Federal transportation dollars at work: I-94 and I-35E near downtown St. Paul, MN.

Fighting for Balanced Transportation in the Motor City

By Joe Grengs

No other governmental program comes close to influencing the divided geographic patterns of our metropolitan regions like that of federal transportation. Yet most citizens would be hard-pressed to name who decides how and where transportation dollars are spent. Metropolitan planning organizations, or MPOs, are the bodies through which billions of federal dollars are distributed to state and local governments each year in support of transportation projects. Nearly every transportation project you see—new roads, fixed roads, interchanges, bus lines—has federal transportation dollars behind it. MPOs decide which projects get funded and which do not. These projects, in turn, influence where homes, jobs and stores are located. Yet the people who make up these MPOs, and the manner in which they arrive at their decisive choices, are mysterious to all but the most dedicated citizen activists.

[Cont. on page 8]
Grengs cont. from page 1

The problem with MPOs is that most of them are biased against central cities in their voting structure. By allotting votes on a "one government-one vote" basis instead of a "one person-one vote" basis, MPOs grant outlying suburban jurisdictions considerably more political power in the decision-making process compared with center cities. Scholars and activists contend that this bias exacerbates sprawling urban development and further disadvantages poor households and people of color in the urban core. Whether this bias leads to worsening social equity remains an open question, but on a procedural basis a highly skewed representational scheme within an MPO may be in violation of the Fourteenth Amendment's equal protection clause, thus making such a structure unconstitutional.

Should the actions of transportation officials be subject to democratic accountability? Not in the state of Michigan, according to a judge's ruling in August 2004. A civil rights lawsuit alleged that transportation officials in the Detroit metropolitan region choose projects and spend public dollars in a way that favors the largely white and wealthy suburbs and unfairly ignores the needs of the central city and its inner suburbs. At issue was the voting structure of the MPO. The judge found that voting strength of an MPO need not be in proportion to population because an MPO has limited responsibility as a special-purpose government. Unfortunately, as a result of the ruling, Detroit's famously segregated metropolis will continue to develop under the influence of a skewed procedure that builds in a bias toward building roads for suburban commuters over strengthening transit service for innercity bus riders. But the case does offer important lessons that planners elsewhere can learn from to mount challenges against undemocratic practices in transportation funding.

The Metropolitan Planning Organization in Detroit

The Southeast Michigan Council of Governments (SEMCOG) was formed in 1968 under Michigan law to serve as a multi-purpose regional planning agency. Like other councils of government that emerged around the country by the mid-1960s, its primary purpose was to coordinate the activities of public services—such as highways, transit, water and sewers—that crossed municipal boundaries. In 1974, the federal government designated SEMCOG the MPO for the Detroit region, granting SEMCOG new responsibility for allocating federal transportation funds. The Detroit region currently receives about $1 billion of federal transportation funds each year.

Joining SEMCOG is voluntary. The organization has a membership of about 150 cities, townships, villages and school districts. It is governed by a set of bylaws that call for an executive committee (EC) to oversee project selection, with delegates coming from their home communities by appointment, not by election.

Membership on the EC is based on a one government-one vote basis, with some modifications to account for heavily populated counties. For example, the city of Detroit is allocated three delegates on the EC for its population of 950,000. Livingston County, a fast-growing area on the furthest periphery of the metropolitan region, is allocated four delegates for its population of 157,000. In other words, Detroit gets one vote for every 317,000 people while Livingston County gets one vote for every 39,000 people. Figure 1 on the following page shows the geographic distribution of people and votes in the region.

The disparity in voting strength between the urban core and outlying communities is magnified when we consider the degree of racial segregation in the region. Detroit is 82 percent African American, while Livingston County is less than one-half of one percent African American. Indeed, 73 percent of all blacks in the metropolitan region live in the central city of Detroit.

The Coalition of Challengers

After unsuccessfully requesting that SEMCOG change its biased voting structure, a coalition of community activists filed a lawsuit against the MPO. They claimed that the voting structure needs to be replaced with one that better reflects jurisdictional populations. They also pointed out that what began in the 1960s as a voluntary organization to coordinate regional plans has evolved into a powerful governmental agency responsible for distributing $1 billion in federal transportation funding and drawing up long-range plans for everything from road projects to wastewater infrastructure to economic development. If a voting structure skewed in favor of suburbs leads to the selection of projects that favor predominantly white residents in outlying communities, they claimed, then transportation officials may be discriminating against racial minorities who live primarily in the urban core.

The first member of the coalition of plaintiffs was one of the MPO's member units of government, the city of Ferndale. As a first-ring suburb north of Detroit, Ferndale has lately been feeling many of the stresses associated with central cities, including deteriorating infrastructure, concentrated poverty and a diminishing tax base. The city manager, Tom Barwin, has long been an outspoken critic of sprawl-inducing policies in the Detroit region. As
he told the *Detroit News* last January, "SEMCOG is so heavily skewed and weighted toward sprawl, it doesn't even pass the straight-face test. We have some of the country's worst roads. We're one of the last areas in the nation without a working mass transit system. And we're at least $60 billion short of being able to maintain the infrastructure we already have."

Other plaintiffs included: MOSES (Metropolitan Organizing Strategy Enabling Strength), a faith-based community organization with over seventy member congregations in the central city and inner-ring suburbs and a mission of fighting the effects of urban sprawl on concentrated poverty and racial segregation; the Transportation can't drive, and you can't afford someone to drive for you, you don't have a life here. And that, we argue, violates provisions under the Civil Rights Act and is illegal under the law. The plaintiffs were represented by attorney and former community organizer Gary Benjamin and his law firm, Michigan Legal Services, an anti-poverty coalition of attorneys.

**The Issues in the Courts**

The plaintiffs in MOSES v. SEMCOG made two main claims. First, they claimed that SEMCOG should be subject to proportional representation based on a one person-one vote requirement. In the absence of such representation,

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**Detroit 7-County Metropolitan Region**

Regional Share of Population vs.
Regional Share of MPO Votes
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Riders United (TRU), a Detroit-based non-profit mass transit advocacy group; four private citizens; and attorney Richard Bernstein, a longtime advocate for disabled persons. Blind since birth, Bernstein argues that SEMCOG's voting structure harms its ability to sufficiently fund mass transit. As he told the local newspaper the *Metro Times* in August, "The system that exists does not provide that basic level of services. If you they claimed, the citizens of underrepresented jurisdictions are denied equal protection of the law. The second main claim alleged that SEMCOG's voting structure violates a civil rights act under Michigan law known as the Elliott-Larsen Civil Rights Act.

The judge, the Honorable John H. Gillis Jr., in the Third Circuit Court of Wayne County, denied both claims. ➞
He ruled that "the one person-one vote doctrine does not apply to SEMCOG." His decision hinged on two essential issues: that SEMCOG delegates are appointed rather than elected, and that SEMCOG is more a special purpose government than a general purpose government. A state government may select some government officials by appointment, "and where appointment is permissible, the one person-one vote doctrine does not apply." On whether appointment is constitutional in this case, the judge further noted that even though SEMCOG carries the substantial responsibility of allocating $1 billion annually, it is not the amount of funding but the "nature of the activities in which a governmental unit is engaged." As a local government with a limited purpose, SEMCOG lacks the kind of power that a general purpose government possesses, such as levying taxes, condemning property or issuing bonds. Therefore, SEMCOG can be governed by appointed delegates and is not subject to proportional representation.

The Elliott-Larsen Civil Rights Act states that a citizen may not be denied the "full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation or public service because of ... race." The judge found that the plaintiffs brought insufficient evidence on this claim: "They have not shown how [the voting structure] burdened African Americans more harshly than members of other racial groups as required to show a disparate impact" and they "also failed to plead any causal connection between the voting structure of SEMCOG and the underdevelopment of mass transit."

Lessons from the Case

The case is currently under appeal, but it has already revealed a number of lessons for mounting new challenges in Detroit or elsewhere. First, on the issue of whether an MPO ought to be considered a general purpose government and therefore subject to proportional representation, legal questions remain.

In a similar lawsuit filed in the United States District Court of Connecticut in 1973, a non-profit community-based organization claimed that a council of governments made no adjustment for population variations among the member units of government and would result in a gross under-representation of the central city of Hartford. Like the SEMCOG case, the court ruled that a council of governments may appoint its delegates and is therefore not subject to the one person-one vote doctrine. But in a dissenting opinion, a judge questioned whether a council of governments is properly considered merely special purpose rather than general government, and signaled that substantial power over public funds may one day be open to challenge: "This control of the purse strings for the building of such a large assortment of facilities is essentially 'governmental' in nature in a day and age when municipalities are frequently financially incapable of total self-reliance." The power over public funds by an MPO has substantially increased since the Connecticut case, especially after passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and challenges elsewhere should place special emphasis on the elevated responsibility granted MPOs since their inception in the 1970s.

A second lesson from the case is that a civil rights legal challenge requires enormous research to establish disparate impact. In the SEMCOG case, the attorneys collected an impressive array of support for the case from nationally recognized researchers, including David Rusk. But the burden of proof is especially high in civil rights cases. Planners have an important role to play in clearing this high bar of proof. Planners in universities can provide number crunching, planners in professional agencies can provide data and insider information and planners in community-based organizations can mobilize citizens and provide personal testimonies from harmed bus riders.

Third, a broader coalition of plaintiffs may be required. The judge noted in his opinion that only three plaintiffs claimed to be members of a protected class under the civil rights act. Furthermore, he noted that although MOSES and TRU advocate for people living in poverty and dependent on mass transit, "the class of impoverished persons is not a protected class" under the law. Evidently, a more explicit link between plaintiffs and people of color will be required to successfully bring suit on civil rights claims. Including other governments that are members of the MPO would have strengthened the legal claims in this case. Conspicuously absent was the city of Detroit, which declined an invitation to join the lawsuit; a point the judge was quick to note in his written opinion.

MPOs across the nation do outstanding work in the face of rising responsibilities and few resources, and they do it while balancing competing interests in what can often be ugly regional politics. But most of them also carry forward an old-fashioned "one government-one vote" decision-making process that is no longer suited to the great responsibility that comes with shaping the geographic landscape of our metropolitan regions. Planners and community activists elsewhere should consider the lessons of this Detroit case if they hope to bring into better balance the built-in bias that contributes to urban sprawl.

Joe Grengs, an assistant professor at the University of Michigan, is a member of TRU and provided expert witness testimony in the lawsuit.