure Act, 5 U.S.C. §§ 551–59 (2006).

109. 23 U.S.C. § 217(g).

110. *Lundeen v. Minetta*, 291 F.3d 300, 303–04, 306 (5th Cir. 2002).

111. *Id.* at 310–12.

112. Compare 23 U.S.C. § 217(g), with *id.* § 134(h)(1)(D).

113. See *id.* § 134(h)(2); *Lundeen*, 291 F.3d at 306.

114. See Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) § 6001, 23 U.S.C. §§ 134–35 (2006 & Supp. II 2008).

the transportation plans inadequately considered accessibility. Both of these modifications would be accomplished by amending 23 U.S.C. § 134(h).<sup>115</sup>

Specifically, § 134(h)(1)(D) would identify individual accessibility as the planning objective by removing express references to individual mobility. Thus, § 134(h)(1)(D), which currently provides

(D) increase the accessibility and mobility of people and for freight[,]<sup>116</sup>

would be amended as follows:

(D)(i) increase the accessibility of people;

(ii) increase the accessibility and mobility for freight . . . .

Expressing accessibility and mobility as separate factors would signal to planners the obvious but previously obfuscated premise that transportation needs of people and freight may differ and should be considered independently.<sup>117</sup> Planning regulations promulgated by USDOT would need similar revision.<sup>118</sup>

EqualiTEA would also amend § 134(h)(2) to expressly permit judicial review of transportation funding decisions under the APA on the grounds that the USDOT did not adequately consider accessibility as listed in proposed § 134(h)(1)(D)(i). The current language of § 134(h)(2) provides,

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a [transportation improvement plan], a project or strategy, or the certification of a planning process.<sup>119</sup>

This language would be modified to include the following language:

except as provided in paragraph (3).

New paragraph § 134(h)(3) would read as follows:

(3) NECESSARY FACTORS.—

(A) The failure to consider the factor specified in paragraph (1)(D)(i) shall be reviewable under subchapter II of chapter 5 of title 5, and chapter 7 of title 5 in any matter affecting a transportation plan, a transportation improvement plan, a project or strategy, or the certification of a planning process. For the purpose of such review, any resident of the metropolitan planning area is affected by the transportation planning process.

115. 23 U.S.C. § 134 sets planning requirements related to grants of Highway Trust Fund money that is not in the Mass Transit Account, 23 U.S.C. § 134, whereas 49 U.S.C. § 5303 mirrors § 134 but sets requirements for grants from the Mass Transit Account, 49 U.S.C. § 5303 (2006). All of the revisions to § 134 proposed in Part III of this note would also be mirrored in § 5303.

116. 23 U.S.C. § 134(h)(1)(D).

117. Handy, *supra* note 85, at 135.

118. *See, e.g.*, 23 C.F.R. § 450.322(f)(3) (2010) (requiring that plans include strategies for improving “the mobility of people,” but not making any reference to accessibility).

119. 23 U.S.C. § 134(h)(2).

If a grant recipient failed to consider accessibility, a local resident would be able to challenge the Secretary of Transportation’s certification of the recipient’s compliance with planning requirements<sup>120</sup> as an arbitrary and capricious abuse of discretion.<sup>121</sup> The Secretary would likely be unable to defend a clear failure to consider accessibility on the merits. The final sentence of proposed § 134(h)(3) clearly provides that all local residents are affected by a transportation plan and may be adversely affected. This should be sufficient to satisfy the APA standing requirement that the challenging party must be adversely affected by the Secretary’s action.<sup>122</sup>

## 2. Considering the Impact of Transportation Planning on Poverty

SAFETEA-LU included several provisions that require transportation planners to consult with relevant parties during the planning process,<sup>123</sup> including state environmental agencies<sup>124</sup> and nature conservation groups.<sup>125</sup> A less stringent participation requirement exists for transit employees, and freight shipping providers.<sup>126</sup> Although the legislation guarantees “representatives of users of public transportation . . . a reasonable opportunity to comment,”<sup>127</sup> it does not contain any requirement for consultation with or the participation of those government and private agencies that have the mission of moving people out of poverty.<sup>128</sup> Because of this omission, there is no guarantee that the transportation plan addresses the needs of people in poverty, including access to employment and education opportunities, and necessary services such as food retailers and child care providers.

120. *See id.* § 134(k)(5).

121. *See* 5 U.S.C. § 706(2)(A) (2006). A court will determine whether an agency based its decision on a “consideration of the relevant factors” during review under the arbitrary and capricious standard. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

122. *See* 5 U.S.C. § 702 (“A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof.”).

123. *See* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), § 6001, 23 U.S.C. §§ 134–35 (2006 & Supp. II 2008).

124. 23 U.S.C. § 134(i)(3) (requiring coordination with the relevant state agencies if the area is in “nonattainment for ozone of carbon monoxide”).

125. *Id.* § 134(i)(4).

126. *Id.* § 134(i)(5) (requiring a “reasonable opportunity to comment on the transportation plan”).

127. *Id.*

128. Although transportation planners are not required to consult with parties addressing poverty, recipients of Job Access and Reverse Commute grants are required to consult with “human service providers.” *See* SAFETEA-LU § 3018; 49 U.S.C. § 5316(g)(3) (2006). Unfortunately, only a small fraction of federal surface transportation spending occurs under this provision. *See* 49 U.S.C. § 5338(b) (appropriating \$8.4 billion in public transportation spending for fiscal year 2011, only \$164.5 million of which is under § 5316). The consultation requirements do not apply to other types of surface transportation grants that account for most spending. *See* 49 U.S.C. §§ 5309, 5311.

## EqualiTEA § 2: Requirement to Coordinate with the Agencies Tasked with Helping People Move out of Poverty

SAFETEA-LU mandates coordination with local environmental protection agencies by referencing the Clean Air Act.<sup>129</sup> By analogous reference to the Temporary Assistance for Needy Families (“TANF”) program,<sup>130</sup> EqualiTEA proposes coordinating with local agencies that assist people in poverty by adding the following paragraph to 23 U.S.C. § 134(i)<sup>131</sup>:

(8) COORDINATION WITH TANF AGENCIES.—In metropolitan areas that provide services under part A of title IV of the Social Security Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the goals of the local agencies responsible for the job preparation, work, and support services required by section 402 of the Social Security Act (42 U.S.C. § 602).

This provision would provide two benefits. First, it would prevent transportation plans from impeding employment and social welfare programs.<sup>132</sup> Second, it would encourage cooperation among local government agencies to address structural poverty, a problem that has proved resistant to limited-scope remedial efforts.<sup>133</sup> Related revisions to USDOT regulations that specify the information that must be included in a transportation plan would ensure that the results of this coordination are documented.<sup>134</sup> Regulations that mirror § 134 would also need to be updated.<sup>135</sup>

### B. Encouraging Public Transportation To Potential Users

The two EqualiTEA provisions outlined above aim to encourage people to choose public transportation over personal vehicles by changing the way in which transportation systems are planned. This goal could also be advanced by changing transportation users’ preferences.<sup>136</sup>

Achieving a shift in transportation choices by changing user behavior has two benefits. First, the per capita reduction in GHG emissions that comes from riding transit instead of driving increases as the number of transit riders increases.<sup>137</sup>

Second, increases in the number of public-transportation passengers promote corresponding increases in transit service, thereby increasing the accessibility that public transportation offers to all users.<sup>138</sup> The following section describes two additional EqualiTEA provisions designed to make public transportation a more attractive and feasible alternative to driving.

### I. Changing User Decisions Through Transportation Pricing

An individual’s consumption of resources is influenced by how that individual perceives the cost of those resources.<sup>139</sup> This perception depends, in part, on whether the cost is fixed or incremental relative to use of the resource.<sup>140</sup> Consumers pay fixed costs once regardless of how much they use the item purchased.<sup>141</sup> For example, a consumer electronics device such as a radio has a fixed cost.<sup>142</sup> The cost is fully realized at the time of purchase; no matter how much an individual uses the radio, she does not pay any more for it. Incremental costs, however, are set relative to the level of use.<sup>143</sup> A jukebox is an example of incremental pricing. A consumer pays to use the jukebox on a per-play basis; if the listener wants to hear the same song twice, she must pay twice. This example also demonstrates the general principle that fixed costs tend to encourage greater consumption than incremental costs.<sup>144</sup> An individual who has already paid for a radio will probably listen to it more often than another individual who must pay for each song on a jukebox.

These concepts are applicable to transportation resources. Most of the costs of owning a car are fixed.<sup>145</sup> Some expenses are incremental, such as highway tolls and fuel, but the daily cost of driving is generally lower, even for a driver commuting alone, than the price a public transportation passenger pays.<sup>146</sup>

The fixed and incremental costs associated with car ownership have been dropping, further encouraging individual travel.<sup>147</sup> Over the past three decades, the cost of buying a personal vehicle has consistently dropped relative to the Consumer Price Index.<sup>148</sup> At the same time, the reliability of personal vehicles has improved<sup>149</sup> and average fuel economy

129. 23 U.S.C. § 134(i)(3).

130. TANF was created in title I of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Pub. L. No. 104-193, §§ 101–16, 110 Stat. 2105, 2110–85 (1996) (codified as amended at 42 U.S.C. §§ 601–19 (2006 & Supp. IV 2010)), by amendment to part A of title IV of the Social Security Act. The program provides federal block grants to states, which administer the program locally. 42 U.S.C. § 601(a) (2006).

131. The language proposed is modeled on the existing language of 23 U.S.C. § 134(i)(3), substituting reference to the Clean Air Act with relevant provisions of the Social Security Act.

132. See SHEEHAN, *supra* note 26, at 19.

133. See, e.g., Lewyn, *supra* note 27, at 281–82; SHEEHAN, *supra* note 26, at 19–20.

134. See 23 C.F.R. § 450.322(f) (2010).

135. For example, the consultation requirements set forth in 23 C.F.R. § 450.322(g) mirror those in 23 U.S.C. § 134(i)(4). A similar regulation would be needed to mirror the proposed § 134(i)(8).

136. See, e.g., FED. TRANSIT ADMIN., U.S. DEPT OF TRANSP., *supra* note 62, at 5–6.

137. See *supra* notes 62–75 and accompanying text.

138. See VUCHIC, *supra* note 92, at 61.

139. See Bartholomew, *supra* note 20, at 170–71.

140. *Id.* at 171.

141. *Id.*

142. To keep this example simple and illustrative, the incremental cost of the electricity necessary to power the electronics is ignored.

143. See Bartholomew, *supra* note 20, at 171.

144. *Id.*

145. *Id.* at 172 (“Of the \$ 835.6 billion Americans spent on owning and operating private automobiles in 2001, 53% was spent on fixed costs—purchase price, financing, insurance, licensing, and registration—while only 20% was spent on incremental costs—fuel and tolls.”); *id.* at 172 n.61 (“The remaining 27% was spent on maintenance and parking.”).

146. See ANTHONY DOWNS, STILL STUCK IN TRAFFIC: COPING WITH PEAK-HOUR TRAFFIC CONGESTION 43 (2004); VUCHIC, *supra* note 92, at 81.

147. See DOWNS, *supra* note 146, at 46–48.

148. See *id.* at 47.

149. See *id.* at 47–48.

has increased,<sup>150</sup> both of which decrease incremental operating costs. It is unsurprising, therefore, that there has been an increase in the number of miles traveled over this period.<sup>151</sup>

In contrast to owning a car, the cost of public transportation is incremental.<sup>152</sup> Fixed-cost options, such as monthly bus passes, are sometimes available, but the dominant pricing model charges fares on a per-use basis.<sup>153</sup> When public transportation provides fixed-pricing options that allow unlimited use, use increases.<sup>154</sup> A common example of this effect is the introduction of unlimited-use passes in New York City and the dramatic increase in transit ridership that resulted.<sup>155</sup> Fixed-cost pricing, therefore, is a mechanism that could increase people's willingness to use public transportation more often.

The commuting prices paid by Darren and Vicki Hiers and Donald Alford, introduced above, illustrate transportation-pricing alternatives and their effects on consumption. Alford pays sixteen dollars per day for his commute to and from work using public transportation.<sup>156</sup> Thus, he has a strong incentive to minimize the frequency with which he makes this trip and, when possible, he will share a ride with a coworker despite the inconvenience to her.<sup>157</sup> In contrast, Darren Hiers pays no money related to his commute on most days, despite the distance travelled.<sup>158</sup> Among his economic concerns are future fixed costs associated with the longevity of his and his wife's cars.<sup>159</sup> Alford and Hiers therefore represent typical transportation users seeking to minimize consumption of incrementally-priced alternatives and maximize consumption of fixed-price alternatives.

### EqualiTEA § 3: Requirement to Consider Fixed Pricing for Public Transit Systems and Grants for Implementation

Fixed pricing structures provide one mechanism through which the government can make public transportation more attractive. EqualiTEA includes a provision that would (1) require transit systems to articulate a reasonable basis for refusing to offer fixed-cost options, and (2) make federal grants available to transition to fixed-cost pricing.

The first part of the proposed provision makes consideration of fixed-cost pricing a condition of transit grants and

provides review of this consideration under the broad judicial-review provisions of the APA.<sup>160</sup> The following section would be added to title 49, chapter 53 of the United States Code:

#### § 5341. FIXED-COST PRICING ALTERNATIVES.—

(a) DEFINITIONS. In this section the following definitions apply:

(1) FIXED COST PRICING ALTERNATIVE.—The term “fixed-cost pricing alternative” means an option under which a public transportation passenger can pay a fixed price in exchange for unlimited personal use of the relevant public transportation service for a given period of time.

(b) CONSIDERATION REQUIREMENT.—Fixed-cost pricing alternatives shall be given due consideration by each recipient of funds apportioned under sections 5309, 5311, or 5336. The failure to consider fixed cost pricing alternatives shall be reviewable under subchapter II of chapter 5 of title 5, and chapter 7 of title 5, in any matter affecting a fund apportionment. For the purpose of such review, any resident of the metropolitan planning area is affected by the grant of funds apportioned under sections 5309, 5311, or 5336.

The express language permitting judicial review in this proposed provision is included to satisfy APA reviewability requirements<sup>161</sup> and thereby overcome the obstacle to review presented by the transportation planning provisions encountered in *Lundeen v. Minetta*.<sup>162</sup>

Second, EqualiTEA would provide funds to remove cost disincentives that might otherwise prevent introduction of fixed-cost pricing alternatives. The following paragraph would be added to proposed § 5341 as § 5341(c)<sup>163</sup>:

(c) CAPITAL PROJECTS.—A project to install equipment in public transportation facilities or vehicles as required to offer fixed-cost pricing alternatives to public-transportation passengers, or to update software technology as required to offer fixed-cost pricing alternatives to public-transportation passengers is a capital project eligible for assistance under sections 5307, 5309, and 5311 of this title.

The federal government makes grants available under §§ 5307, 5309, and 5311 for eighty percent of a project's cost.<sup>164</sup> Thus, if a transit agency determines that providing a fixed-cost pricing alternative would require a one-time investment of \$1 million, the agency would be responsible for \$200,000, and the federal grant would cover the remainder.

150. The average fuel economy for cars was 15.9 miles per gallon in 1980, and 22.6 miles per gallon in 2008. DAVIS ET AL., *supra* note 60, at 4-2 tbl.4.1.

151. See EPA, *supra* note 39, at 2-21.

152. See Bartholomew, *supra* note 20, at 172.

153. *Id.*

154. See *id.*; Brian J. Cudahy, *Transit Marketing and Markets in the United States*, in *MARKETING PUBLIC TRANSPORTATION 1-3* (Richard K. Robinson & Christopher H. Lovelock eds., 1981).

155. See, e.g., Willie Neuman, *In Decade of Unlimited Rides, MetroCard Has Transformed How the City Travels*, N.Y. TIMES, July 16, 2008, at B3.

156. Hedgpeh, *supra* note 6.

157. *Id.*

158. See Leahy, *supra* note 1, at 23. Hiers commutes 120 miles per day, *id.*, but gets approximately 30 miles per gallon, *supra* note 4 and accompanying text, thus consuming about four gallons per day. At this rate, he needs to purchase gas every three to four days.

159. See Leahy, *supra* note 1, at 40 (“He hopes that Vicki, whose Accord has 202,000 miles on it, will be driving her car well beyond 300,000 miles. . . . ‘You think about maintenance and repairs too much, and that can depress you a little.’”).

160. 5 U.S.C. § 706(2)(A) (2006).

161. 5 U.S.C. § 702.

162. See *Lundeen v. Minetta*, 291 F.3d 300, 313 (5th Cir. 2002) (holding that provision does not give private cause of action to sue the U.S. Secretary of Transportation); see *supra* notes 110-113 and accompanying text.

163. This language is modeled on a provision in TEA-21 that makes federal transit funds available for projects that make public transportation more accessible to bicyclists. See 49 U.S.C. § 5319 (2006).

164. See *id.* §§ 5307(e), 5309(h), 5311(g).

## 2. Changing User Transportation Decisions Through Marketing

EqualiTEA would also address the need for users to make informed transportation choices. An individual will choose among alternatives based on the information available about those alternatives.<sup>165</sup> Americans generally have more information about personal-vehicle travel than about public-transportation alternatives.<sup>166</sup> As one scholar notes, “[f]rom parental and social conditioning, to blanket advertising in the media, to drivers’ education courses in school, Americans are bombarded with information about how to use streets and highways to drive cars.”<sup>167</sup> Less information is available on other modes of travel.<sup>168</sup> In cases where marketing has narrowed or closed this information gap between car usage and public transit, people have made greater use of public transportation.<sup>169</sup>

### EqualiTEA § 4: Grants for Public Transportation Marketing

The fourth EqualiTEA provision therefore seeks to disseminate information that makes public transportation more attractive. Grants would be available to transit systems for marketing campaigns to inform the public about the availability of public transportation, as well as environmental and social benefits of public transportation relative to personal-vehicle travel.<sup>170</sup> Funding for such programs would be available from apportionments designated for capital investment grants.<sup>171</sup> The following section would be added to title 49, chapter 53 of the United States Code:

§ 5342. MARKETING PUBLIC TRANSPORTATION TO AUTOMOBILE USERS.—

(a) CAPITAL PROJECTS.—A project to develop or implement a marketing campaign that is targeted at automobile users, provides information about public-transportation alternatives to automobile travel, and provides information about the environmental and social benefits of public-transportation travel relative to automobile travel with the objective of encouraging those users to become public-transportation passengers is a capital project eligible for assistance under sections 5307, 5309, and 5311 of this title.

(b) EFFECTIVENESS REQUIREMENT.—No project may be carried out under this section unless the Secretary has determined that such project has given due consideration to evaluating effectiveness of the marketing campaign relative

to the objective of encouraging automobile users to become public-transportation passengers.

The language for subparagraph a of this provision is similar to the language employed for proposed § 5341(c), above,<sup>172</sup> and would provide a cost-sharing grant by which the federal government would provide eighty percent of the project funds.<sup>173</sup> Subparagraph b would ensure that marketing efforts coincided with the objective of promoting a transportation mode shift.<sup>174</sup>

### C. Encouraging Local Government to Improve Existing Transit Operations

Public-transportation planners recognize that pricing incentives may be required to attract passengers.<sup>175</sup> In some cases, transit systems have priced fares below operational costs to encourage use of the system.<sup>176</sup> The consequence of this pricing is that costs on transit providers may increase if the mode shift advocated by this note is realized.<sup>177</sup> To alleviate this disincentive it is necessary to remove the preference in federal transit funding for investment in new infrastructure instead of improving existing operations.

### I. Removing the Preference for New Infrastructure Over Operations

Prior to 1982, federal funds were available to subsidize operational costs of public transportation systems.<sup>178</sup> The Reagan Administration targeted this mechanism to reduce federal spending, however, and succeeded in reducing the funding available for such uses.<sup>179</sup> In 1998, TEA-21 completely eliminated operating assistance to urban areas with populations of more than 200,000.<sup>180</sup> This threshold was preserved in SAFETEA-LU,<sup>181</sup> and reflects a concern by some lawmakers that subsidies encourage local authorities to forgo basic

172. See *supra* Part III.B.1.a.

173. See 49 U.S.C. §§ 5307(e), 5309(h), 5311(g).

174. See Arline Z. Bronzaft, *Understanding Traveler Information Needs for Decision Making*, in *MARKETING PUBLIC TRANSPORTATION*, *supra* note 154, at 37–38 (stating that the emphasis of some transit marketing material “appears to be on producing . . . not in evaluating”).

175. See, e.g., *Sustainable Transportation Hearing*, *supra* note 21, at 66 (statement of Beverly Scott, General Manager and CEO, Metropolitan Atlanta Rapid Transit Authority, and Chair, American Public Transit Association); VUCHIC, *supra* note 92, at 81.

176. See *Sustainable Transportation Hearing*, *supra* note 21, at 66, (statement of Beverly Scott, General Manager and CEO, Metropolitan Atlanta Rapid Transit Authority, and Chair, American Public Transit Association) (“[T]ransit fares are set below market rates in order to attract as many riders as possible . . .”).

177. See *id.* at 66.

178. See Reasa D. Currier, *Public Transit: Looking Back and Moving Forward: A Legislative History of Public Transportation in the United States and Analysis of Major Issues for the Authorization of the Surface Transportation Bill*, 37 *TRANSP. L.J.* 119, 128 (2010).

179. *Id.*

180. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, § 3007(c)(1), 112 Stat. 107, 347–48 (1998) (codified as amended at 49 U.S.C. § 5307(b)(1) (2006)).

181. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, § 3009(c)(1), 119 Stat. 1144, 1568–69 (2005) (codified as amended at 49 U.S.C. § 5307(b)(1) (2006)).

165. See Bartholomew, *supra* note 20, at 173–74.

166. See *id.* at 174.

167. *Id.*

168. See *id.*

169. *Id.* (citing Victoria Transp. Policy Inst., *Marketing*, in *ONLINE TDM ENCYCLOPEDIA*, <http://www.vtpi.org/tdm/tdm23.htm> (last updated June 9, 2011) (“Given adequate resources, marketing programs can often increase use of alternative modes by 10–25% and reduce automobile use by 5–15% . . .”)); Cudahy, *supra* note 154, at 1–2.

170. See, e.g., *supra* Parts I–II.

171. See 49 U.S.C. § 5338(a)(3)(A) (2006).

maintenance and defer costs to the federal government.<sup>182</sup> Thus, funds are generally available for capital investments to increase transportation capacity, including building new roadways, but is not available to maintain existing public transportation systems or cover the personnel expenses necessary to drive buses that such systems may already own.<sup>183</sup>

The inability of public transportation systems to meet operating expenses can lead to vehicles and facilities being underutilized.<sup>184</sup> If federal assistance is available to pay those expenses, however, providers can increase service,<sup>185</sup> thereby increasing accessibility.<sup>186</sup> For this reason, trade groups such as the American Association of State Highway and Transportation Officials and the American Public Transit Association have recommended that Congress remove the population ceiling for operating assistance.<sup>187</sup>

### EqualiTEA § 5: Eliminate Population Limits for Operating Assistance

The final provision of EqualiTEA proposed by this note would eliminate the limitations on operating assistance introduced in TEA-21.<sup>188</sup> It would address the concern that underlies these limits by requiring grant recipients to certify that they will not reduce operational expenditures during the period of assistance.<sup>189</sup> First, 49 U.S.C. § 5307(b)(1) should be amended to eliminate the population limit as follows:

(b) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants under this section for—

....

(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000;

(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

(i) the urbanized area includes parts of more than one State;

(ii) the portion of the urbanized area includes only one State;

(iii) the population of the portion of the urbanized area is less than 30,000; and

(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area . . . .

Second, a certification requirement would be added in new subparagraph (L) under § 5307(d)(1):

(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient . . . submits . . . a certification for that fiscal year that the recipient . . .

....

(L) will not reduce expenditures related to the operating costs of equipment and facilities for use in public transportation if the grant is made under paragraph (b)(1)(D) of this section.

These amendments would allow larger urban areas with underutilized facilities and vehicles to offer additional services at lower costs than would otherwise be possible.<sup>190</sup>

Eliminating the population limit would offer a secondary job-creation benefit. As transit systems expand their service, they must increase the number of operators or make greater use of existing operators. Thus, federal grants would stimulate employment that would be sustained with increased public-transportation use. Recognition of this benefit grounds the EqualiTEA proposal in the current political reality where transportation spending on road building is used as a catalyst for job creation,<sup>191</sup> and a proposal that advocates a reduction in road building without some offsetting job creation might face hostility from lawmakers and labor advocates, regardless of its benefits.

## IV. Criticisms & Alternatives

The discussion above proposes EqualiTEA, a collection of five provisions that would amend existing law to encourage people to choose public transportation over driving. The main objectives of EqualiTEA are (1) to reduce transportation barriers that contribute to poverty, and (2) to mitigate climate change by reducing GHG emissions. The following

182. See *Sustainable Transportation Hearing*, *supra* note 21, at 37–38 (statements of Sen. Richard C. Shelby & John Hickenlooper, Chair, U.S. Conference of Mayors).

183. See *id.* at 38–39 (statements of Beverly Scott, General Manager and CEO, Metropolitan Atlanta Rapid Transit Authority, and Chair, American Public Transit Association, and Joseph F. Marie, Commissioner, Connecticut Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials); *id.* at 15 (statement of Ray LaHood, U.S. Secretary of Transportation).

184. See *id.* at 15 (statement of Ray LaHood, U.S. Secretary of Transportation).

185. *Id.* (“If you have all the great equipment but it is sitting and not really delivering people where they want to go because you don’t have people to drive the buses or drive the trains or whatever, then we should do something about that. And I want to be open-minded about the idea that some of these funds could be operating.”).

186. See VUCHIC, *supra* note 92, at 63.

187. *Sustainable Transportation Hearing*, *supra* note 21, at 61, 66 (statements of Joseph F. Marie, Commissioner, Connecticut Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials and of Beverly Scott, General Manager and CEO, Metropolitan Atlanta Rapid Transit Authority, and Chair, American Public Transit Association).

188. 49 U.S.C. § 5307(b)(1) (2006).

189. The American Recovery and Reinvestment Act of 2009 imposed a requirement for funding recipients to maintain local expenditures. American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, § 1201, 123 Stat. 115, 212–25 (2009). This requirement checks local jurisdictions that might otherwise use federal grants to avoid the maintenance costs of infrastructure. See *Sustainable Transportation Hearing*, *supra* note 21, at 37–38 (statements of Sen. Richard C. Shelby & Joseph F. Marie Connecticut Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials).

190. 49 U.S.C. § 5307(e)(2) (2006) limits the federal share of operating expenses to fifty percent of the net project cost.

191. See, e.g., Jason Plautz, *Transportation: Senate, House Rev Up Hearings for Reauthorization Bill*, ENV’T & ENERGY DAILY, Feb. 14, 2011.

sections anticipate criticism of various aspects of the proposed legislation, and consider whether alternatives could achieve the same goals.

### A. Funding for EqualiTEA Grants

Several provisions in EqualiTEA require federal funds, which may attract criticism from fiscally conservative legislators, particularly those who advocate for a reduction in discretionary spending.<sup>192</sup> EqualiTEA implicates two distinct types of federal expenditures. First, it would make grants available from the Highway Trust Fund for transit systems to adopt fixed-cost pricing, for marketing campaigns to inform people of the benefits of public transportation, and for assisting transit systems in areas with populations greater than 200,000 with their operational expenses. Second, by permitting residents to challenge a decision by the USDOT to fund transportation projects, it may impose litigation costs. Neither, however, is likely to impose a significant financial burden on the government.

The grants that EqualiTEA would authorize from the Highway Trust Fund would not increase federal spending, but would expand the types of projects that USDOT would be able to fund through existing appropriations.<sup>193</sup> For example, the government would provide grants for marketing projects under EqualiTEA section 4 from funds already appropriated for capital investment grants.<sup>194</sup> Because this appropriation is fixed, EqualiTEA section 4 would only require the Secretary of Transportation to consider the merits of proposed marketing projects in deciding how to apportion the total amount of funds. Congress does earmark funding in some cases,<sup>195</sup> and while EqualiTEA grants could potentially benefit from specific appropriations, the current proposal does not require them.

As for the possibility of increased litigation due to judicial review of USDOT decisions, there are several reasons to expect that costs would be minimal. First, the amendments proposed in EqualiTEA use language similar to SAFETEA-LU to minimize ambiguity that opens the door for litigation.<sup>196</sup> Second, similar discretionary transportation actions have not prompted significant or costly litigation after implementation. For example, the planning requirements of 23 U.S.C. § 217(g) were introduced in 1998,<sup>197</sup> but there is little

evidence of court challenges other than the 2002 *Lundeen* case.<sup>198</sup> This suggests that the review provisions would not likely give rise to numerous challenges. While it is difficult to anticipate future costs, the importance of judicial review to ensuring that USDOT decisions take into account all of the relevant factors<sup>199</sup> outweighs the risk of a modest increase in litigation, and both the Secretary of Transportation and federal courts can take steps to efficiently manage the challenges that the provisions make possible.

### B. Alternatives to EqualiTEA

EqualiTEA seeks to modify existing law to create incentives for people to use public transportation rather than their own vehicles to address negative impacts that current transportation practices have on poverty and climate change.<sup>200</sup> Lawmakers have tried to achieve these objectives in other ways.

In 2009, for example, the House of Representatives passed comprehensive climate legislation that would have amended the same transportation planning provisions as EqualiTEA section 1 to reduce GHG emissions.<sup>201</sup> A “cap and trade” system in the bill proved to be controversial,<sup>202</sup> however, and the bill never reached the Senate floor.<sup>203</sup> Because EqualiTEA would encourage a change in practice rather than mandating an emissions cap, it should be more politically tenable.<sup>204</sup> Further, the House’s 2009 climate legislation was not concerned with addressing the relationship between poverty and transportation,<sup>205</sup> which is a primary concern of this proposal.

Others have argued that there is a need to discourage driving outright.<sup>206</sup> While this could provide equal or greater GHG reductions, such an approach would likely exacerbate poverty and wealth disparity.<sup>207</sup> For example, although some scholars have argued that a dramatic increase in the gasoline tax would prompt Americans to drive less frequently,<sup>208</sup> this would place the greatest burden on the poor who spend a

(2006)).

198. *Lundeen v. Minetta*, 291 F.3d 300 (5th Cir. 2002). *Lundeen* is discussed *supra* text accompanying notes 109–113.

199. See *supra* Part III.A.1 (discussion of mobility versus accessibility).

200. See *supra* Part III.A.

201. American Clean Energy and Security (ACES) Act of 2009, H.R. 2454, 111th Cong. § 222 (2009). ACES would have amended 23 U.S.C. §§ 134–35 to coordinate transportation planning with GHG limits set by the U.S. Environmental Protection Agency (“EPA”) under the Clean Air Act. *Id.* § 841 (“Greenhouse Gas Emissions Reductions Through Transportation Efficiency”); see also U.S. Climate Action Network, *Congress May Act On Energy in 2011; Climate Not A Focus*, <http://www.usclimatenetwork.org/policy/congress> (last visited July 12, 2011).

202. See, e.g., Juliet Eilperin, *Cap-and-Trade Would Slow Economy*, *CBO Chief Says*, WASH. POST, Oct. 15, 2009, at A3.

203. See *Bill Summary & Status 111th Congress (2009-2010) H.R. 2454*, LIBRARY OF CONG. THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.2454>: (last visited Apr. 2, 2011).

204. See, e.g., Eilperin, *supra* note 202.

205. See H.R. 2454.

206. See e.g., Andrew D. Appelby, *Pay at the Pump: How \$11 per Gallon Gasoline Can Solve the United States’ Most Pressing Challenges*, 40 CUMB. L. REV. 3, 5–6 (2009–2010); Josh Voorhees, *Transportation: Congestion Pricing Provides Benefits but Faces Challenges—CBO*, ENV’T & ENERGY DAILY, Mar. 12, 2009.

207. See *supra* Part I.

208. See Appelby, *supra* note 206 at 26.

192. See, e.g., Press Release, Chairman Hal Rogers, U.S. House Appropriations Comm., Chairman Rogers Outlines Subcommittee Spending Cuts for Fiscal Year 2011 (Feb. 3, 2011), <http://appropriations.house.gov/news/DocumentSingle.aspx?DocumentID=235785> (“We are going [to] go line by line to . . . produce legislation that will represent the largest series of spending reductions in the history of Congress.”).

193. See, e.g., 49 U.S.C. § 5338(c)(6) (2006 & Supp. IV 2010) (amended 2011) (appropriating “\$2,000,000,000 for fiscal year 2011” for capital investment grants under § 5309).

194. See 49 U.S.C. § 5338(a)(3)(A).

195. See, e.g., 49 U.S.C. § 5309(m)(2)(A)(i) (2006 & Supp. IV 2010) (amended 2011) (restricting ten percent of the funds appropriated in § 5338(c)(6), to “projects for new fixed guideway capital projects of less than \$ 75,000,000”).

196. For example, EqualiTEA section 2 provides for coordination with TANF by echoing language in 23 U.S.C. § 134(i)(3) regarding coordination with the Clean Air Act. See *supra* Part III.A.2.

197. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, § 1202, 112 Stat. 107, 168–70 (1998) (codified at 23 U.S.C. § 217(g)

higher proportion of their income on gasoline.<sup>209</sup> Increasing the cost of fuel would also effectively reduce the accessibility that a car provides. Proposals have been made for other mechanisms that increase the incremental cost of personal vehicle use, including more frequent use of toll roads and congestion pricing.<sup>210</sup> These alternatives would also disadvantage the poor.<sup>211</sup>

EqualiTEA is uniquely designed to address the needs of people living in poverty and reduce emissions that lead to harmful climate change effects. While the alternatives considered above would reduce likely emissions, they fail to account for the needs of those living in poverty.

## V. Conclusion

As illustrated above by the commuting experiences of Darren and Vicki Hiers and Donald Alford, Americans take different approaches to travel. Whereas Alford commutes thirteen miles via public transportation, the Hierses choose to com-

mute nearly five times the distance in a comparable time and at a lower daily cost.<sup>212</sup> The relative ease of their commutes reflects the structural preference for car-based travel over public transportation in the U.S.—a preference imposed by federal transportation law for decades. This preference is problematic because it leads to harmful environmental, social, and economic consequences.<sup>213</sup> Specifically, this preference reinforces the obstacles faced by individuals trying to escape poverty and contributes to the global warming crisis more than travel via public transportation does.

The five provisions of EqualiTEA—proposed amendments to the highway and public-transportation titles of the U.S. Code—are designed to remove the preference for car-based travel by improving the quality of and access to public transportation. The changes required would be modest, but effective. The existing federal surface-transportation appropriations will expire during the 112th Congress.<sup>214</sup> EqualiTEA presents an opportunity for Congress to correct the shortcomings in current law to provide for an efficient and responsible transportation system.

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209. On average, Americans in the lowest income quintile spend about 12% of their gross income on gasoline and motor oil, and Americans in the highest quintile spend less than 3% of their gross income on the same. BUREAU OF LABOR STATISTICS, U.S. DEPT OF LABOR, REPORT 1023, CONSUMER EXPENDITURES IN 2008 at 8 tbl.1 (2010), available at <http://www.bls.gov/cex/csxann08.pdf>.

210. See generally Voorhees, *supra* note 206 (explaining congestion pricing, its benefits, and drawbacks in the contemporary transportation and political context).

211. *Id.*

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212. See *supra* Introduction.

213. See *supra* Parts I–II.

214. See *supra* note 19 and accompanying text.

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