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Testimony to the Council of the City of New York, Committee on
Transportation.

The Honorable John Liu, Chair.

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Introduction

My name is Sheila Foster and I am the Albert A. Walsh Professor of Real Estate, Land Use, and Property Law at Fordham University. In addition to teaching Urban Land Use and topics related to environmental justice, I also teach and have written in the area of Civil Rights and Antidiscrimination Law. Since 2001 I have also served as one of WE ACT's pro bono attorneys, chiefly as lead counsel for the administrative action filed against the MTA with the U.S. Department of Transportation's Federal Transit Administration. This action was brought under Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal funds (such as the MTA) from discriminating in its programs and policies on the basis of race, color, or national origin. In addition to prohibiting intentional discrimination, Title VI, through its implementing administrative regulations, also prohibit policies and practices that are neutral on their face but have the *effect* of discriminating.

Our complaint and subsequent filings demonstrated that the concentration of bus depots in communities of color in Northern Manhattan was both a result of MTA/NYTA policies and decisions over the years and has had the effect of discriminating against residents in those communities by exposing them to disproportionately high health risks from diesel exhaust.

The Disproportionate Location of Bus Depots in Minority Communities

To assess whether bus depots were disproportionately located in communities of color we performed a statistical analysis, based on the most

recent census data, comparing the number of minority and non-white residents actually living near bus depots in Manhattan against the number of minority and non-white residents who would be expected to live near bus depots absent the influence of race on bus depot location, or rather if depots were evenly distributed by race (our so-called “null hypothesis”).

We found an “excess” of racial minorities who live within ¼ mile of a bus depot in Manhattan as compared to non-minorities. Specifically, we found that

57.7% of the population that lives within a ¼ mile of any depot in Manhattan is minority, although minorities only comprise 45.5% of the overall population in Manhattan (according to the 2000 census).

In contrast, only 42.3% of the population living within ¼ mile of any depot is white, although whites comprise 54.6% of the population.

Thus, the number of minorities living within ¼ mile of a bus depot is 27% higher than expected, and the number of whites living within ¼ mile of a bus depot is 22% lower than expected, if race were not an influence on the location of depots, or if depots were evenly distributed by race.

This showing thus supported our claim that there is a systematic racial disparity in the location of diesel bus depots in Manhattan. We also demonstrated that this racial disparity exists throughout all five boroughs in New York City, although the disparity is most pronounced in the borough of Manhattan.

As we have argued, however, against the MTA/NYTA’s attempt to demonstrate a less significant disparity by measuring the location of bus depots in all five boroughs, the relevant area of analysis for disparate impact analysis is Manhattan. Although the technical jurisdiction of the New York Transit Authority decision making authority is citywide, the criteria it employs in decisions regarding the opening, expansion, and closing of bus depots, by its own admission, are unique to each borough.

Except showing that all bus depot decisions are ultimately made through MTA’s capital plan, there is nothing to indicate that its decision making

process for depots in Manhattan is inseparable from its decision making process regarding depots in other boroughs.

Thus we maintain that the adverse, disparate impacts we have seen in result from unique commonalities in NYTA's decision making process for depots is Manhattan.

The Adverse, Health Impacts of Bus Depots on Minority Communities

We also demonstrated that the disproportionate location of bus depots in communities of color expose those communities to disparate and adverse health risks and impacts. This is particularly true for residents who suffer from asthma and related respiratory problems.

We relied upon a Columbia University study that documented that the highest concentrations of diesel exhaust in Harlem tend to be found near bus depots.

We also pointed to a very strong body of scientific evidence that establishes the association between exposure to diesel exhaust and the exacerbation of respiratory illnesses, like asthma, as well as excess cancer risks.

In addition to these health risks, we also highlighted other adverse effects of living near a bus depot, including the increased exposure to noise, dust, traffic, and vibrations associated with bus depot operations (including their expansion, renovation, and reconstruction).

The Cause of Disparate, Adverse Impacts

As to causation, our case demonstrated that the disparate and adverse impacts of bus depots in Manhattan are the direct result of a multitude of decisions to construct, maintain, expand, and close bus depots made by the MTA over the course of the last decade or so (decisions between 1987-2002). In particular, we pointed to decisions that included the construction of the Manhattanville Depot, the expansion of parking lots in Northern Manhattan depots, and the anticipated closure of the Hudson Depot, all of which have contributed to impacts on surrounding communities of color.

Although MTA/NYTA pointed to a number of "race neutral" criteria used to make decisions regarding its bus depots and their associated infrastructure

(such as parking lots), we have shown how in fact many of these criteria inherently bias the location of bus depots toward minority communities.

For instance, one of the main reasons MTA/NYTA cited for not placing depots in other parts of Manhattan—such as midtown or downtown-- is that such areas were not appropriately zoned for bus depot use. We demonstrate two fundamental flaws with this argument.

The first is its utter lack of merit. As a matter of law, MTA/NYTA is not bound by local zoning ordinances (per the Public Authorities Law), as is evident by their inconsistent application of this criterion to the siting of the present depots, and the fact that they expanded the 100th Street Depot in an residential zone without needing to receive a zoning variance.

Second, zoning designations continue to perpetuate the location of unwanted and noxious land uses in communities of color. As historians have shown, the historical pattern of zoning African American neighborhoods as “industrial” (or mixed industrial/residential) has over time permitted the intrusion of disruptive, incompatible uses and generally undermined the character, quality, and stability of black residential areas.

MTA/NYTA’s contention that the limited number of alternate areas in Manhattan where bus depots could be built “as of right” are primarily “M-1” manufacturing zones eerily fits this phenomenon. The reduction of appropriate bus depot sites to M-1 manufacturing zones effectively limits future bus depot operations to sites that are contiguous with minority populations in Manhattan. Given that MTA/NYTA are not bound by zoning restrictions, this argument appears to be pretext for continuing its pattern of maintaining and expanding bus depots in communities of color.

Moreover, a cursory review of the location of current bus depots in Manhattan and MTA/NYTA’s efforts to building and expand depots over the past decade reveals that there are many more zoning categories (other than M-1) that are appropriate for bus depots. Public bus depots are not a defined use under New York zoning law. In fact, given the varied activities that take place within bus depots and their adjoining parking lots, many existing zoning categories can accommodate bus depots in Manhattan.

For example, most (if not all) bus depots can fit into almost any “C” zone, particularly when special permits are sought. These include “C-8” zones, designed for automotive and other heavy commercial services, “C-6” and

“C-4” zones; M-2 and M-3 zones are also appropriate potential locations for this type of land use.

In fact, at least 6 of MTA’s current depots are located in areas zoned as land use “C-8,” while the 100th Street Depot is in a residentially zoned community. Additionally, many private bus depots are currently being built within C-4 and C-6 zones in lower Manhattan.

Business Necessity

Finally, MTA/NYTA has attempted to justify the business necessity of maintaining bus depots in their current locations in Northern Manhattan by reference to the need to maintain bus depots as close as possible to the bus routes that they serve. However, as we have shown in our filings, a quick glance at MTA bus routes and their corresponding bus depots reveals a startling distance between some of the routes and their proximity to the depots themselves.

As MTA itself has acknowledged, many of the buses housed in depots in Northern Manhattan are actually servicing the Bronx. And even among those buses that service Manhattan, many are primarily servicing other communities in Manhattan. For example:

Kingsbridge Depot: Only 4 of 22 bus routes housed in the Kingsbridge depot have any stops in the local area.

Mother Clara Hale Depot: Out of eight routes housed here, three Bronx routes don’t have any local stops, while the M30 serves only the East side in midtown. The M1 and M7 routes are north/south routes that equally serve uptown and downtown.

126th Street Depot: Out of six routes housed here, three routes that only service the upper East Side, with no local stops: The M31, M57 serve only the East side in midtown and the M66 is a cross-town in midtown.

Amsterdam: Out of nine routes housed here, four, the Bx36, Bx13, Bx36 and Bx42 don’t serve Manhattan and have no local stops.

Hudson Depot: In contrast, this depot’s location most closely fits the MTA’s operational criteria that “depots need to be located as close to

possible to assigned bus routes and located at end of service route.” 7 out of 10 of the routes housed here service the immediate area, and this depot is at the end of their service routes. Even for the buses that don't serve the immediate area (M22, M34 and Q32), this is the closest depot. Ironically, the MTA's decision to close this depot is inconsistent with this operational “necessity”.

Accountability and Land Use

In closing, we initiated the Title VI action less out of an expectation of winning than out of a desire to leverage the promise of the law to hold MTA/NYTA accountable for its decisions. Residents impacted by bus depots have tried hard to work through the prescribed channels for community participation in land use and others decisions only to find themselves excluded from the structures and processes where the real decisions are made.

In this sense our efforts are aligned with a larger movement towards government accountability, particularly around land use, happening across the country. This movement recognizes that the system by which land use decisions are made is broken. The threads of accountability have been severed across the board, in virtually every aspect of the development and planning of many local communities across the country.

Fixing this broken system will mean restoring accountability to the relationship between our local government, public officials, and citizens We hope to, and have made some progress towards, building structures of accountability through this lawsuit. Our work continues in this regard, as my colleague will soon attest to, even though we did not get the entire relief we wanted from the Department of Transportation

Thank you for taking the time to learn about our efforts.