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Change We Can Believe In: The Seventh Circuit's Exposure of Inadequate Environmental Review in *Protect Our Parks v. Buttigieg*

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CHANGE WE CAN BELIEVE IN: THE SEVENTH CIRCUIT'S
EXPOSURE OF INADEQUATE ENVIRONMENTAL
REVIEW IN *PROTECT OUR PARKS V.*
BUTTIGIEG

I. BREAKING GROUND: AN INTRODUCTION TO ENVIRONMENTAL
ISSUES IN BUILDING THE OBAMA PRESIDENTIAL CENTER

“If the rent goes up a little bit, people can pay it [be]cause they’ve got more money.”¹ Former President Barack Obama said this while addressing gentrification concerns amidst the construction of his new Presidential Center in Chicago, Illinois.² Gentrification, the process of a neighborhood’s conversion from lower real estate values to higher real estate values, changes the social and environmental landscape of the community.³ Outcomes of gentrification are both positive and negative, but the negative outcomes are serious and debilitating.⁴ The shift from low real estate prices to high real estate prices typically indicates the beginning of gentrification, which can destroy a community’s historical landscape and create a new population demographic.⁵ Gentrification concerns

1. Obama Foundation, *Watch Live: Obama Presidential Center Public Meeting*, YOUTUBE (Feb. 27, 2018), <https://youtu.be/4fauz35jxHU> [hereinafter *Presidential Center Public Meeting*] (defending presidential center’s construction against gentrification concerns).

2. *Id.* (addressing concern for new presidential center).

3. *Equitable Development and Environmental Justice*, U.S. ENV’T PROT. AGENCY (Nov. 14, 2022), <https://www.epa.gov/environmentaljustice/equitable-development-and-environmental-justice#gentrification> (defining gentrification).

4. *Id.* (depicting both positive and negative outcomes of gentrification). Positively, gentrification can expand job opportunities, increase property values, reduce crime, and offer new services. *Id.* (offering positive outcomes from gentrification); *but see Health Effects of Gentrification*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 15, 2009), <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm> (listing negative outcomes of gentrification). Negatively, gentrification can displace long-time residents of affected communities, create serious health risks for those displaced, and alter neighborhoods’ historical characteristics. *See id.* (outlining health and safety risks for affected population). An increasing amount of evidence suggests that residents displaced from their communities are more likely to face exposure to lead paint and have a “shorter life expectancy; higher cancer rates; more birth defects; greater infant mortality; and higher incidence of asthma, diabetes, and cardiovascular disease.” *Id.* (enumerating health hazards and potentially lethal outcomes of gentrification).

5. Adam Frank, *What Does It Take To See Gentrification Before It Happens?*, NPR (Aug. 29, 2017, 9:42 AM), <https://www.npr.org/sections/13.7/2017/08/29/546980178/what-does-it-take-to-see-gentrification-before-it-happens> (noting how ascending real estate prices mark advent of gentrification).

loomed in the background of the United States Court of Appeals for the Seventh Circuit's review of *Protect Our Parks, Inc. v. Buttigieg*.⁶

In *Protect Our Parks*, the Seventh Circuit analyzed whether federal agencies adequately reviewed the environmental implications of the construction of the Obama Presidential Center (Presidential Center) in Chicago's Jackson Park.⁷ Protect Our Parks, an environmental preservation group, claimed that federal agencies did not adequately consider less harmful, alternative locations to the Presidential Center's siting of Jackson Park.⁸ The Seventh Circuit ultimately dismissed this claim, contending that the City of Chicago sited the Presidential Center in conjunction with the Obama Foundation, not the federal government.⁹ This denied the federal government any authority to move the Presidential Center to an alternate location.¹⁰ On appeal, the Seventh Circuit upheld the lower court's decision, denying Protect Our Parks' request for a preliminary injunction to stop the Presidential Center's construction.¹¹ The court correctly interpreted administrative law and aptly balanced federal and state powers, but it neglected to address policy concerns and the Presidential Center's impact on the surrounding neighborhoods.¹²

This Note examines the significance of the Seventh Circuit's ruling in *Protect Our Parks* by analyzing the court's successes and oversights in interpreting administrative law and statutory agency action.¹³ This Note also assesses the potential environmental and social impacts of the court's ruling.¹⁴ Part II of this Note provides a historical and factual backdrop for the case.¹⁵ A description of the relevant legal issues — such as the relevant statutes the court re-

6. 39 F.4th 389, 392-93 (7th Cir. 2022) (introducing this Note's subject).

7. *Id.* at 393 (describing Protect Our Parks' main claim).

8. See Complaint for Declaratory and Injunctive Relief at 4, *Protect Our Parks, Inc. v. Buttigieg*, 2021 U.S. Dist. LEXIS 151806 (N.D. Ill. 2021) [hereinafter Complaint] (No. 21-cv-2006) (stating main issue in complaint).

9. See *Protect Our Parks*, 39 F.4th at 393 (distinguishing authority between local and federal governments).

10. *Id.* (explaining federal government's role in Presidential Center construction and siting).

11. *Id.* at 402 (affirming prior courts' judgments against Protect Our Parks).

12. For a discussion of the Seventh Circuit's ruling and its potential impact on Jackson Park and the surrounding community, see *infra* notes 203-13 and accompanying text.

13. For a discussion of the arguments in *Protect Our Parks*, see *infra* notes 110-83 and accompanying text.

14. For a discussion of *Protect Our Parks*' lasting environmental and social impact, see *infra* notes 214-31 and accompanying text.

15. For a discussion of *Protect Our Parks*' historical and factual foundation, see *infra* notes 20-44 and accompanying text.

viewed — follows in Part III.¹⁶ Part IV follows with a summary of the legal rationale for the court’s holding.¹⁷ Then, Part V offers a critical analysis of the court’s reasoning, arguing that while the court correctly decided the case, it missed an opportunity to provide a discussion of larger social issues.¹⁸ Finally, Part VI outlines the potential impact this case will have on Chicago, lists issues surrounding the relevant law, and suggests reform.¹⁹

II. LAYING THE GROUNDWORK: THE FACTS OF *Protect Our Parks*

The history of Chicago’s Jackson Park traces back to 1869, when the Illinois General Assembly passed a statute appointing a board of public park commissioners for the City of Chicago.²⁰ The statute granted the board, known as “South Park Commissioners” (the Commissioners), the ability to locate and acquire public parks in Chicago.²¹ The Commissioners used their delegated authority to acquire land that would eventually become Jackson Park.²² In 1934, the Illinois legislature enacted the Park District Consolidation Act, which consolidated all existing park districts into one district: the Chicago Park District.²³ The Chicago Park District held Jackson

16. For a discussion of *Protect Our Parks*’ legal basis and central issues, see *infra* notes 45-109 and accompanying text.

17. For a discussion of the Seventh Circuit’s holding in *Protect Our Parks*, see *infra* notes 112-83 and accompanying text.

18. For a critical analysis of the court’s holding in *Protect Our Parks*, see *infra* notes 184-213 and accompanying text.

19. For a discussion of *Protect Our Parks*’ potential ramifications, see *infra* notes 214-31 and accompanying text.

20. See Act effective Feb. 24, 1869, vol. 1, 1869 Ill. Laws 358 (creating Act to locate and maintain public parks).

21. See *id.* at 360 (giving board power to hold, control, and manage land). The Act bestowed upon the Commissioners the power to hold, control, and manage land “as a public park, for the recreation, health and benefit of the public, and free to all persons forever” *Id.* (describing Jackson Park’s initial purpose as public park).

22. See *Jackson (Andrew) Park*, CHI. PARK DIST., <https://www.chicagoparkdistrict.com/parks-facilities/jackson-park> (last visited Mar. 6, 2023) (discussing history of Jackson Park). The Midway Plaisance connects Jackson Park, which was originally divided by east and west divisions, to Washington Park. *Id.* (mapping Midway Plaisance connected between east and west). In 1880, Chicago named the eastern division “Jackson Park” after the Seventh President of the United States, Andrew Jackson. *Id.* (stating current name of park).

23. See 70 ILL. COMP. STAT. 1505/1 (1933) (consolidating park districts into one Chicago Park district).

Park in public trust.²⁴ Since then, Jackson Park has been an integral feature of Chicago.²⁵

In 2014, the Obama Foundation began its search for a location to build the Presidential Center.²⁶ The Obama Foundation eventually decided to build the Presidential Center in the City of Chicago.²⁷ Once the Obama Foundation chose Chicago, it narrowed its choices to two parks: Washington Park and Jackson Park.²⁸ The Obama Foundation chose the latter, sparking concern from local environmental groups and residents alike.²⁹ Former Chicago Mayor Rahm Emanuel — who served as Obama’s Chief of Staff in the White House — passed an ordinance to transfer a portion of Jackson Park to the Obama Foundation for private use.³⁰ The Illinois General Assembly also revised the Illinois Park District Aquarium and Museum Act to permit certain third-party groups to construct and maintain buildings and structures on public land,

24. *See id.* (marking change from private to public land).

25. *See generally Jackson Park Timeline*, JACKSON PARK ADVISORY COUNCIL, <https://www.jacksonparkadvisorycouncil.org/history-2/> (last visited Mar. 6, 2023) (outlining Jackson Park’s history).

26. *See generally* Dahleen Glanton, *Obama Library Officials Allow Parties to Make Their Bid*, CHI. TRIBUNE (Mar. 20, 2014, 12:00 AM), <https://www.chicagotribune.com/news/ct-xpm-2014-03-20-chi-obama-library-officials-allow-parties-to-make-their-bid-20140320-story.html> (discussing preliminary stages for applicants bidding on Presidential Center site).

27. Julie Bosman & Mitch Smith, *Chicago Wins Bid to Host Obama Library*, N.Y. TIMES (May 12, 2015), <https://www.nytimes.com/2015/05/13/us/chicago-president-obama-library.html> (noting University of Chicago’s partnership with Obama Foundation after Chicago’s winning bid). The Obama Foundation chose Chicago because of President Obama’s connections to the area. *Id.* (detailing Obama’s connection to Chicago). President Obama met his wife, Michelle, in Chicago and began his political career there. *Id.* (delving into Obama’s link to Chicago). Other competing areas included Hawaii, where President Obama was born, and New York City, where Obama earned his undergraduate degree at Columbia University. *Id.* (explaining other geographical influences for Presidential Center’s siting).

28. *Id.* (listing two options for Presidential Center’s location).

29. *See University Group Announces Opposition to Obama Center*, CBS NEWS (Jan. 9, 2018, 7:43 AM), <https://www.cbsnews.com/news/university-group-announces-opposition-to-obama-center/> (noting unrest amongst University of Chicago scholars and staff); *see also* Evelyn Holmes, *Rally Near Obama Presidential Center Site Demands Affordable Housing for South Side Residents*, ABC NEWS CHI. (Sept. 28, 2021), <https://abc7chicago.com/obama-library-displacement-neighborhood-jackson-park-gentrification/11057905/> (conversing with local residents voicing concern about displacement amid rising housing costs); *see also* Kathy Bergen, Blair Kamin & Katherine Skiba, *Obama Chooses Historic Jackson Park as Library Site*, CHI. TRIBUNE (July 27, 2016, 8:34 PM), <https://www.chicagotribune.com/news/obama-center/ct-obama-library-site-jackson-park-met-20160727-story.html> (interviewing community residents refusing to give up homes for rising real estate costs).

30. *See* Chi., Ill. Ordinance O2015-192 (Jan. 21, 2015) (transferring land to private ownership).

such as the Presidential Center in Jackson Park.³¹ The City of Chicago approved the partial transfer of Jackson Park to the Obama Foundation to build the Presidential Center in 2018.³² Chicago then passed another ordinance to ensure the Presidential Center would use the land for the intended purposes.³³

Private donations currently fund the Presidential Center.³⁴ Original estimates calculated the cost of the Presidential Center around \$500 million, but these estimates have increased to a price as high as \$830 million.³⁵ The Presidential Center may reach a price tag of \$1.6 billion over the next several years to pay for construction, preservation, and artifacts within the Presidential Center.³⁶

In May 2018, the environmental preservationist group Protect Our Parks sued the City of Chicago and the Chicago Park District, seeking a preliminary injunction to stop the Presidential Center's construction.³⁷ The Northern District of Illinois ruled in part for the City of Chicago and the Chicago Park District, which allowed the construction to continue, and the United States Court of Appeals for the Seventh Circuit affirmed the judgment.³⁸ Undeterred, Protect Our Parks returned to the Northern District of Illinois just days before the Presidential Center's groundbreaking with a new case, naming multiple federal government officials in a fifteen-count complaint.³⁹ In its complaint, Protect Our Parks alleged that

31. See 70 ILL. COMP. STAT. 1290/1 (2020) (amending Act to include presidential centers as permitted structure on public land).

32. Fran Spielman, *City Council Approves Obama Presidential Center*, CHI. SUN TIMES (May 23, 2018, 6:21 PM), <https://chicago.suntimes.com/2018/5/23/18339201/city-council-approves-obama-presidential-center> (noting approval of site for construction).

33. Press Release, Chi. Off. of the Mayor, Mayor Emanuel, City Departments Introduce Two Ordinances to City Council That Represent the Next Step Forward to the Revitalization of the Obama Presidential Center, (Sept. 20, 2018), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2018/september/092018_TwoOrdinancesObamaPresidentialCenter.html (detailing specifications for Presidential Center's use in city and community).

34. See *Documents Detail New Cost for Obama Presidential Center*, ASSOCIATED PRESS (Aug. 22, 2021), <https://apnews.com/article/philanthropy-aaecbd43264b62e70dd634dc78470294> (detailing method of funding).

35. *Id.* (listing Presidential Center's price and recent cost increase).

36. *Id.* (stating projected final donation amount).

37. See *Protect Our Parks, Inc. v. Chi. Park Dist.*, 368 F. Supp. 3d 1184, 1188-89 (N.D. Ill. 2019) (describing Protect Our Parks' complaint).

38. *Id.* at 1198 (ruling partly against Protect Our Parks, particularly on "environmental harm theory"); *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 728 (7th Cir. 2020) (affirming in part prior court's judgment).

39. See Complaint, *supra* note 8, at 11-13 (naming federal government officials as defendants in complaint). More specifically, Protect Our Parks brought claims

various federal agencies inadequately reviewed the Obama Foundation's proposal to build within Jackson Park by neglecting to consider alternative construction sites and environmental concerns.⁴⁰ Protect Our Parks again moved for a preliminary injunction, claiming that the federal agencies did not sufficiently execute statutory requirements, but the District Court dismissed the motion.⁴¹ In a desperate move, Protect Our Parks moved for an injunction pending appeal with the Seventh Circuit, which the District Court also denied.⁴² Protect Our Parks then filed an emergency application for writ of injunction to the Supreme Court of the United States, but the Court denied this as well.⁴³ Ultimately, Protect Our Parks appealed unsuccessfully to the Seventh Circuit.⁴⁴

III. FROM PILLAR TO POST: DISCUSSING THE BACKGROUND OF PROTECT OUR PARKS' ARGUMENTS

Protect Our Parks argued in its complaint that the federal government failed to adequately review the environmental conse-

under the Administrative Procedure Act against the City and Park District, the Foundation, and a group of federal and state officers, namely: Pete Buttigieg in his official capacity as Secretary of the Department of Transportation; Stephanie Pollock in her official capacity as Acting Administrator of the Federal Highway Administration (FHWA); Arlene Kocher in her official capacity as the Division Administrator of the Illinois Division of the FHWA; Matt Fuller in his official capacity as the Environmental Programs Engineer of the Illinois Division of the FHWA; Anthony Quigley, P.E., in his official capacity as the Deputy Director, Region 1 Engineer of the Illinois Department of Transportation; Deb Haaland in her official capacity as the Secretary of the United States Department of the Interior; Shawn Bengé in his official capacity as Deputy Director of Operations of the National Park Service (NPS), exercising the delegated authority of the Director of the NPS; John E. Whitley in his official capacity as Acting Secretary of the Army; and Paul Culberson in his official capacity as Commanding Officer of the Army Corps of Engineers. *Id.* (suing multiple federal officials).

40. *Id.* at 3-6 (alleging unsatisfactory federal agency review for Presidential Center siting and construction). Protect Our Parks sought a preliminary injunction on its federal claims under the following: Section 4(f) of the Department of Transportation Act; the National Environmental Policy Act; the Urban Park and Recreation Recovery Act; sections 106 and 110(k) of the National Historic Preservation Act; the Rivers and Harbors Act; and the Clean Water Act. *Id.* (listing federal statutes named in complaint).

41. *Protect Our Parks v. Buttigieg*, No. 21-CV-2006, 2022 U.S. Dist. LEXIS 56619, at *7 (N.D. Ill. Mar. 29, 2022) (dismissing motion for preliminary injunction).

42. *Protect Our Parks, Inc. v. Buttigieg*, 10 F.4th 758, 765 (7th Cir. 2021) *cert. denied*, 142 S. Ct. 60 (2021) (rejecting injunction pending appeal).

43. *Protect Our Parks, Inc. v. Buttigieg*, 142 S. Ct. 60, 60 (2021) (denying emergency application for writ of injunction to stop Presidential Center construction).

44. *Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 402 (7th Cir. 2022) (affirming preliminary injunction denial).

quences of building the Presidential Center in Jackson Park.⁴⁵ At the crux of its argument was an “environmental assessment” that the National Park Service (NPS), the Federal Highway Administration (FHWA), and the Illinois Department of Transportation conducted jointly pursuant to the National Environmental Policy Act (NEPA).⁴⁶ Additionally, Protect Our Parks cited review errors based on Section 4(f) of the Department of Transportation Act (DOTA), the Urban Park and Recreation Recovery Act (UPARR), and Section 106 of the National Historic Preservation Act (NHPA).⁴⁷

Protect Our Parks alleged that the Section 4(f) review required the FHWA to analyze prudent and feasible alternatives to the original site of Jackson Park, but the agency did not do this.⁴⁸ Protect Our Parks also argued that the UPARR review was inadequate, stating that the NPS had a statutory obligation to review all practical alternatives to UPARR-assisted parks such as Jackson Park.⁴⁹ Further, Protect Our Parks argued that FHWA ignored its findings under Section 106 of the NHPA.⁵⁰ Finally, and perhaps most importantly, Protect Our Parks argued the environmental assessment under NEPA was largely inadequate and an Environmental Impact Statement (EIS) was necessary.⁵¹ Under the alleged inadequacies, Protect Our Parks moved for a preliminary injunction to stop the construction of the Presidential Center.⁵² To win the preliminary

45. See Complaint, *supra* note 8, at 3-4, (presenting central issue in case).

46. NAT'L PARK SERV., FED. HIGHWAY ADMIN. & ILL. DEPT. OF TRANSP., ENVIRONMENTAL ASSESSMENT: FEDERAL ACTIONS IN AND ADJACENT TO JACKSON PARK: URBAN PARK AND RECREATION RECOVERY AMENDMENT AND TRANSPORTATION IMPROVEMENTS, 1 (2020) [hereinafter ENVIRONMENTAL ASSESSMENT] (enlisting two federal agencies and one state agency as assessors).

47. *Protect Our Parks*, 39 F.4th at 396 (listing federal acts that Presidential Center constructors did not properly consider).

48. See Complaint, *supra* note 8, at 32-34 (noting FHWA's inadequate review).

49. *Id.* at 58-60 (arguing NPS failed to review practical alternatives to Jackson Park).

50. *Id.* at 20 (asserting FHWA should have considered Section 106 findings).

51. *Id.* at 45-58 (listing all potential inadequacies under NEPA review and environmental assessments).

52. *Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 397 (7th Cir. 2022) (discussing necessities to win motion for preliminary injunction). Obtaining a preliminary injunction required Protect Our Parks to show that it was “likely to succeed on the merits . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest.” *Id.* (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)) (reciting necessary elements to win preliminary injunction).

injunction, Protect Our Parks needed to show the court that there was at least a “strong” showing of a “likelihood of success.”⁵³

A. Administrative Procedure Act

Protect Our Parks brought its action to court under the Administrative Procedure Act (APA).⁵⁴ The APA governs how federal agencies operate.⁵⁵ Because Protect Our Parks brought claims against the federal government under the APA, the Seventh Circuit applied the APA’s “arbitrary and capricious” standard of review.⁵⁶ There are many factors to consider under the arbitrary and capricious standard.⁵⁷ The leading case describing the arbitrary and capricious standard is *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Auto Insurance*,⁵⁸ where the United States Supreme Court defined courts’ role during review as to ensure that agencies relied on factors that Congress intended them to consider when reaching a conclusion.⁵⁹ Protect Our Parks relied on the APA’s arbitrary and capricious standard for a preliminary injunction when reviewing the following environmental statutes.⁶⁰

53. See *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762-63 (7th Cir. 2020), cert. denied, 141 S. Ct. 1754 (2021) (explaining that proving “beyond” a preponderance of evidence is unnecessary).

54. *Protect Our Parks*, 39 F.4th at 396 (describing procedural history and how Protect Our Parks pursued case).

55. Gillian Metzger, *The Administrative Procedure Act: An Introduction*, POVERTY & RACE RSCH. ACTION COUNCIL, <https://prrac.org/pdf/APA.summary.ProfMetzger.pdf> (last visited Mar. 6, 2023) (summarizing APA’s role in government and judicial processes).

56. See *Protect Our Parks*, 39 F.4th at 397 (stating how APA governs agency action and noting standard of review for such actions).

57. See generally Metzger, *supra* note 55, at 6 (discussing factors courts use to determine arbitrary and capricious). Some notable factors include the agency’s overall credibility and care, political factors with which a particular court may sympathize, and the agency’s likelihood of constantly changing policy between presidential administrations. *Id.* (listing significant factors in courts’ review); see also 5 U.S.C. § 706 (authorizing arbitrary and capricious standard in statute).

58. 463 U.S. 29, 30 (1983) (introducing seminal case for arbitrary and capricious standard).

59. *Id.* (defining arbitrary and capricious in APA’s standard of review context). Courts’ review of arbitrary and capricious is narrow and typically deferential to the agency. *Id.* (narrowing courts’ role in APA review). Courts should “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Id.* (stating courts’ purpose during APA review).

60. For a discussion of the statutory issues Protect Our Parks cited, see *supra* note 40 and accompanying text.

B. National Environmental Policy Act

Congress enacted NEPA in 1970 to ensure federal agencies conducted thorough reviews of each proposed action and considered the potential environmental, social, and economic effects of the proposed action.⁶¹ NEPA is a procedural statute, not a substantive statute.⁶² Courts only have the authority to analyze whether the agencies conducting the review have “taken a hard look at environmental consequences.”⁶³ Agencies must follow statutory and regulatory procedures and take a “hard look” when conducting environmental assessments.⁶⁴

1. *Environmental Assessment*

The NEPA review process begins with an environmental assessment.⁶⁵ An environmental assessment is an introductory review of the environmental consequences of a proposed action.⁶⁶ NEPA governs the environmental assessment, but federal agencies that provide funding to the project conduct the review.⁶⁷ In *Protect Our Parks*, the NPS and FHWA conducted the environmental assessment because both agencies played a role in the Presidential Center’s construction process.⁶⁸

61. *See generally What Is the National Environmental Policy Act?*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/nepa/what-national-environmental-policy-act> (Oct. 26, 2022) (outlining significant aspects of NEPA).

62. *See Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 952 (7th Cir. 2003) (marking NEPA as procedural in nature).

63. *Env’t L. & Pol’y Ctr. v. U.S. Nuclear Regul. Comm’n*, 470 F.3d 676, 682 (7th Cir. 2006) (explaining courts’ role in determining agencies’ adherence to NEPA).

64. *See* 40 C.F.R. § 1501.5 (2022) (listing steps necessary for determining both environmental assessment and EIS).

65. *Id.* (addressing first step of NEPA agency review). This is a less involved and burdensome review agencies use to decide whether a more time intensive EIS is necessary. *Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 397 (7th Cir. 2022) (explaining preliminary environmental assessment review’s purpose).

66. 40 C.F.R. § 1501.5 (2022) (defining environmental assessment).

67. *Id.* (mandating federal agency review).

68. NAT’L PARK SERV., FED. HIGHWAY ADMIN. & ILL. DEP’T OF TRANSP., FINDING OF NO SIGNIFICANT IMPACT, FEDERAL ACTIONS IN AND ADJACENT TO JACKSON PARK 1-2 (2021) [hereinafter FINDING OF NO SIGNIFICANT IMPACT] (citing agencies that created environmental assessment). Although construction of the Presidential Center also triggered the Illinois Department of Transportation to review for the environmental assessment, the court only reviewed federal agencies’ review process. *Id.* (listing Illinois Department of Transportation as reviewer).

Each federal agency has adopted specific NEPA procedures for the production of its own environmental assessments.⁶⁹ Typically, there are four basic requirements that each environmental assessment must include: the proposed action's purpose, relevant alternatives to the proposed action, environmental impacts of the proposed action, and a list of agencies conducting the review.⁷⁰ If the environmental assessment finds the proposed project presents a significant environmental threat, the agency must continue the review process with an Environmental Impact Assessment (EIS).⁷¹ Alternatively, if the environmental assessment concludes the proposed action has no significant environmental impacts, the agency must issue a "Finding of No Significant Impact" (FONSI).⁷² A FONSI must explain why the agency believes the project will not cause a significant environmental impact.⁷³

In *Protect Our Parks*, the NPS and FHWA produced three alternatives to the proposed construction of the Presidential Center.⁷⁴ The agencies first proposed Alternative A, which urged a "no action" scenario where construction stops and no roadways close as a byproduct of the Presidential Center.⁷⁵ They also put forth Alternative B, which is a "no build" scenario where both the Presidential Center construction and road closures occur, but federal authorities do not improve the roadways.⁷⁶ Finally, the NPS and FHWA offered Alternative C, where both agencies approve the construction of the Presidential Center and new road improvements.⁷⁷ Ultimately, the agencies selected Alternative C and construction commenced.⁷⁸

69. See 43 C.F.R. §§ 46.300–325 (2022) (implementing specific procedures for crafting environmental assessment by NPS); see also 23 C.F.R. § 771.119 (2022) (stating all requirements for FHWA).

70. 40 C.F.R. § 1501.5(c) (2022) (providing general requirements for environmental assessment).

71. *Id.* § 1501.5(a) (2022) (authorizing agency to draft new impact statement).

72. *Id.* § 1501.6 (2022) (allowing agency to find no environmental impact).

73. *Id.* (articulating FONSI purpose).

74. ENVIRONMENTAL ASSESSMENT, *supra* note 46, at 15-25 (creating three alternatives for FHWA and NPS to consider).

75. *Id.* (describing Alternative A where both NPS and FHWA do not approve of federally funded projects).

76. *Id.* (depicting Alternative B where construction continues without FHWA funding approval and roadways go untouched).

77. *Id.* (illustrating Alternative C where both NPS and FHWA approve of Jackson Park conversion and Presidential Center construction).

78. *Id.* (choosing FHWA to build new roadways and NPS to approve UPARR conversion for Presidential Center construction).

2. *Environmental Impact Statement*

If an environmental assessment finds that an EIS is necessary, the reviewing agency must complete a more detailed review of the proposed project's environmental impacts.⁷⁹ An EIS is more comprehensive than an environmental assessment.⁸⁰ NEPA requires an EIS for projects and actions that could “significantly [affect] the quality of the human environment.”⁸¹ Environmental assessments are shorter in length and duration, while an EIS is a more descriptive, thorough, and complete review.⁸²

When creating an EIS, an agency must first publish a Notice of Intent in the Federal Register.⁸³ The Notice of Intent informs the public about the environmental review and starts the scoping process, which is when the federal agency and the public discuss environmental issues and alternatives in the upcoming EIS.⁸⁴ The agency then publishes a draft for public review and comment for a minimum of forty-five days, at which point the agency will consider all comments and potentially conduct further analysis.⁸⁵ The agency will then publish a final EIS, which incorporates the public comments received.⁸⁶

Agencies must deliberate for a minimum of thirty days before making a final decision on the proposed action.⁸⁷ The Environmental Protection Agency (EPA) will then post a Notice of Availability in the Federal Register, which informs the public that the EIS is available for review.⁸⁸ Then, the EPA will issue the final EIS.⁸⁹

79. 40 C.F.R. § 1502 (2022) (detailing necessary requirements for completing EIS).

80. *National Environmental Policy Act Review Process*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/nepa/national-environmental-policy-act-review-process> (Oct. 5, 2022) [hereinafter *NEPA Review Process*] (summarizing differences in regulatory requirements for EIS and environmental assessment).

81. 42 U.S.C. §§ 4321-47 (2012) (noting EIS creation timing).

82. *See Environmental Impact Statement Timelines (2010-2018)*, COUNCIL ON ENV'T QUALITY, EXEC. OFF. OF THE PRESIDENT (June 12, 2020), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf (charting average time of EIS preparation and completion). On average, agencies completed an EIS in four and a half years. *Id.* (combining average times for preparing and drafting to completion).

83. 40 C.F.R. § 1501.9 (2022) (providing first EIS requirement).

84. *Id.* (explaining purpose of Notice of Intent and scoping).

85. *Id.* §§ 1503, 1506.11(d) (outlining public comment period for EIS).

86. *Id.* § 1506.11(d) (finalizing EIS requirements).

87. *Id.* § 1506.11 (mandating time frame for final decision).

88. 40 C.F.R. § 1502.20 (2022) (publicizing EIS for review).

89. *Id.* (highlighting most vital and essential findings in EIS).

An EIS has concrete requirements, while environmental assessments can vary between agencies.⁹⁰

C. Section 4(f) and Section 106 Review

Protect Our Parks also sought a preliminary injunction based on its claim that the FHWA inadequately conducted a Section 4(f) review under the Department of Transportation Act of 1969.⁹¹ The Presidential Center's closure of three roadways in Jackson Park triggered a review under Section 4(f) of the Transportation Act because these closures and new transportation projects involved federal funding.⁹² Under Section 4(f), the Secretary of Transportation may approve a transportation project on public or historic land only if there is no "prudent and feasible alternative to using that land . . . and the . . . program or project includes all possible planning to minimize harm to the [land] resulting from the use."⁹³ During the assessment, the Secretary must consult with other secretaries, such as the Secretary of the Interior.⁹⁴

In this case, the Secretary of Transportation (under the FHWA) and the Secretary of the Interior (under the NPS) conducted an environmental assessment to consider the road closures' and construction's impact on the area.⁹⁵ For publicly owned parks, such as Jackson Park, secretaries can issue a de minimus impact statement, which outlines how the proposed action will not adversely affect the park.⁹⁶ If the secretary issues a de minimus impact

90. See *NEPA Review Process*, *supra* note 80 (mentioning differences between EIS and environmental assessment). An EIS must include: a cover sheet, summary, table of contents, purpose and need statement, alternatives, affected environment, environmental consequences, submitted alternatives, information, and analyses, list of preparers, and appendices (if necessary). 40 C.F.R. § 1502.11-18 (2022) (listing all EIS requirements).

91. *Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 394 (7th Cir. 2022) (discussing claims Protect Our Parks brought against federal government). A Section 4(f) review is named after the section in the original Department of Transportation Act of 1969 but is codified at 49 U.S.C. § 303. See 49 U.S.C. § 303 (2015) (codifying Department of Transportation environmental effects review).

92. *Protect Our Parks*, 39 F.4th at 393-94 (signaling closure of roads and federal funding for new roads as trigger for review).

93. 49 U.S.C. § 303(c)(1)-(2) (2015) (determining necessary objectives in approving transportation project).

94. *Id.* § 303(b) (creating required relationship between secretaries for internal environmental review).

95. ENVIRONMENTAL ASSESSMENT, *supra* note 46, at 9-15 (enlisting FHWA to review highway closures and road improvements and NPS to consider UPARR conversion).

96. See 49 U.S.C. § 303(d) (describing necessary conditions for de minimus impact findings).

statement, the secretaries will not need to review feasible and prudent alternatives.⁹⁷

New road construction around the Presidential Center required federal highway funding, which triggered the FHWA to conduct a Section 4(f) review.⁹⁸ The FHWA proceeded with its original transportation plan to build new roadways because it found no prudent and feasible alternatives to constructing the new roadways.⁹⁹ The FHWA also created ten alternatives to minimize impact on Jackson Park and chose an alternative that attempted to cause the least damage to the Section 4(f) protected property.¹⁰⁰

Additionally, the FHWA conducted a Section 106 review under the NHPA.¹⁰¹ Jackson Park is a historical site, which triggers a Section 106 review.¹⁰² Under a Section 106 review, the presiding federal agency must consider how its project will affect a historical site.¹⁰³ Agencies must take these Section 106 findings into account and develop alternatives that could mitigate adverse effects on the historical property.¹⁰⁴

D. Urban Park and Recreation Recovery Act Conversion Proposal Review

Under the UPARR Act, the NPS needed to approve Jackson Park's conversion from public to private use.¹⁰⁵ Congress enacted

97. *Id.* § 303(c)-(d) (allowing federal agency secretaries to ignore consideration for alternatives).

98. *Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 393-94 (7th Cir. 2022) (connecting FHWA and Section 4(f) review through federal funding). The Presidential Center's proposal affected four properties that Section 4(f) protects, including Jackson Park, Midway Plaisance, Jackson Park Historic Landscape District and Midway Plaisance, and the Chicago Park Boulevard System Historic District (CPBS). *Protect Our Parks, Inc. v. Buttigieg*, No. 21-cv-2006, 2021 U.S. Dist. LEXIS 151806, at *51-52 (N.D. Ill. Aug. 12, 2021) (listing historical properties triggering Section 4(f) review).

99. *Protect Our Parks*, 39 F.4th at 394 (stating why Jackson Park needed new federally funded roadways).

100. ENVIRONMENTAL ASSESSMENT, *supra* note 46, at 26-27 (choosing alternative that does not allow significant impact to Jackson Park).

101. *See Protect Our Parks*, 39 F.4th at 396 (noting FHWA involvement in Section 106 review).

102. *See* 54 U.S.C. § 306108 (triggering federal statute by working on historical land). An agency must make a "reasonable" and "good-faith effort" to identify historic properties, such as Jackson Park. 36 C.F.R. § 800.4(b)(1) (explaining how to identify historic property).

103. 54 U.S.C. § 306018 (requiring agencies to monitor and consider effects on historical properties).

104. *See* 36 C.F.R. § 800.4-6 (instructing agencies to consider alternatives).

105. *Protect Our Parks*, 39 F.4th at 394-95 (analyzing UPARR as factor in environmental assessment review).

UPARR in 1978 to fund improvements to recreational facilities and urban parks.¹⁰⁶ Communities that receive a UPARR grant, like Jackson Park, must maintain that park for public recreational use unless the NPS approves conversion for another purpose.¹⁰⁷ Put simply, UPARR requires the NPS to approve the conversion if the state or local government's conversion proposal adequately adheres to the UPARR Act's conversion guidelines.¹⁰⁸ Here, the NPS conducted a review for conversion of UPARR-assisted land because the Obama Foundation and the City of Chicago wanted to convert a portion of Jackson Park to private use.¹⁰⁹

IV. CAUTION, CONSTRUCTION AHEAD: THE SEVENTH CIRCUIT AXES PROTECT OUR PARKS' MOTION FOR PRELIMINARY INJUNCTION

On appeal, the Seventh Circuit reviewed whether Protect Our Parks had a sufficient claim to secure a preliminary injunction to stop construction of the Presidential Center.¹¹⁰ Protect Our Parks argued that the federal government did not adequately review "reasonable alternatives" to the location of the Presidential Center as NEPA requires.¹¹¹ The court held that Protect Our Parks did not make a "strong" showing under any of the claims it presented, and the court affirmed the lower court's judgment denying the preliminary injunction.¹¹²

The Seventh Circuit began its analysis by distinguishing between the "chance" and "likelihood" of irreparable harm.¹¹³ In the court's eyes, Protect Our Parks made no showing of a likelihood of

106. See 36 C.F.R. § 72.1-2 (2022) (stating UPARR's purpose and legislative authority).

107. 54 U.S.C. § 200507 (2014) (outlining conversion requirements for UPARR-funded communities).

108. *Id.* (mandating agencies to approve conversion if proposal fulfills statutory obligations).

109. *Protect Our Parks*, 39 F.4th at 394-95 (discussing reason for UPARR conversion).

110. *Id.* at 397 (explaining purpose of Seventh Circuit's review).

111. For a further discussion of Protect Our Parks' central arguments, see *supra* notes 45-51 and accompanying text.

112. *Protect Our Parks*, 39 F.4th at 394, 397 (explaining how Protect Our Parks does not have strong argument for success). For a further discussion of securing a preliminary injunction, see *supra* note 52 and accompanying text.

113. *Id.* at 397 (distinguishing between possibility and likelihood when looking at whether Protect Our Parks had strong arguments). A likelihood, not a *possibility* of succeeding, is necessary to secure a preliminary injunction. *Id.* (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)) (emphasizing likelihood of success as crucial factor). For a further discussion of securing a preliminary injunction, see *supra* note 52 and accompanying text.

irreparable harm in any of its claims.¹¹⁴ The City of Chicago was responsible for the Presidential Center’s siting, not the federal government.¹¹⁵ The court noted that federal law does not require federal agencies to use unnecessary resources and time in analyzing the environmental effects of proposed actions if those agencies did not cause or have authority to change that action.¹¹⁶ Once the court finished explaining preliminary injunctions and why Protect Our Parks had a failing argument, it closely dissected NEPA and NEPA’s “reasonable-alternative” requirement.¹¹⁷ The court finished its discussion by covering the other federal statutes listed in Protect Our Parks’ complaint.¹¹⁸ Ultimately, the Seventh Circuit affirmed the lower court’s judgment, denied the preliminary injunction, and allowed Jackson Park as the site for the Presidential Center.¹¹⁹

A. National Environmental Policy Act

First, the Seventh Circuit reviewed Protect Our Parks’ claims that the environmental assessment and FONSI were insufficient and that the construction of the Presidential Center warranted an EIS.¹²⁰ Under NEPA, courts review agency action under the APA’s “arbitrary and capricious” standard.¹²¹ Agency action under NEPA is also a procedural action instead of a substantive action.¹²² This is

114. *Id.* at 394 (differentiating between Protect Our Parks’ argument and what the organization needed to be to win). For a further discussion of what Protect Our Parks listed as irreparable harm, see *infra* note 124

115. *Id.* at 393 (describing second major issue with Protect Our Parks’ argument).

116. *Id.* (citing *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004)) (narrowing scope of federal agency responsibilities).

117. *Protect Our Parks*, 39 F.4th at 397-400 (discussing Protect Our Parks’ claims).

118. *Id.* at 400-02 (reviewing Protect Our Parks’ other federal statutory claims in one review).

119. *Id.* at 402 (denying preliminary injunction and allowing Jackson Park as site for Presidential Center).

120. *See id.* at 397-98 (reviewing environmental assessment and EIS specifics). For a further discussion of environmental assessments and EISs, see *supra* notes 65-90 and accompanying text.

121. *See Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 952 (7th Cir. 2003) (citing 5 U.S.C. § 706 (2)(A)) (noting statute requires arbitrary and capricious standard when looking at federal agency action). For a further discussion of APA standards, see *supra* notes 54-60 and accompanying text.

122. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (describing how NEPA only prescribes statutory process). *Robertson* defines substantive as a result-based standard, requiring agencies under NEPA to review environmental effects and mandate particular results. *Id.* (minimizing role of NEPA). Statutes under NEPA merely prescribe the necessary process by which an agency must operate — agency findings under NEPA are irrelevant. *Id.* (authoriz-

important, the Seventh Circuit stated, because the court's role in ruling on agency compliance is only to ensure the agency has "taken a hard look at environmental consequences" instead of looking at an agency's "substantive judgment" about the seriousness of the environmental consequences.¹²³ Protect Our Parks argued that not producing an EIS was arbitrary and capricious because the Presidential Center required the City of Chicago to cut down hundreds of trees, displace wildlife, and upset historic preservation.¹²⁴ The Seventh Circuit rejected this argument, opining that these issues did not address any failures on behalf of the agencies to adhere to the required review process, which is the key element in a NEPA review.¹²⁵ The court addressed the NPS's and FHWA's assessments and found them to be detailed and thorough.¹²⁶

Protect Our Parks also argued that the NPS and FHWA did not adequately consider all of the factors listed in the NEPA process when reviewing the environmental effects.¹²⁷ Agencies reviewing these factors rely on both the context and intensity of the proposed action's ability to "significantly" affect the human environment.¹²⁸ Protect Our Parks complained that the agencies ignored the

ing NEPA to only prescribe necessary process and disregard mandating particular results).

123. *Protect Our Parks*, 39 F.4th at 397-98 (citing *Env't L. & Pol'y Ctr. v. U.S. Nuclear Regul. Comm'n*, 470 F.3d 676, 682 (7th Cir. 2006)) (articulating proper standard when reviewing federal agency action).

124. *Id.* at 398 (discussing environmental degradation that should have triggered EIS). Protect Our Parks believed these practices to be environmentally degrading. *Id.* (stating Protect Our Parks' main reasoning for EIS).

125. *Id.* (rebutting Protect Our Parks' arguments).

126. *Id.* (mentioning agency review process for each environmental concern). The agencies created a "Tree Technical Memorandum," detailed the migration pattern of birds and how to mitigate issues of their displacement, and reviewed new trees that the Obama Foundation and Chicago will plant once the Presidential Center finishes construction. *Id.* (explaining steps agencies took to review environmental effects).

127. *Id.* (complaining FHWA and NPS did not consider some required factors). Protect Our Parks argued that the agencies failed to consider the following factors in their review: (1) "unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas"; (2) the "degree to which the effects on the quality of the human environment are likely to be highly controversial"; (3) the "degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources"; and (4) whether "the action is related to other actions with individually insignificant but cumulatively significant impacts." Complaint, *supra* note 8, at 46 (enumerating alleged missteps by federal agencies when reviewing required environmental effects).

128. See 40 C.F.R. § 1508.27(a)-(b) (2019) (authorizing two factors for considering if proposed projects "significantly" affect environment).

unique characteristics of Jackson Park.¹²⁹ The court denied this by stating that the environmental assessment considered “historical and cultural resources” before concluding that there was potential for only minimal environmental effects.¹³⁰

Additionally, Protect Our Parks argued that the agencies mishandled the “likely to be highly controversial” factor, which is a factor in the NEPA review process that addresses a proposed project’s controversial nature.¹³¹ The main source of this argument, according to Protect Our Parks, was that there was opposition from community members, thus making the project likely to be “highly controversial.”¹³² The Seventh Circuit stated that the “heckler’s veto” is an insufficient reason to increase the likelihood of a project being controversial.¹³³ Public unrest and discomfort do not create controversy — there must be “substantial methodological reasons to disagree about the ‘size, nature, or effect’ of a project.”¹³⁴ The Seventh Circuit also dismissed Protect Our Parks’ claim that the agencies failed to consider the “cumulatively significant impact” of the Presidential Center.¹³⁵ The court reasoned that the environmental assessment considered the cumulative impacts of the Presidential Center’s construction, but the agencies classified the effects as minor and insignificant.¹³⁶ The court reiterated that even though Protect Our Parks may disagree with the substance of the agencies’ findings, only the agencies’ procedures are relevant.¹³⁷

129. *Protect Our Parks*, 39 F.4th at 398 (listing alleged issues with review process). Protect Our Parks stated there were extra-record declarations from neighbors who vehemently opposed the project. *Id.* (citing Protect Our Parks’ reasoning for stating project was highly controversial).

130. *Id.* (denying argument that environmental assessment did not account for “historical and cultural resources”).

131. *Id.* (stating another alleged mishandled regulatory factor).

132. *Id.* (explaining Protect Our Parks’ assertion that controversy stems from disgruntled and affected community members).

133. *Id.* (citing *Ind. Forest All., Inc. v. U.S. Forest Serv.*, 325 F.3d 851, 857 (7th Cir. 2003)) (discussing irrelevance of “heckler’s veto” as NEPA factor). A heckler’s veto in this context was in the form of Jackson Park community members and neighbors voicing their disapproval of the Presidential Center’s siting and construction. *Id.* (excluding community members’ opinion from controversy factor).

134. *Protect Our Parks*, 39 F.4th at 398 (citing *Ind. Forest All., Inc. v. U.S. Forest Serv.*, 325 F.3d 851, 857 (7th Cir. 2003)) (listing only significant factors when looking at “heckler’s veto”).

135. *Id.* at 399 (citing 40 C.F.R. § 1508.27(b)(7) (2019)) (dismissing claim of substantive findings in procedural statute).

136. *Id.* (addressing issue of “cumulatively significant impact”).

137. *Id.* (deciding Protect Our Parks’ position on substantive findings is irrelevant).

B. Reasonable-Alternative Requirement

Next, the Seventh Circuit addressed Protect Our Parks' argument that both the NPS and FHWA sidestepped NEPA's "reasonable-alternatives" requirement when considering the Presidential Center's location.¹³⁸ Protect Our Parks argued that NEPA requires agencies to evaluate alternative sites.¹³⁹ Protect Our Parks cited "segmentation" as a way that the agencies unlawfully dodged their NEPA obligations when conducting the reasonable-alternative analysis.¹⁴⁰ Agencies use segmentation to break up a large overall project into smaller ones to circumvent NEPA requirements and minimize environmental effects.¹⁴¹ Here, Protect Our Parks believed the NPS and FHWA segmented the project into two parts: first, the UPARR conversion to build and expand roads, bike paths, and pedestrian routes; and second, Chicago's decision to build the Presidential Center in Jackson Park.¹⁴² The court rejected the segmentation argument, providing three reasons as to why the argument was unpersuasive.¹⁴³

First, the Seventh Circuit stated that NEPA only applies to significant, or "major," federal actions.¹⁴⁴ Again, the court leaned on the argument that Chicago – *not* the federal government – was responsible for siting the Presidential Center.¹⁴⁵ The court explained

138. *Id.* (shifting focus to reasonable-alternatives requirement claim).

139. *Protect Our Parks*, 39 F.4th at 399 (arguing for NEPA to follow required guidelines).

140. *Id.* (raising segmentation issue).

141. *See, e.g.*, *Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 962 (7th Cir. 2003) (defining segmentation in context of separating large highway project into multiple highway projects). Segmentation allows federal agencies to divide one large project into multiple smaller projects, which minimizes the overall environmental effects, thus decreasing the possibility that the project requires an EIS. *Id.* (describing segmentation). In order to avoid segmentation as a negative consequence, the FHWA requires that each action in an EIS or FONSI:

- (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
- (2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements are made; and
- (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Id. (citing 23 C.F.R. § 771.111(f)(1)-(3) (2022)) (enumerating FHWA requirements to avoid segmentation).

142. *See Protect Our Parks*, 39 F.4th at 399 (stating Protect Our Parks claims that NPS, FHWA, and local level Chicago officials "improperly" segmented).

143. *Id.* (disagreeing with Protect Our Parks' segmentation argument).

144. *Id.* (interpreting NEPA's scope as narrow); *see also* 40 C.F.R. § 1508.18 (2022) (defining "major Federal action" as one "potentially subject to Federal control and responsibility").

145. *Protect Our Parks*, 39 F.4th at 399 (stressing Chicago's role in Presidential Center siting process).

that agencies without authority under the law to prevent an effect cannot logically be a “legally relevant” cause of that effect.¹⁴⁶ The Seventh Circuit maintained that no federal agency had the authority to approve or disapprove the location of the Presidential Center because the siting was not a federal project.¹⁴⁷ According to the court, the NPS and FHWA could only confine their analysis to the portions of the project that were subject to federal review, which did not include locating the Presidential Center.¹⁴⁸

Second, the court opined that Protect Our Parks’ reasonable-alternative argument also lacked the requisite causation.¹⁴⁹ Under NEPA, a federal agency must review environmental harms that the agency’s proposed action both “factually and proximately” caused.¹⁵⁰ Protect Our Parks argued that the NPS was both the factual and proximate cause of environmental harms resulting from the Presidential Center’s location in Jackson Park because without the NPS’s approval, the Presidential Center’s construction would stop.¹⁵¹ The Seventh Circuit accepted the argument that the NPS’s approval of the project and conversion of the parkland would be a factual cause of the Presidential Center’s potential environmental harm.¹⁵² The court, however, ruled that the NPS was not the proximate cause of any future environmental harm resulting from the Presidential Center’s location.¹⁵³ Once again, the court emphasized it was the City of Chicago that cited the Presidential Center, not the federal government or the NPS.¹⁵⁴ Because the NPS did not choose the Presidential Center’s location, the NPS had no authority to move the Presidential Center elsewhere.¹⁵⁵ For this reason, the Seventh Circuit stated any environmental harm resulting from the Jackson Park location would not be a proximate cause of

146. *Id.* (citing *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004)) (restricting scope of agency authority).

147. *Id.* (rejecting notion that NPS and FHWA had authority to disapprove location of Presidential Center).

148. *Id.* (interpreting NEPA to give federal agencies limited authority in this specific context).

149. *Id.* at 399-400 (continuing analysis to second flaw in reasonable-alternative argument).

150. *Protect Our Parks*, 39 F.4th at 399 (listing NEPA requirements for causation claim).

151. *Id.* at 399-400 (dissecting Protect Our Parks’ causation argument).

152. *Id.* (naming NPS as factual cause).

153. *Id.* at 400 (denying proximate cause argument).

154. *Id.* (reasoning that NPS took no part in siting process).

155. *Protect Our Parks*, 39 F.4th at 400 (reiterating federal government’s lack of involvement with Presidential Center’s siting).

federal action.¹⁵⁶ Additionally, factual causation alone is insufficient to make an agency responsible for particular future effects under NEPA and other relevant regulations.¹⁵⁷ Agencies like the NPS and FHWA are only responsible for the decisions they have the authority to make.¹⁵⁸ Without proximate causation, then, Protect Our Parks' causation argument failed.¹⁵⁹

The court continued its analysis by admitting that the role of federal agencies in this case "would be enough to defeat causation on its own," but cited the UPARR Act to bolster its conclusion.¹⁶⁰ The NPS's approval of the Jackson Park conversion exhibited that Chicago's proposal for siting the Presidential Center met statutory criteria.¹⁶¹ The UPARR Act obligated the NPS to approve the conversion because not doing so would violate the NPS's statutory duty.¹⁶²

Finally, the Seventh Circuit concluded Protect Our Parks ignored the "reasonable" aspect of NEPA's reasonable-alternatives requirement.¹⁶³ The court held that it would be unreasonable to expect the federal government to waste taxpayer resources, such as time and money, to explore alternative sites for the Presidential Center because the federal government has no authority to institute such alternative sites.¹⁶⁴ According to the court, forcing an agency to consider alternatives that would circumvent a project's goals would also be unreasonable.¹⁶⁵ Here, forcing the NPS and FHWA to consider alternative construction sites would inhibit the Obama

156. *Id.* (exonerating federal government from proximate cause liability).

157. *Id.* (citing *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752 at 768-70) (explaining limitations of factual causation argument for future claims).

158. *Id.* (citing *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 768-70 (2004)) (expressing federal agency responsibility exists in limited circumstances).

159. *Id.* (denying causation argument without requisite proximate causation component).

160. *Protect Our Parks*, 39 F.4th at 400 (citing 54 U.S.C. § 200507 (2014)) (examining statutory language). The court explained the use of the word "shall" mandates an agency to act if all the statutory criteria are present. *Id.* (reviewing language in UPARR Act to bolster causation argument). For a further discussion of the UPARR Act, see *supra* notes 105-109 and accompanying text.

161. *Protect Our Parks*, 39 F.4th at 400 (defeating causation argument through UPARR Act's mandatory language).

162. *Id.* (reasoning UPARR Act mandated that NPS approve conversion).

163. *Id.* (deeming "reasonableness" part of Protect Our Parks' argument as misguided).

164. *Id.* (citing *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 765 (2004)) (observing federal agency's diminished role).

165. *Id.* (citing *Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 960-61 (7th Cir. 2003)) (implying agencies should promote desired goals instead of prohibiting them).

Foundation's goals because the location of the Presidential Center is central to its mission.¹⁶⁶

C. Addressing Other Statutory Issues

The Seventh Circuit concluded its statutory analysis by considering the rest of Protect Our Parks' arguments.¹⁶⁷ First, the court addressed Protect Our Parks' Section 4(f) claim that the FHWA did not consider "prudent and feasible" alternatives to the Presidential Center's road closures and subsequent new highway infrastructure.¹⁶⁸ In its review, the Seventh Circuit ruled that the FHWA could not have compelled Chicago to relocate the Presidential Center because the FHWA's review solely concerned transportation infrastructure *around* the Presidential Center, not the actual site of the Presidential Center.¹⁶⁹ This claim, according to the court, suffers from flaws similar to Protect Our Parks' NEPA claim.¹⁷⁰ Although the unique location of the Presidential Center forced road closures, the federal government did not fund the project or choose its location.¹⁷¹ Importantly, no federal law exists that prohibits Chicago from closing roadways for the project — the Department of Transportation Act only authorized the FHWA to review the new construction of roadways through a Section 4(f) review.¹⁷² Because of this limited scope, the FHWA is only required to consider alternatives to the new transportation infrastructure rather than the Presidential Center's location.¹⁷³

Next, the court addressed Protect Our Parks' claim that the agencies inadequately considered the Presidential Center's future historical effects under Section 106 of the NHPA.¹⁷⁴ The Seventh

166. *Protect Our Parks*, 39 F.4th at 400 (discussing how Presidential Center's goals coincide with Jackson Park location).

167. *Id.* at 400-02 (stating that remaining arguments suffer from same issues as previously discussed statutory claims).

168. *Id.* at 400-01 (expressing Protect Our Parks faulted FHWA for not evaluating alternative locations for Presidential Center).

169. *Id.* (denying Protect Our Parks' Section 4(f) claim).

170. *Id.* (likening failure of argument to weaknesses in NEPA causation and reasonable-alternative claim).

171. For a discussion of the Presidential Center's funding, see *supra* notes 34-36 and accompanying text.

172. *Protect Our Parks*, 39 F.4th at 401 (interpreting narrow scope for FHWA's Section 4(f) review).

173. *Id.* (determining authority for FHWA during Section 4(f) review).

174. *See id.* (noting Protect Our Parks claimed violation of NHPA because FHWA did not consider alternatives or historical effects). The court also reviewed the Clean Water Act and Rivers Harbors Act in this section, which are not covered within this Note. *Id.* (reviewing other federal statutes). For a further discussion of Section 106, see *supra* notes 101-04 and accompanying text.

Circuit rebutted this argument in a similar fashion to the previous claims, stating that the NHPA is a purely procedural statute, not substantive.¹⁷⁵ The court believed the FHWA, which reviewed the NHPA's regulatory factors, took adequate steps to follow the NHPA's required procedure.¹⁷⁶ The Seventh Circuit specified that the NHPA only applies to projects that require federal approval, similar to both NEPA and Section 4(f).¹⁷⁷ Again, choosing the location of the Presidential Center was a private decision made in conjunction with the City of Chicago, so the NHPA had no authority to alter the construction site.¹⁷⁸

Similarly, the Seventh Circuit succinctly dismissed Protect Our Parks' UPARR Act claims.¹⁷⁹ When considering a proposal to convert UPARR-funded parklands from public to private use, the NPS must ensure that the proposal evaluated "all practical alternatives to the proposed conversion."¹⁸⁰ Protect Our Parks wanted the NPS to consider the practicality of these alternatives, but the NPS merely reviewed the proposed plan and had no authority to move the Presidential Center.¹⁸¹ The Seventh Circuit acknowledged the NPS completed all requirements under the UPARR Act, such as evaluating the conversion proposal and deciding whether Chicago considered available and feasible alternatives.¹⁸² The court stated that the NPS satisfied its statutory obligations, affirming the district court's order denying Protect Our Parks' motion for a preliminary injunction.¹⁸³

175. *Protect Our Parks*, 39 F.4th at 401 (citing *Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752, 755 (D.C. Cir. 2003)) (denying argument and explaining deference afforded when agency follows procedures).

176. *Id.* (defining NHPA only as procedural).

177. *Id.* (characterizing Section 106 of NHPA similarly to NEPA and Section 4(f) of DOTA as giving narrow authority).

178. *Id.* (acknowledging NHPA's limited scope due to private funding and local government).

179. *Id.* (dismissing Protect Our Parks' claim that NPS violated UPARR Act).

180. *Protect Our Parks*, 39 F.4th at 401 (citing 36 C.F.R. § 72.72(b)(1)) (reading statute to require consideration of all "practical" alternatives).

181. *Id.* (restating limitations on reach of agencies).

182. *Id.* (listing NPS's UPARR conversion review process regarding Presidential Center). The NPS's review of Jackson Park's UPARR conversion was merely procedural, not substantive. *Id.* (describing required actions by NPS during UPARR conversion review).

183. *Id.* (clearing NPS of any missteps or mishandlings).

V. HIT THE NAIL ON THE HEAD: SEVENTH CIRCUIT CORRECTLY
INTERPRETS ADMINISTRATIVE LAW BUT LACKS ADEQUATE POLICY
ANALYSIS

The Seventh Circuit correctly decided *Protect Our Parks* by interpreting federal agencies' duties when reviewing the relevant environmental statutes.¹⁸⁴ *Protect Our Parks* could not refute the court's determination of the federal environmental statutes as procedural rather than substantive.¹⁸⁵ Because these statutes are procedural in nature, the court had no choice but to defer to the agencies' "hard look" at the environmental consequences and accept their outcome.¹⁸⁶

A. Environmental Assessment versus EIS and Procedural versus
Substantive

The Seventh Circuit's discussion of procedural versus substantive regulations was clear and precise.¹⁸⁷ Both the NPS and FHWA decided that no EIS was necessary.¹⁸⁸ In arguing that the agencies' failure to produce an EIS was arbitrary and capricious, *Protect Our Parks* pointed to the destruction of over eight hundred trees, the adverse effects on certain migratory birds, and issues regarding historic preservation.¹⁸⁹ While these actions may negatively impact the environment, their harm is not enough to "significantly" impact the environment.¹⁹⁰ Furthermore, the agencies followed all procedural guidelines when producing the environmental assessment and the FONSI.¹⁹¹ By doing so, the agencies met their statutory require-

184. For a discussion of the Seventh Circuit's findings regarding administrative law and the agencies' roles in the siting review, see *supra* notes 111-83 and accompanying text.

185. For a discussion of the Seventh Circuit's conclusion that the environmental statutes in this case are procedural, see *supra* notes 111-83 and accompanying text.

186. For a discussion of what constitutes an agency's "hard look," see *supra* note 123 and accompanying text.

187. For a discussion of the Seventh Circuit's procedural versus substantive reasoning, see *supra* note 123-25 and accompanying text.

188. See FINDING OF NO SIGNIFICANT IMPACT, *supra* note 68 (concluding no EIS is necessary).

189. See *Protect Our Parks, Inc. v. Buttigieg*, 39 F.4th 389, 398 (7th Cir. 2022) (hearing *Protect Our Parks*' environmental concerns and ultimately denying argument).

190. For a discussion of the Seventh Circuit's reasoning on significance in the context of NEPA, see *supra* notes 135-37 and accompanying text.

191. For a discussion of the agencies' procedural steps, see *supra* notes 125-27 and accompanying text.

ments.¹⁹² Protect Our Parks cannot claim that the substance of the findings is incorrect or insufficient — it can only challenge an agency's failure to adhere to the required procedural steps.¹⁹³ To this end, the court correctly discussed the thorough review the agencies conducted.¹⁹⁴ The Seventh Circuit rightly noted that the procedural versus substantive argument applied to every other claim Protect Our Parks made, such as the Section 4(f) review claim, the NHPA claim, and the UPARR claim, as these are all procedural statutes.¹⁹⁵

B. Chicago as Siting Authority and Not the Federal Government

The City of Chicago siting the Presidential Center was lethal to Protect Our Parks' arguments.¹⁹⁶ The City of Chicago and the Obama Foundation chose Jackson Park; the federal government did not choose the location.¹⁹⁷ The construction of the Presidential Center and new highway infrastructure triggered federal review, not the siting process.¹⁹⁸ If the Seventh Circuit ruled that the NPS and the FHWA had the authority to stop the Presidential Center's construction, the court would have expanded the scope of federal agency authority, thus creating alarming effects for the relationship between state and federal agency power.¹⁹⁹ State and local autonomy was at stake here, which is why it was necessary that the court

192. *Protect Our Parks*, 39 F.4th at 397-98 (citing *Env't L. & Pol'y Ctr. v. U.S. Nuclear Regul. Comm'n*, 470 F.3d 676, 682 (7th Cir. 2006)) (introducing "hard look" requirement and commending agencies' thoroughness in environmental assessment).

193. *See id.* at 398 (ruling NEPA is procedural statute).

194. *See id.* (discussing thorough agency review and steps agencies took to ensure environment's protection).

195. For a discussion of the Seventh Circuit's procedural versus substantive reasoning, see *supra* notes 62-63 and accompanying text.

196. For a discussion of the court's focus on who participated in the siting of the Presidential Center, see *supra* notes 145-48 and accompanying text.

197. For a discussion of Chicago's siting process, see *supra* notes 145-48 and accompanying text.

198. *See Protect Our Parks*, 39 F.4th at 394 (asserting reason for federal review).

199. *See generally* Gillian E. Metzger, *Agencies, Polarization, and the States*, 115 COLUM. L. REV. 1739, 1765-69 (2015) (portraying relationship between state governments and federal agencies). States can agree to federal oversight through multiple means, such as accepting federal grants, using federal land, and other state participation methods. *Id.* at 1766-68 (describing state participation in context of federal agencies). States must keep a political and collegial relationship with federal agencies to ensure cooperation on both ends. *Id.* (placing importance on federal agencies remaining within scope of authority and states adhering to federal agency decision-making).

limit the federal government's statutory review authority.²⁰⁰ The only method by which the federal government could have stopped the Presidential Center construction was by accepting the environmental assessment's "Alternative A" — the "no action" alternative — through a denial of the UPARR-funded land conversion and Section 4(f) review.²⁰¹ The court correctly concluded, however, that these agencies had no authority to stop the construction because of their limited statutory authority.²⁰²

C. The Seventh Circuit's Missteps

The court thoroughly interpreted administrative law and statutory authority in *Protect Our Parks*.²⁰³ The court, however, neglected to examine in greater detail the specific factors that made the Presidential Center possible with such little federal oversight and funding.²⁰⁴ One of those factors is that the Presidential Center is not a typical presidential library.²⁰⁵ The federal government typically funds presidential libraries; private donations, however, funded the Presidential Center.²⁰⁶ The Obama Foundation skirted around the typical federal funding and approval process for official presidential libraries by securing private donations and working with former cabinet members, indebted city leaders, and Obama-appointed

200. For a discussion of the Seventh Circuit's interpretation of agencies' scope of authority, see *supra* notes 116-19 and accompanying text.

201. For a discussion of the agencies' potential alternatives, see *supra* notes 74-78 and accompanying text.

202. For a discussion of the agencies' statutory authority, see *supra* notes 116-19 and accompanying text.

203. For a discussion of the agencies' statutory authority, see *supra* notes 116-19 and accompanying text.

204. For a discussion of the Presidential Center's funding, see *supra* notes 34-36 and accompanying text.

205. See Jennifer Schuessler, *The Obama Presidential Library That Isn't*, N.Y. TIMES (Feb. 20, 2019), <https://www.nytimes.com/2019/02/20/arts/obama-presidential-center-library-national-archives-and-records-administration.html> (defining Presidential Center as private library instead of federally funded presidential library). The National Archives and Records Administration (NARA) is a federal agency that typically monitors and administers presidential libraries. *Id.* (mentioning typical agency that oversees presidential libraries). NARA does not control the privately-funding Presidential Center, worrying some historians about partisan information within libraries for controversial former presidents such as Donald Trump. *Id.* (outlining path to unruly presidential libraries with misinformation). Further, the Presidential Center will have no research library on site as presidential documents will be entirely digitized for the first time ever. *Id.* (discussing digitization of presidential libraries).

206. For a discussion of the Presidential Center's funding, see *supra* notes 34-36 and accompanying text.

judges.²⁰⁷ By working with private donors and the City of Chicago instead of the federal government, the Obama Foundation was able to trigger only a miniscule federal review.²⁰⁸ The Seventh Circuit's ruling still remains correctly decided, but there should have been further discussion as to why the federal government's review was so narrow in light of the significance of this project.²⁰⁹

Next, although the Seventh Circuit correctly decided the case, it did not consider a policy-based analysis.²¹⁰ A policy-based analysis in this case could bring the siting and environmental issues that Protect Our Parks raised to the forefront, even though the preservation organization did not have a clear path to victory in court.²¹¹ This case, whether the Seventh Circuit judges realize it, will have rippling effects for years to come in Chicago.²¹² Thus, the court and its jurisdictional population would have benefitted from a discussion of potential policy concerns and impacts stemming from this case.²¹³

207. See Shia Kapos, 'It's Been Hard Opposing Barack Obama', POLITICO (Aug. 3, 2021, 4:30 AM), <https://www.politico.com/news/magazine/2021/08/03/obama-presidential-center-chicago-park-protest-501946> (describing difficulty for residents of South Side residents to oppose hometown hero Barack Obama); see also *President Obama Nominates Two to Serve on the United States District Courts*, THE WHITE HOUSE OFF. OF THE PRESS SEC'Y (Aug. 5, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/08/05/president-obama-nominates-two-serve-united-states-district-courts> (detailing Obama's nomination of Judge Robert Blakey to Northern District of Illinois, who later ruled in *Protect Our Parks*' district court proceedings); see also *President Obama Announces David Hamilton for the United States 7th Circuit Court of Appeals*, THE WHITE HOUSE OFF. OF THE PRESS SEC'Y (Mar. 17, 2009), <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/president-obama-announces-david-hamilton-united-states-7th-circuit-court-appeals> (stating Obama's nomination of Judge David Hamilton to Seventh Circuit, who later took part in *Protect Our Parks*); see also Fran Spielman & Lauren FitzPatrick, *Rahm's Agency Heads Could Outlast Him Thanks to Golden Parachute Contracts*, CHI. SUN TIMES (Feb. 18, 2019, 7:04 PM), <https://chicago.suntimes.com/2019/2/18/18398890/rahm-s-agency-heads-could-outlast-him-thanks-to-golden-parachute-contracts> (discussing former Obama cabinet member Rahm Emanuel's role in securing land and political favors in return for Presidential Center construction and approval).

208. For a discussion of the Seventh Circuit's interpretation of the agencies' scope of authority, see *supra* notes 116-19 and accompanying text.

209. For a discussion of the Seventh Circuit's siting analysis, see *supra* notes 145-48 and accompanying text.

210. See generally Henry J. Friendly, *The Courts and Social Policy: Substance and Procedure*, 33 U. MIA. L. REV. 21, 40-42 (1978) (stating importance of social policy discussion within court opinions).

211. See generally *id.* at 23-27 (arguing social policy dicta holds great value).

212. For a discussion of *Protect Our Parks*' impact, see *infra* notes 217-31 and accompanying text.

213. See Friendly, *supra* note 210, at 21-22 (mentioning how potential policy concerns relate to case's outcomes).

VI. A HOUSE OF CARDS: WILL INDIRECT ENVIRONMENTAL EFFECTS
TEAR DOWN THE SEVENTH CIRCUIT'S RULING?

The Seventh Circuit's ruling provides an accurate snapshot of federal agency authority through environmental statutes, but its ruling indirectly changes the housing and human environment landscape of Chicago.²¹⁴ By allowing construction of the Presidential Center in Jackson Park, the Seventh Circuit invited much more than just potential environmental degradation — it invited “environmental gentrification.”²¹⁵ Environmental gentrification is the process of converting unused and underutilized land in cities and improving that land through environmentally conscious projects and initiatives.²¹⁶ The Obama Foundation claims the Presidential Center will enhance Jackson Park and act as an environmentally “sustainable landscape brimming with new life.”²¹⁷ The Presidential Center partially destroyed Jackson Park, but it promises to in-

214. For a discussion of the scope of authority for federal agencies, see *supra* notes 116-19 and accompanying text.

215. See generally Melissa Checker, *Wiped Out by the “Greenwave”: Environmental Gentrification and the Paradoxical Politics of Urban Sustainability*, 23 CITY & SOCIETY 210, 212 (2011) (introducing topic of environmental gentrification). Environmental gentrification is the intersection of “urban redevelopment, ecologically minded initiatives and environmental justice activism in an era of advanced capitalism.” *Id.* (defining environmental gentrification). Environmental gentrification produces the same positive and negative effects as normal gentrification. *Id.* (noting role of environmental gentrification in human displacement).

216. See Juliana A. Maantay & Andrew R. Maroko, *Brownfields to Greenfields: Environmental Justice Versus Environmental Gentrification*, INT'L J. ENV'T RSCH. & PUB. HEALTH, Oct. 2018, at 1, 1 (establishing environmental gentrification in urban context). Cities experience the most noticeable environmental gentrification when they repurpose dilapidated land, such as old railroad lines or industrial areas. *Id.* at 1-2 (depicting urban settings ripe for environmental gentrification). Cities can also create more subtle environmental gentrification, as land is generally repurposed with gardens, parks, and recreational paths which invite a more affluent demographic into the area. *Id.* at 3 (observing interesting twist on environmental gentrification).

217. See *Explore the Center's Environmentally Sustainable Design*, OBAMA FOUND., <https://www.obama.org/the-center/sustainability/> (last visited Mar. 6, 2023) (mentioning sustainable initiatives for Presidential Center). The Presidential Center is working with Chicago Botanic Garden to create a garden located on the Presidential Center's roof. *Id.* (mentioning work with Chicago Botanic Garden to curate garden similar to Former First Lady Michelle Obama's in White House). The Presidential Center will feature a beehive and pollinator garden, a new wetland walk, an extensive children's play area, and more. *Id.* (listing environmentally conscious additions). The new building will have environmental building certifications, such as: “LEED v4 Platinum, SITES Silver, and ILFI Zero Energy.” *Id.* (certifying Presidential Center as environmentally conscious). Other environmental initiatives for the Presidential Center include composting stations and solar panels throughout the Presidential Center's campus, helping the Presidential Center become a carbon neutral institution. *Id.* (detailing Presidential Center's aim of becoming carbon neutral institution through various environmental initiatives).

crease recreational areas and greenspaces.²¹⁸ Masked as an environmentally-friendly campus, the Presidential Center has started to attract new homeowners, landlords, and renters, thus accelerating upward trends in housing prices and increasing gentrification.²¹⁹ The environmental gentrification process has begun.²²⁰ According to a 2019 report from the University of Illinois at Chicago, home values around Jackson Park have been increasing at a faster rate than Chicago's median housing price since 2016.²²¹ President Obama said the general population would have more money to pay for the increased housing costs, but he did not guarantee that this applied to the current community members.²²²

The Presidential Center's location significantly affects residents of Woodlawn, the neighborhood bordering Jackson Park and the Presidential Center.²²³ Minority groups and low-income individuals primarily inhabit Woodlawn.²²⁴ Unfortunately, gentrifica-

218. For a discussion of Jackson Park's destruction, see *supra* note 189 and accompanying text.

219. See Wendell Hutson, *Three Apartment Buildings Near The Obama Presidential Center Have Been Sold*, CHI. BUS. J. (Sep. 30, 2022 10:48 AM), <https://www.bizjournals.com/chicago/news/2022/09/29/three-chicago-buildings-sold-for-10m.html> (announcing acquisition of apartment buildings near Presidential Center by New York City real estate group); see also Wendell Hutson, *Glangeolin Properties Buys Multifamily Building Near Obama Presidential Center*, CHI. BUS. J. (Apr. 29, 2022), <https://www.bizjournals.com/chicago/news/2022/04/29/chicago-investor-buys-multifamily-building.html> (declaring another property group as buyer of apartment complex near Presidential Center); see also Safia Samee Ali, *How Can We Benefit From It If We're Not There Anymore?: Obama Center Neighbors Still Waiting For Housing Protection*, NBC NEWS (Oct. 19, 2021, 12:15 PM), <https://www.nbcnews.com/news/us-news/how-can-we-benefit-it-if-we-re-not-there-n1280875> (discussing rising housing prices and concern from citizens).

220. See generally Hutson, *supra* note 219 (considering real estate sales around area of Presidential Center).

221. See NATHALIE P. VOORHEES CTR. FOR NEIGHBORHOOD & CMTY. IMPROVEMENT, PROTECT, PRESERVE, PRODUCE: AFFORDABLE HOUSING & THE OBAMA CENTER, 2 (Aug. 2019), https://cdn.vox-cdn.com/uploads/chorus_asset/file/19170773/Obama_Center_impact_study.pdf (marking upward trend in housing prices around Jackson Park after announcement of Presidential Center site).

222. See *Presidential Center Public Meeting*, *supra* note 1 (quelling fear of gentrification Presidential Center may cause).

223. For a discussion of the rising rent costs for residents around the Presidential Center, see *supra* note 221 and accompanying text.

224. See *Woodlawn Community Data Snapshot, Chicago Community Area Series (July 2022 Release)*, CHI. METRO. AGENCY FOR PLAN. 3 (July 2022), <https://www.cmap.ilinois.gov/documents/10180/126764/Woodlawn.pdf> [hereinafter *Woodlawn Community Data*] (providing data points for demographic in Woodlawn). From 2016 to 2020, people of color represented most of the population in Woodlawn, comprising about ninety-two percent of the overall population. *Id.* (presenting demographics of Woodlawn community). Woodlawn's median income for this period was \$27,541, while the overall median income for Chicago was \$62,097. *Id.* at 5 (showing Woodlawn's median income was well below Chicago's).

tion disproportionately affects minority groups in low-income urban areas.²²⁵ Woodlawn is living proof of this.²²⁶ The upward trend in housing prices signals early signs of gentrification and harshly counters the findings of the FONSI.²²⁷

The agencies' FONSI report for the Presidential Center described the Presidential Center's effects on the human population and socioeconomic demographic in the surrounding area with only one paragraph.²²⁸ In that one paragraph, the agencies concluded housing prices, population levels, and the community's demographic would not change.²²⁹ But this appears to be false — housing prices have already risen, real estate companies have purchased existing apartment complexes, and community members have already been displaced.²³⁰ The Seventh Circuit's holding in *Protect Our Parks* is a perfect example of how agencies can follow statutory procedural requirements, yet, their “hard look” findings remain unchallengeable because of the deference courts grant to those agencies.²³¹

It is time for NEPA reform in some capacity.²³² While NEPA is meant to protect the environment from physical damage, it does not significantly protect environmental changes such as human dis-

225. Jackelyn Hwang, *Gentrification Without Segregation? Race, Immigration, and Renewal in a Diversifying City*, 19 CITY & CMTY. 538, 547 (Sept. 2020) (exhibiting gentrification data forcing low-income individuals out of homes and into overcrowded areas); see also Maantay & Maroko, *supra* note 216, at 2-3 (defining gentrification as hurting low-income and minority communities). “In most cases in the United States, the existing/displaced residents are people of color, immigrants, ethnic minorities, or lower-income and working-class Whites, and the residents who replace them are usually more affluent non-Hispanic Whites.” *Id.* at 2 (noting typical change in demographic during gentrification).

226. See generally *Woodlawn Community Data*, *supra* note 224, at 3-5 (reporting Woodlawn residential demographics).

227. For a discussion of early indications of gentrification, see *supra* note 5 and accompanying text.

228. FINDING OF NO SIGNIFICANT IMPACT, *supra* note 68, at 7-8 (stating construction of Presidential Center will not affect “community cohesion” or population demographics).

229. *Id.* (ensuring there will be no significant impact on community and current Jackson Park area residents).

230. For a discussion of housing trends near the Presidential Center, see *supra* note 221 and accompanying text.

231. For a discussion of what plaintiffs can realistically challenge, see *supra* note 123 and accompanying text.

232. See generally Jesse Hevia, *NEPA and Gentrification: Using Federal Environmental Review to Combat Urban Displacement*, 70 EMORY L.J. 711, 715-16 (2021) (calling for new guidelines in environmental impact statements under NEPA that include heightened consideration of human displacement in urban areas).

placement.²³³ Currently, NEPA regulations describe “human environment” to include “the natural and physical environment and the relationship of people with that environment”; however, agencies do not focus on the relationship between people and their environment during review as much as they consider physical environmental effects.²³⁴ Socioeconomic effects and human displacement are minimal factors in a NEPA review.²³⁵ As NEPA currently stands, human displacement alone would not trigger an EIS.²³⁶ Some scholars have addressed this issue, arguing that human displacement in urban areas actually causes physical environmental harm when taken in the aggregate.²³⁷

Human displacement manifests in the form of gentrification, and gentrification destroys social and economic ties that bind a community together.²³⁸ In turn, this can create overcrowding in other neighborhoods, urban sprawl, and increased risk of negative health effects, which all can have a serious impact on the physical environment of a specific area.²³⁹ Indirect displacement and shifts in community cohesion are more typically linked to social and societal harm than traditional environmental harm.²⁴⁰ For these reasons, NEPA should consider human displacement as a larger factor in the environmental review process, especially in major cities

233. *See id.* at 721 (requesting federal government includes human displacement as larger consideration during NEPA review).

234. *See generally* 40 C.F.R. § 1508.14 (2017) (defining “human environment”). NEPA regulations do not intend for economic or social effects from a proposed action to require an EIS. *Id.* (narrowing scope of EIS relating to human environment effects). If physical environmental effects warrant an EIS, and there are “interrelated” social or economic effects, then the EIS will discuss these effects on the human environment. *Id.* (requiring EIS to include human environment review when interrelated to physical environmental impact).

235. For a discussion of relevant NEPA factors, see *supra* notes 233-34 and accompanying text.

236. *See Hevia, supra* note 232, at 721 (noting social and economic impacts alone are insufficient for EIS).

237. *E.g.*, Hope M. Babcock, *The National Environmental Policy Act in the Urban Environment: Oxymoron or a Useful Tool to Combat the Destruction of Neighborhoods and Urban Sprawl?*, 23 J. ENV'T L. & LITIG. 1, 25-27 (2008) (illustrating how social capital changes and aggregation of human displacement explains need for NEPA to include human displacement).

238. *Id.* at 29 (noting aggregation of gentrification effects can destroy community).

239. *Id.* (listing examples of how gentrification can destroy entire communities).

240. *See Hevia, supra* note 232, at 721 (relating indirect human displacement in urban areas to traditional environmental harm conceptions).

where the human environment can outnumber nature and the physical environment.²⁴¹

NEPA is also a procedural statute, which poses an issue when addressing human displacement.²⁴² Because of this, people have a difficult time challenging an agency's substantive findings.²⁴³ *Protect Our Parks* is a perfect example of this, as the Seventh Circuit ruled in favor of the federal government because it essentially followed the required statutory procedures.²⁴⁴ *Protect Our Parks* depicts a negative aspect of the statutes being solely procedural.²⁴⁵ The FONSI stated there would be no effect on human population around the area, but recent reports indicate otherwise.²⁴⁶

Finally, and most importantly in *Protect Our Parks*, NEPA review mostly occurs in major, federally-funded projects.²⁴⁷ This is a barrier for environmental review because if a major project, like the Presidential Center, is privately funded, the project can potentially bypass federal review.²⁴⁸ A good alternative would be for state legislatures to mandate an EIS for all projects.²⁴⁹ States can pass legislation that require every project, privately or publicly funded, to have an in-depth environmental review.²⁵⁰ This would mandate that local governments take a hard look at the environmental impact of a proposed action regardless of whether it is privately or publicly funded.²⁵¹ Some states have already ordered that proposed actions have an EIS for any major project.²⁵²

241. *See id.* (calling for change to include indirect urban displacement in environmental reviews).

242. For a discussion of procedural versus substantive statutes, see *supra* notes 62-64 and accompanying text.

243. For a discussion of the distinction between procedural and substantive statutes, see *supra* notes 62-64 and accompanying text.

244. For a discussion of the court's view of the agencies' findings, see *supra* notes 187-188 and accompanying text.

245. For a discussion of procedural states contrasted against substantive statutes, see *supra* notes 62-64 and accompanying text.

246. For a discussion of disputed FONSI findings, see *supra* notes 229-31 and accompanying text.

247. For an example of what triggers federal review, see *supra* note 92 and accompanying text.

248. For a discussion of the Presidential Center's funding, see *supra* notes 34-36 and accompanying text.

249. *See generally* Hannah Weinstein, *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 UCLA L. REV. 794, 818 (2015) (discussing states mandating EISs).

250. *See id.* (explaining how state EISs can be more inclusive reviews).

251. For a discussion of how public funding triggers NEPA, see *supra* note 92 and accompanying text.

252. *See generally* Stewart E. Sterk, *Environmental Review in the Land Use Process: New York's Experience with SEQRA*, 13 CARDOZO L. REV. 2041, 2043 n.7 (1992) (not-

Another practical reform would be to have NEPA require a community benefit agreement for projects in high-density, urban areas before the project breaks ground.²⁵³ A community benefit agreement is a legal agreement between community benefit groups and real estate developers, where developers agree to provide community benefits in exchange for the community's support of the project.²⁵⁴ Community benefit agreements are beneficial to all parties involved: the developers can build without public backlash or fear of retaliation, local governments satisfy both their constituents' and land developers' interests, and communities can benefit and profit from employment and economic development without displacement.²⁵⁵ A community benefit agreement would allow the NEPA process to continue as it currently stands but would give low-income, minority groups the benefit of new development in their areas.²⁵⁶ The Obama Foundation has refused to sign a community benefit agreement despite coalitions urging it to do so.²⁵⁷

The Seventh Circuit ruled correctly in *Protect Our Parks*, but allowing construction to continue will have rippling effects on the

ing states that require EISs for even private development). A state like California, whose government invests heavily in its environment, requires EISs for every project. *Id.* (mentioning states that require EISs).

253. See generally *Community Benefit Agreement (CBA) Toolkit*, U.S. DEP'T OF ENERGY OFF. OF ECON. IMPACT & DIVERSITY, <https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit> (last visited Mar. 6, 2023) (providing community benefit agreement information).

254. *Id.* (defining community benefit agreement).

255. *Id.* (acknowledging value of community benefit agreements).

256. See *id.* (exploring how community development can benefit from community benefit agreements).

257. See *About the Obama Presidential Center*, OBAMA FOUND., <https://www.obama.org/chicago/opc-faq/> (last visited Mar. 6, 2023) (stating Obama Foundation will not sign no community benefit agreement). The Obama Foundation intends to prioritize the current Jackson Park community but does not believe a community benefit agreement would provide the correct mechanism in working with the community. *Id.* (declaring no community benefit agreement); but see COMMUNITY BENEFITS AGREEMENT (CBA) FOR THE AREA AROUND THE OBAMA CENTER, OBAMA CMTY. BENEFITS AGREEMENT COAL., <http://www.obamacba.org/> (last visited Mar. 6, 2023) (forming coalition for community benefit agreement for Woodlawn residents). A coalition of community groups across Chicago presented a community benefit agreement ordinance to Chicago's City Council. *Id.* (presenting ordinance for agreement). Although the Obama Foundation has not signed a community benefit agreement, some citizens took it upon themselves to stop displacement. See Maxwell Evans, *300 Apartments Near Obama Center Will Remain Affordable for Decades as Jackson Park Terrace Sells for \$25 Million*, BLOCK CLUB CHI. (Aug. 4, 2022, 1:49 PM), <https://blockclubchicago.org/2022/08/04/300-apartments-near-obama-center-will-remain-affordable-for-decades-as-jackson-park-terrace-sells-for-25-million/> (announcing acquisition of apartment complex whose new owners promise to prevent resident displacement).

City of Chicago.²⁵⁸ The court had no option but to defer to the agencies' findings in the FONSI and allow construction to continue.²⁵⁹ *Protect Our Parks* should remind judges, lawmakers, and everyday citizens that human displacement has serious implications, like physical environmental damage.²⁶⁰ The Seventh Circuit's decision should also serve as a reminder that a court's ruling can have far-reaching, unintended consequences.²⁶¹ Slowly but surely scholars are calling for necessary NEPA reform — one can only hope that change will one day come.²⁶²

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258. For a further discussion of the Presidential Center's current impact, see *supra* notes 215-31 and accompanying text.

259. For a further discussion of the court's FONSI stance, see *supra* notes 191-94 and accompanying text.

260. For a further discussion of the continuing impact the Presidential Center will have, see *supra* notes 215-31 and accompanying text.

261. For a further discussion of the effect of the Presidential Center on the surrounding community, see *supra* notes 215-31 and accompanying text.

262. For a further discussion of the scholarly desire for change in NEPA, see *supra* notes 232-40 and accompanying text.

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