

**UNEQUAL ACCESS TO PUBLIC TRANSPORTATION IN THE MIDLANDS:
HOW THE COMET HARMS LOW-INCOME POPULATIONS IN SOUTH
CAROLINA**

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I. INTRODUCTION

On June 22, 1954, Sarah Mae Flemming, a twenty-year-old African American, boarded a bus in Columbia, South Carolina, to commute to her job as a housekeeper.¹ The bus was crowded, but Sarah Mae Flemming found the last available seat at the front of the bus.² During this era, bus drivers in South Carolina were granted full authority to ensure that white passengers always sat at the front of the bus to promote racial segregation.³ Although the South

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1. Jennifer Melton, *Brown, Sarah Mae Flemming*, SOUTH CAROLINA ENCYCLOPEDIA (July 12, 2022), <https://www.scencyclopedia.org/sce/entries/brown-sarah-mae-flemming> [https://perma.cc/V5TB-ZCZG].

2. *Id.*

3. S.C. CODE ANN. § 58-1491 *et seq.* (1952) (repealed 1962); see “*Jim Crow*” *Ordinance Passed*, STATE, June 24, 1903, at 8; see also *Sarah Mae Flemming*, SOUTH CAROLINA AFRICAN AMERICAN HISTORY CALENDAR (2022), <https://scafricanamerican.com/honorees/sarah-mae-flemmin> [https://perma.cc/94N6-9NTT].

Carolina Electric and Gas Company (SCE&G) controlled Columbia's bus system, drivers still exercised the full authority of the state and local governments to carry out this law.⁴ Immediately after finding her seat, Sarah Mae Flemming was harassed by the bus driver and ordered to move to the back of the bus.⁵ With nowhere else to sit and the bus in motion, Sarah Mae Flemming decided to remain in her seat.⁶ When she attempted to exit the bus at the next stop, the bus driver punched Flemming in the abdomen and forced her to leave through the rear exit.⁷

Traumatized by the experience, Sarah Mae Flemming attempted to put the ordeal behind her and move on. It was not until Modjeska Simkins, South Carolina's NAACP state secretary, heard about Flemming's experience that the idea of bringing a lawsuit against SCE&G was born.⁸ With the support of the NAACP, Sarah Mae Flemming sued SCE&G, claiming the South Carolina law "[denied] her equal protection of the laws secured to her by the 14th Amendment."⁹ With the Supreme Court's *Brown v. Board of Education* decision having been announced only a month before Sarah Mae Flemming's incident of racial discrimination, local Columbia attorneys and attorneys from the NAACP saw Flemming's case as an opportunity to both overturn *Plessy v. Ferguson*¹⁰ and give Sarah Mae Flemming the justice that she deserved.¹¹ However, justice did not come easy. The South Carolina District Court dismissed Sarah Mae Flemming's case twice, requiring orders from the Fourth Circuit and the Supreme Court for the suit to finally be heard.¹² Meanwhile, amidst this legal battle, a cross was burned on the front lawn of Flemming's

4. S.C. CODE ANN. § 58-1491 *et seq.* (1952) (repealed 1962); see "Jim Crow" Ordinance Passed, STATE, June 24, 1903, at 8; see also *Sarah Mae Flemming*, South Carolina African American History Calendar, (2022), <https://scafricanamerican.com/honorees/sarah-mae-flemmin> [<https://perma.cc/94N6-9NTT>].

5. Melton, *supra* note 1.

6. *See id.*

7. *Id.*

8. See Abel Bartley, *Before Rosa Parks, There Was Sara Mae Flemming*, DISCOVER, <https://discoversouthcarolina.com/articles/before-rosa-parks-there-was-sara-mae-flemming> [<https://perma.cc/S28P-GT3B>].

9. *Flemming v. S.C. Elec. & Gas Co.*, 128 F. Supp. 469, 470 (D.S.C. 1955).

10. *Plessy v. Ferguson*, 163 U.S. 537, 543 (1896) (holding any statute that created a legal distinction between races Constitutional under the Thirteenth Amendment).

11. See generally Herbert Lovelace, *King Making: Brown v. Board and the Rise of a Racial Savior*, 57 AM. J. LEGAL HIST. 393, 410–11 (2017) (discussing the impact of Sarah Mae Flemming's case on the larger civil rights movement throughout the Southeastern United States and the strategy differences between the MIA and the NAACP).

12. *Flemming v. S.C. Elec. & Gas Co.*, 224 F.2d 752, 752–53 (4th Cir.1955); *S.C.Elec. & Gas Co. v. Flemming*, 351 U.S. 901 (1956).

attorney's home.¹³ In June of 1957, Sarah Mae Flemming was finally granted the opportunity to have her case heard.¹⁴ After Sarah Mae Flemming and one witness testified regarding Flemming's harassment before "an all-white, all-male jury,"¹⁵ they decided that Fleming did not deserve compensation "after only thirty minutes of deliberation."¹⁶

Notwithstanding pervasive discrimination during the Jim Crow era, public transportation has remained an essential fixture throughout the history of the United States. Further, it has consistently been viewed as the engine behind economic development and social mobility.¹⁷ From horse-drawn carriages in the early nineteenth century to modern mass transit,¹⁸ public transportation has been idealized as a launching pad for equal opportunity across the United States.¹⁹ However, public transportation, like all public institutions, is tied to the politics and perceptions of local communities. While these institutions are intended to be offered to the public without discriminatory policies and procedures, they have instead often served as vessels to enforce antiquated concepts, such as the law of vagrancy.²⁰ While vagrancy laws have been deemed unconstitutional throughout the United States, public perception regarding vagrancy and the treatment of individuals deemed "vagrants" are deeply rooted in Anglo-American culture.²¹ Individuals who act in a manner contradictory to societal expectations or fail to contribute to society are criminalized or deemed unworthy of societal

13. *Cross Burned on Lawn of Lawyer in Bus Case*, STATE, Aug. 2, 1956, at 2-B, <https://www.newspapers.com/image/749201557/?terms=wittenberg%20cross&match=1> [<https://perma.cc/5YFF-N4EP>].

14. Melton, *supra* note 1.

15. *Id.*

16. *Id.*

17. *See generally* ROGER P. ROESS & GENE SANSONE, *THE WHEELS THAT DROVE NEW YORK* 54 (Springer Berlin, Heidelberg ed., 2013) (discussing the introduction of horse-drawn carriages used explicitly for public transportation in cities across the world during the early nineteenth century).

18. Zachary M. Zchrag, *Urban Mass Transit in The United States*, ECONOMIC HISTORY ASSOCIATION (May 7, 2002), <https://eh.net/encyclopedia/urban-mass-transit-in-the-united-states> [<https://perma.cc/59HX-LUWJ>].

19. *See generally* CHRISTINA STACY ET AL., *ACCESS TO OPPORTUNITY THROUGH EQUITABLE TRANSPORTATION: LESSONS FROM FOUR METROPOLITAN REGIONS*, 1 (Oct. 2020), <https://www.urban.org/sites/default/files/2023-08/Access%20to%20Opportunity%20through%20Equitable%20Transportation.pdf> [<https://perma.cc/A2AS-8SVH>]; *but see* Sarah Chaney Cambon & Andrew Mollica, *Remote Work Sticks for All Kinds of Jobs*, WALL ST. J., July 4, 2023, <https://www.wsj.com/articles/remote-work-sticks-for-all-kinds-of-jobs-db9786ee> [<https://perma.cc/M2R8-7ZLM>].

20. *See generally* Margaret K. Rosenheim, *Vagrancy Concepts in Welfare Law*, 54 CALIF. L. REV. 511, 566 (1966) (discussing the implementation of vagrancy concepts in both criminal law and public welfare).

21. *See generally id.* at 517–27.

support.²² Public transportation is one of the many public institutions that have been used to enforce these vagrancy concepts.²³

While this phenomenon is not exclusive to the American South, the South's political, racial, and economic dynamics have heightened its effects. Through the implementation of the black Codes throughout the American South after the Civil War, black individuals in the South were oppressed through these unfounded vagrant laws.²⁴ As a result, instead of being a vessel of opportunity, public transportation in the South has too often been a roadblock for citizens, hindering their social and economic mobility.²⁵ Progress in public transportation occurred slowly in the South. It would take many years for public transportation to transform from a tool of oppression into an instrument of public protest that helped ignite the Civil Rights Movement.²⁶ By 1964, ten years after Sarah Mae Flemming's experience, the Civil Rights Act had deemed discrimination or exclusion from public services based on "race, color, or natural origin," illegal.²⁷

The Civil Rights Act brought much-needed change to Columbia's public transportation system. However, that change did not resolve the underlying systemic issues separating low-income and minoritized groups from opportunity. For example, although the Civil Rights Act outlawed overt discrimination in the policy of the bus system, racial discrimination continued by seemingly race neutral policies that made it harder for minoritized groups to access the bus system altogether.²⁸ SCE&G continued operating Columbia's public transportation system until 2002.²⁹ Along the way, the bus driver who had been accused of harassing and punching Sarah Mae Flemming, was promoted to the manager of Columbia's public transit operation.³⁰ Systemic discrimination cannot be dismantled merely with the

22. *See id.*

23. *See generally id.* at 519 (examining the implementation of vagrancy concepts in Aid to Families with Dependent Children, Income Maintenance Programs, and programs implemented under Title V of the Economic Opportunity Act); *see also id.* at 526 (discussing the Federal Emergency Relief Administration's program where individuals were aided with no consideration for housing status).

24. *See generally* DANIEL A. NOVAK, *THE WHEEL OF SERVITUDE: BLACK FORCED LABOR AFTER SLAVERY*, at 1–8 (1978).

25. *See* Gerard C. Wellman, *The Social Justice of Movement: How Public Transportation Administrators Define Social Justice*, 39 *PUB. ADMIN. Q.* 117, 117–18 (2015).

26. *See e.g., id.*

27. 42 U.S.C. § 2000(d) (1964).

28. S.C. CODE ANN. § 58-1491 *et seq.* (1952) (repealed 1962).

29. *See* Jeff Wilkinson, *Uthority to Run Struggling Bus System*, *STATE*, Dec. 13, 2001, at A1.

30. *See* Bill Higgins, *City Buses Operating at a Loss*, *STATE*, Jan. 22, 1978, at 1.

passage of legislation. Even as the role of public transportation has evolved across the history of the United States,³¹ these issues have continued to fester.

Despite political promises to improve the public transportation system,³² this Article argues that local government policies in Columbia, South Carolina, regarding public transportation have continued to marginalize low-income and minoritized racial and ethnic groups, frustrating their access to social and economic mobility. Sarah Mae Flemming's racial discrimination at the hands of Columbia's public transportation system lingers as a painful reminder of the potential for public transportation to be used to oppress subordinated groups. Despite the transition of Columbia's public transportation system to public ownership through the Central Midlands Regional Transit Authority (COMET), many of the same challenges that plagued Columbia's bus system during the Jim Crow era continue to manifest today. Currently, the COMET restrictions impact access to public transportation for low-income and minoritized groups in three significant ways.

First, the COMET's ability to ban individuals from using its services stymies low-income residents with limited means of transportation to access essential resources and services. The COMET has broad authority to remove individuals from its buses and ban removed individuals from using its services temporarily or permanently.³³ This ban applies not only to buses, but also to bus stations, benches, and any other property owned or operated by the COMET.³⁴ In modern society, transportation is still necessary to access many low-wage employment opportunities, much less to access food, healthcare, and education.³⁵ Without public transportation, many of Columbia's low-income residents have no option but to navigate the city's rural landscape by foot or carpool. Not only does this option pose dangers for those who must travel alone, it also subjects such individuals to Columbia's arbitrary and strictly enforced ordinances that are designed to keep people off the streets and highways.³⁶ Indeed, many essential services are inaccessible by foot.

31. NICHOLAS DAGEN BLOOM, *THE GREAT AMERICAN TRANSIT DISASTER* 1–2 (Univ. Chi. Press 2023).

32. See, e.g., Morgan Hughes, *Richland County to ask Voters for Penny Sales Tax*, STATE, Oct. 4, 2023, at 1A.

33. S.C. CODE ANN. § 16-11-620 (2022).

34. *Id.*

35. See *Lawsuit Challenges South Carolina's Wealth-Based Driver's License Suspensions*, ACLU (Oct. 31, 2019) <https://www.aclu.org/press-releases/lawsuit-challenges-south-carolinas-wealth-based-drivers-license-suspensions> [<https://perma.cc/JPQ7-2CVG>] (highlighting the necessity for transportation in the context of license suspension issues in South Carolina).

36. See, e.g., COLUMBIA, S.C. ch. 14, art. 1, § 14-3 (1979); S.C. CODE ANN. § 56-5-3180 (prohibiting standing on any road for the purposes of soliciting a ride, employment, business, or contributions from a vehicle).

While the COMET is intended to be a solution for individuals who need access to rapid shelter during inclement weather and do not own a vehicle, the COMET's restrictions prevent low-income community members from accessing the services provided by Rapid Shelter Columbia.³⁷ As another example, previously incarcerated individuals being released from Alvin S. Glenn Detention Center are prohibited from exiting on foot.³⁸ The COMET is intended to be a solution for individuals leaving Alvin S. Glenn who do not have any other means of transportation. However, the COMET's policies often leave people who are banned from using its services in limbo. They must either stand outside of Alvin S. Glenn indefinitely or risk further criminal punishment by taking the bus.³⁹

Second, the COMET fails to disclose its policies and procedures regarding access to its public transportation services. While the COMET claims that the enforcement of its procedures are consistent, they leave individuals facing such charges hopeless and confused with few opportunities to be heard. For example, the COMET claims that an appeal process enables aggrieved individuals to contest their charges; in practice, that appeal process is rarely utilized. Further, the COMET provides limited publicly available information to assist claimants in complying with administrative procedures. Issues surrounding the COMET's procedures are further compounded given the COMET's understated relationship with the Columbia Police Department.⁴⁰ Through this relationship, the COMET exerts police authority with none of its checks. For the low-income communities of the Midlands region of South Carolina, the damage caused by the COMET's lack of administrative clarity is compounded by its inadequate dispute resolution mechanisms.⁴¹ Further, the lack of administrative clarity regarding the COMET's governance prevents low-income and minoritized populations from practically holding the COMET accountable.⁴² While the COMET

37. See Nick Neville, "We Need Places Like This:" Columbia's Winter Shelter Welcomes People Experiencing Homelessness on Frigid Nights, WIS (Jan. 29, 2022) <https://www.wistv.com/2022/01/29/we-need-places-like-this-columbias-winter-shelter-welcomes-people-experiencing-homelessness-frigid-nights/> [<https://perma.cc/86Y8-5HPJ>].

38. See Glen Luke Flanagan, *Detainees to get Bus Passes after Jail Release*, STATE, Apr. 21, 2016, at 3.

39. See *id.*

40. See *Central Midlands Regional Transit Authority Security Ad-Hoc Subcommittee Agenda*, THE COMET at 6–10 (2021), https://catchthecometsc.gov/wp-content/uploads/2021/07/July-2021-Security-Best-Practice-Ad-Hoc-Subcommittee-Packet_FINAL.pdf [<https://perma.cc/55JQ-KZMW>].

41. See *id.* at 4. The public message regarding appeals originates from its *Rules of the Road* pamphlet and states "[p]assengers may appeal the suspension of service by contacting The COMET," with no further mention of how the actual appeal process functions.

42. See generally Jennifer Shkabatur, *Transparency With(out) Accountability: Open Government in the United States*, 31 YALE L. & POL'Y REV. 79, 82 (2012).

continues to hold board meetings,⁴³ the COMET has not posted minutes for any of its meetings since February 10th, 2021.⁴⁴

Third, the COMET's policies and procedures disparately impact low-income communities and minoritized racial and ethnic groups in ways that infringe upon these groups' constitutional rights. The COMET's policies frustrate these groups constitutionally protected equal access to public transportation services through the enforcement of trespass charges. While the COMET cites to Title VI of The Civil Rights Act to advertise its accommodation to these statutes,⁴⁵ its policies significantly frustrate these populations' ability to use Columbia's bus services. In practice, the COMET's ability to ban individuals from utilizing its services disparately impacts the low-income and minoritized populations of Columbia.⁴⁶

Some commentators argue that low-income communities are more prone to crime, thereby posing an undue tax burden on local and state governments. Accordingly, expanding public transportation services to these communities is a seemingly inefficient use of tax dollars. However, marginalized populations deserve equal and unrestrained access to public transportation. To be sure, Columbia's public transportation system has made progress since Sarah Mae Flemming's harassment on June 22, 1954. However, it still fails to adequately fulfill the requirements of a public transportation service. These shortcomings extend beyond mere funding issues. In fact, the COMET's funding through the Penny Tax Referendum highlights the inherent discrepancy between where Columbia's public transportation system should be and where the COMET's priorities lie.⁴⁷ While the Penny Tax was sold to Midlands residents as the funding mechanism to expand public transportation services, Penny Tax Referendum funds have been directed towards providing additional transit services for University of South Carolina students and

43. *All Public Meetings*, THE COMET, <https://catchthecometsc.gov/category/all-public-meetings/> [<https://perma.cc/9W64-537Z>]; see also S.C. CODE ANN. § 30-4-80 (2022) (requiring public entities to post notice before meetings).

44. *Meeting Minutes*, THE COMET, <https://catchthecometsc.gov/minutes-and-agenda/> [<https://perma.cc/4TLX-MXQG>]; see S.C. CODE ANN. § 30-4-90 (2017) (requiring public entities to keep minutes for its meetings and make those minutes public record).

45. *Civil Rights*, THE COMET, <https://catchthecometsc.gov/about/civil-rights/> [<https://perma.cc/R5QV-QDH6>].

46. See Fig. 1. [<https://perma.cc/X3GH-28E7>] (This exhibit reflects information requested from the COMET under Section 30-4-30 (Freedom of Information Act) of the South Carolina Code. Specifically, the COMET sent this exhibit in response to a Freedom of Information Act request for the COMET's trespass ban list as of August, 2023. The names of individuals on the COMET's trespass ban list have been removed to preserve anonymity.

47. See generally David Travis Bland, *Here's a Look at 11 Years of Hurdles Richland County's Penny Tax Program has Faced*, STATE (July 21, 2021), <https://www.thestate.com/news/local/article252332678.html> [<https://perma.cc/S2AZ-GQAL>] (discussing the timeline of Richland County's penny tax transportation program).

improving the University's sports facilities.⁴⁸ Such funding discrepancies underscore a longstanding bigoted view of who deserves to ride the bus, and who deserves to benefit from government services.⁴⁹

To overcome this dilemma, this article recommends that the COMET create new policies and procedures emphasizing positive engagement with low-income and minoritized groups, such as pledging to facilitate the indigent population's utilization of Columbia's public transportation system. Further, this article would recommend additional oversight by Richland and Lexington counties and the Office of Public Transportation to increase transparency between the COMET and the people of Richland and Lexington counties.

This Article will proceed as follows. Part II discusses the history of Columbia's public transportation system and the current challenges that some communities have faced due to the COMET's policies and procedures. Part III will examine how the COMET's policies have harmed specific populations in the Midlands region by restricting access to necessary public transportation services for some of the city's most vulnerable residents. Further, this part will examine how these policies disparately impact low-income and minoritized groups in ways that undermine their constitutional rights. Finally, Part IV will examine how cities facing similar issues of access to public transportation have implemented progressive measures to improve these systems.

II. THE ORIGINS OF UNEQUAL PUBLIC TRANSPORTATION IN THE MIDLANDS

A. *Origins of Columbia's Public Transportation System*

To understand how Columbia's public transportation system arrived where it is today, it is important to examine its history and development. The first public transportation system in Columbia, South Carolina, was created in 1882 and consisted of six railway cars used by "as many as 800 passengers a day."⁵⁰ In 1892, the public transportation system transitioned from horsepower to electric rail when a local electric company purchased the fledgling transportation system.⁵¹ As electric rail grew in popularity, the local electric company expanded its services from the state fairgrounds north to Ridgewood Country Club and Columbia College and east to Camp Jackson.⁵² With this public transportation system in place, the electric company entered

48. Morgan Hughes, *Richland County's Penny Tax Caused Years of Controversy. Now, Council Wants Another One*, STATE (Oct. 4, 2023), <https://www.thestate.com/article280080069.html> [https://perma.cc/PNQ2-EPQ9].

49. *Id.*

50. THOMAS FETTERS, PALMETTO TRACTION, ELECTRIC RAILWAYS OF SOUTH CAROLINA 37 (1978).

51. *See id.* at 38.

52. *Id.* at 48.

into a contract with the City of Columbia.⁵³ As long as the electric company provided public passenger services within Columbia, the electric company was entitled to a monopoly to provide power to the citizens of Columbia.⁵⁴ This style of agreement was common practice for cities across the United States during this period.⁵⁵

While this agreement was initially incredibly profitable due to the low cost maintenance of the electric rail system, the rise of the more expensive bus system meant the electric company needed to invest more of its yearly budget to the public transportation system's maintenance.⁵⁶ When Broad River Power Company purchased the local electric company, Broad River attempted to revoke its subsidiary's contract with the City of Columbia in a lawsuit heard before the Supreme Court.⁵⁷ Through the guidance of the Merger Act, the Supreme Court held Broad River was required to maintain the responsibilities of both power companies, including those that were unsuccessful, as the Supreme Court upheld the Supreme Court of South Carolina's decision including the requirement to provide public transportation services.⁵⁸ The contract saddled Broad River, which later became SCE&G, with the obligation to provide public transportation services to Columbia.⁵⁹

Over the next decade, Columbia and its public transportation system saw significant growth. Columbia city officials were increasingly concerned with the multitude of white residents who moved to Columbia's surrounding suburbs through the previous decades.⁶⁰ Columbia had targeted areas with majority black populations for destruction since its 1924 zoning map.⁶¹ However, Columbia's "struggling economy" during the Great Depression "halted much of the downtown commerce and industry that may have taken

53. See 1890 S.C. ACTS 969–71.

54. John Temple Ligon, *State to City: A Deal is a Deal*, COLUMBIA STAR (Apr. 11, 2008), <https://www.thecolumbiastar.com/articles/state-to-city-a-deal-is-a-deal/> [https://perma.cc/65R8-Q8FE].

55. See Randal O'Toole, *Fixing Transit the Case for Privatization*, POLICY ANALYSIS, Nov. 10, 2010, at 2 (stating "the vast majority of the nation's transit systems were privately owned . . . [i]n 1964).

56. See generally Stephen Smith, *The Great American Streetcar Myth*, MARKET URBANISM (Sep. 23, 2010), <https://marketurbanism.com/2010/09/23/the-great-american-streetcar-myth/> [https://perma.cc/6KPX-KYMP]; Joseph Stromberg, *The Real Story Behind the Demise of America's Once-Mighty Streetcars*, VOX (May 7, 2015), <https://www.vox.com/2015/5/7/8562007/streetcar-history-demise> [https://perma.cc/2383-ZHE8].

57. *Broad River Power Co. v. South Carolina*, 281 U.S. 537, 539 (1930).

58. *Id.* at 547–48.

59. *Id.* at 547.

60. Staci Richey, *Columbia Downtown Historic Resource Survey*, CITY OF COLUMBIA, Sept. 2020, at 44.

61. Staci Leanne Richey, *Variations on a Theme: Planning for the Elimination of Black Neighborhoods in Downtown Columbia, South Carolina, 1905–1970* (2004) (M.A. Thesis, University of South Carolina) (on file with Thomas Cooper Library) at 6.

over the black neighborhoods.”⁶² While the 1924 zoning map was not implemented in its original state, “it did set up a framework for future planning and land use that was clearly incompatible with the historical patterns of [black] residential use in [Columbia].”⁶³ Columbia’s slow growth during the Great Depression did not mitigate its population growth: the city’s population nearly doubled “from 37,524 in 1920 to 62,484 in 1940.”⁶⁴ This spike in population in turn impacted public transportation’s performance. By 1941, Columbia’s bus system had doubled in total passengers compared to the previous year, and the Broad River Power Company commissioned twenty-seven additional buses for Columbia and some of its surrounding suburbs.⁶⁵ A year later, South Carolina’s Public Service Commission urged its population to carpool in private automobiles due to the “congestion” of Columbia’s bus system.⁶⁶

City officials, concerned with the current state of Columbia and the ramifications of white flight, relied on “Jim Crow and other legal means of segregation to restrict and control the city’s [black] population,” and began implementing city planning procedures to change Columbia’s landscape.⁶⁷ South Carolina passed the Redevelopment Law in 1946 and amended the statute in 1952.⁶⁸ Not only did the Redevelopment Law grant housing authorities the ability to destroy blighted areas and prevent “the spread or recurrence of slum conditions or conditions of blight,”⁶⁹ it also gave housing authorities the ability to sell this cleared land to private entities.⁷⁰ While this practice was ultimately found unconstitutional by the South Carolina Supreme Court in 1965,⁷¹ Columbia’s housing authority used the decade to target black neighborhoods for destruction.⁷² These policies, and the pervasiveness of Jim Crow laws at the time, impacted how SCE&G’s bus service expanded to meet its increased usage. Protests began in 1946 from the Anti-Jim Crow committee

62. *Id.* at 7.

63. *Richey*, *supra* note 60, at 35–36.

64. *Id.* at 35.

65. *Street Buses and Passengers Double in Columbia in Year*, COLUMBIA RECORD, Feb. 25, 1941, at 14.

66. ‘Save Autos’, *Scott Urges, Commissioner Says Even New Buses Certain to Be Crowded*, COLUMBIA RECORD, May 6, 1942, at 12.

67. *Richey*, *supra* note 60, at 35.

68. S.C. CODE ANN. § 36-401 *et seq.* (1952) (repealed 1962); *see Richey*, *supra* note 60, at 47.

69. S.C. CODE ANN. § 36-402, 404 (1952) (repealed 1962).

70. *Id.* at § 36-410.

71. *Edens v. Columbia*, 228 S.C. 563, 576, 91 S.E.2d 280, 285 (1965); *see generally* Matthew Howsare, *Kelo in South Carolina: Economic Development Is Not a Public Use for Purposes of Eminent Domain in South Carolina*, 57 S.C. L. REV. 505, 525 (2006).

72. *See Richey*, *supra* note 61, at 7.

on the grounds of racial discrimination.⁷³ Outside of Columbia, Isaac Woodard Jr., an African American World War II veteran, was attacked by white Batesburg police officers and blinded after a bus driver complained of Woodard's unruliness.⁷⁴ By 1951, a group of citizens testified before the Public Service Commission, asking for the Palmetto Estates and Rose Hill bus lines to be expanded to serve more working-class individuals.⁷⁵ When the Commission asked a SCE&G representative why it would not expand the prosperous bus line, the representative emphasized the financial burden associated with extending the route. From the perspective of the concerned residents, SCE&G's route decisions were not based in financial concerns and instead represented SCE&G refusal to "allow for the area's growth."⁷⁶ Notably, the areas of Columbia where SCE&G refused to expand the bus system to had a significantly higher black population than where SCE&G ended its Rose Hill bus line.⁷⁷

Despite the Commission's hearing on the subject, and the SCE&G representative's vague explanation for the lack of expanding public transportation services to those in need, SCE&G's impact on Columbia residents' ability to access their public transportation system was evident. Regardless of SCE&G's intent, its conduct designated who was appropriate to use such services. Columbia's low income and minoritized communities were not deserving of the same, and Columbia's local government was complicit in restricting these groups' social and economic mobility.⁷⁸ The culmination of these actions did not go unnoticed. By 1954, Sarah Mae Flemming's experience on SCE&G's bus would garner national attention.⁷⁹

Sarah Mae Flemming finally had her case tried in front of a jury in 1957.⁸⁰ The road from the initial complaint to that trial was immensely strained. The South Carolina District Court first dismissed Sarah Mae Flemming's claim in

73. *Group Here Asks That Transport Use Be Avoided*, COLUMBIA RECORD, Mar. 2, 1946, at 13.

74. *Criminal Information Filed Against Batesburg Policeman in Case of Blinded Veteran*, STATE, Sep. 27, 1946, at 1.

75. *Public Service Has Hearing on Palmetto Estates Bus Line*, STATE, Nov. 14, 1951, at 2-B.

76. *Id.*

77. Compare U.S. CENSUS BUREAU 1950 CENSUS, SOUTH CAROLINA, RICHLAND COUNTY 40-38 – 40-43 (showing the overwhelmingly white demographics of certain census districts), with U.S. CENSUS BUREAU 1950 CENSUS, SOUTH CAROLINA, RICHLAND COUNTY 40-45, 40-46, 40-47 (showing much higher black demographics in certain census districts), <https://1950census.archives.gov/search/?county=Richland&page=2&state=SC> [<https://perma.cc/LT38-7FXG>].

78. See Richey, *supra* note 60, at 35.

79. *Sarah Mae Flemming*, COLUMBIA CITY OF WOMEN, <https://www.columbiacityofwomen.com/honorees/sarah-mae-flemming> [<https://perma.cc/PWR3-9MF7>].

80. Melton, *supra* note 1.

1955, stating that “the Supreme Court’s decision in *Brown v. Board of Education* . . . [was] not applicable in the field of public transportation.”⁸¹ Further, the South Carolina District Court reaffirmed *Plessy* as good law so long as it did not interfere with the Supreme Court’s decision in *Brown*.⁸²

The Fourth Circuit Court of Appeals reversed the district court’s decision since *Plessy* could no longer be interpreted as good law after the *Brown* decision.⁸³ After the Supreme Court dismissed SCE&G’s appeal,⁸⁴ Sarah Mae Flemming’s case was remanded back to the district court.⁸⁵ However, the South Carolina District Court again refused to hear Sarah Mae Flemming’s case and dismissed her claim.⁸⁶ After the Fourth Circuit Court of Appeals again reversed the district court’s decision and remanded the case,⁸⁷ Sarah Mae Flemming finally received her day in court.⁸⁸ As one paper noted, “[b]igoted southern judges and juries can’t be trusted to uphold the law in civil rights cases.”⁸⁹ Although Flemming did not receive compensation from her trial, the Fourth Circuit opinion proved foundational to the Civil Rights Movement and the equalization of access to public transportation in the South.⁹⁰

Nevertheless, Sarah Mae Flemming’s case changed how people in Columbia interacted with the public transportation system. However, it did not change SCE&G’s control over that system. Citing a national trend of people using less public transportation, SCE&G steadily decreased their public transportation services by millions of passengers in the mid-1950s.⁹¹ In those same years, SCE&G announced new records in electric and natural gas sales due to its monopoly over the Columbia area.⁹² Whereas power and public transportation had historically appeared closely aligned, SCE&G’s interests and obligations to provide public transportation were no longer aligned. Concurrently, Columbia’s new housing authority, the Urban Rehabilitation Commission, promoted its “Fight Blight” campaign.⁹³ This

81. *Flemming v. S.C. Elec. & Gas Co.*, 128 F. Supp. 469, 470 (D.S.C. 1955).

82. *Id.*

83. *Flemming v. S.C. Elec. & Gas Co.*, 224 F.2d 752, 752–53 (4th Cir. 1955).

84. *S.C. Elec. & Gas Co. v. Flemming*, 351 U.S. 901 (1956).

85. *Flemming v. S.C. Elec. & Gas Co.*, 224 F.2d at 752–53.

86. *Flemming v. S.C. Elec. & Gas Co.*, 239 F.2d 277, 278–79 (4th Cir. 1956).

87. *Id.* at 279.

88. Melton, *supra* note 1.

89. *Columbia Bus Case Shows Defects in Dixie Jury Trials*, PALMETTO LEADER, June 15, 1957, at 4.

90. *See Browder v. Gayle*, 142 F. Supp 707, 717 (M.D. Ala. 1956).

91. *Power Firm Last Year Set New Records*, STATE, Apr. 25, 1955, at 2-A.

92. *Id.*

93. Staci Leanne Richey, *Variations on a Theme: Planning for the Elimination of Black Neighborhoods in Downtown Columbia, South Carolina, 1905-1970* (2004) (M.A. Thesis, University of South Carolina) (on file with Thomas Cooper Library) at 12.

campaign targeted the remaining black and low-income neighborhoods in Columbia with the hopes of permanently destroying these areas.⁹⁴

While Columbia continued to destroy its downtown areas in the hopes of coaxing the city's white population to return, the city still faced the issue of connecting its suburban populations to the downtown area through proper public transportation. Public transportation systems in cities across the United States deteriorated under the care of private companies.⁹⁵ To curb this issue, cities created public transportation authorities to take control of public transportation systems. The federal government enacted the Urban Mass Transportation Act in 1964 to support these fledgling public systems.⁹⁶ This Act incentivized public control of transportation systems through maintenance and development federal funding.⁹⁷ However, while the Urban Mass Transportation Act supported nationalizing public transportation systems in cities across the United States, Columbia's public transportation system remained firmly in SCE&G's control.⁹⁸ Under the Supreme Court's 1930 decision,⁹⁹ SCE&G was obligated to maintain Columbia's public transportation system. Further, Columbia's government was unwilling to take on the expensive burden of public transportation when SCE&G was required to maintain it.¹⁰⁰ This struggle between SCE&G, Columbia's local government, and the people of Columbia would persist for decades beyond the passage of the Urban Mass Transportation Act. As public transportation systems across the United States nationalized and modernized with federal funding, Columbia's public transportation system remained in SCE&G's hands.¹⁰¹

By the late 1970s, the same bus driver who harassed Sarah Mae Flemming in 1954, had become SCE&G's manager of Columbia transit operations.¹⁰² In this role, he lamented the decrease in bus ridership while acknowledging that SCE&G had was not able to expand its services in the St. Andrews area.¹⁰³ Instead of embracing the changing audience of public transportation and implementing new bus routes areas of need, SCE&G focused its efforts on

94. *Richey*, *supra* note 60, at 47.

95. *Zchrag*, *supra* note 18.

96. Urban Mass Transportation Act of 1964, Pub. L. No. 88-365, 78 Stat. 302-03.

97. *See id.*

98. *See* Samuel Scheib, *How to Launch a Comet*, MASS TRANSIT (Apr. 15, 2014), <https://www.masstransitmag.com/home/article/11406080/how-to-launch-a-comet> [<https://perma.cc/D7E9-KQJ4>].

99. *See* *Broad River Power Co. v. South Carolina*, 281 U.S. 537, 539, 548 (1930).

100. *See* Bobby Bryant, *Bus Route Changes Prompt Harsh Remarks*, STATE, May 17, 1984, at 34 (referencing Columbia's continued stance of not being able to afford to purchase Columbia's public transportation system).

101. *See, e.g., id.*

102. Higgins, *supra* note 30.

103. *Id.*

Columbia's wealthier class through bus advertisements.¹⁰⁴ Additionally, SCE&G implemented the SCE&G Football Coach, a series of specialized buses for football gamedays to transfer people from around Columbia to Williams Brice Stadium.¹⁰⁵ Concurrently, SCE&G reduced and rerouted bus routes without warning, forcing those who used the bus to walk further and wait longer.¹⁰⁶ In a 1984 Columbia City Council hearing, frustrated public members alleged that the routes were being changed because representatives from the Marriott Hotel in downtown Columbia complained.¹⁰⁷ SCE&G explained these changes more plainly, with SCE&G's position being that "unless the attitudes of *the public* toward riding city buses change, and a wider variety of people besides the generally poor and elderly begin using the buses, SCE&G can't do much to change the service."¹⁰⁸ While impossible to interpret SCE&G's full intent through these policies, the ramifications from its conduct were clear. Those in need of public transportation service were left with no access while SCE&G focused its efforts on charter buses and gameday transportation.

Although SCE&G refused to acknowledge the public's issues with the bus service, the public's complaints were noticed by Columbia's City Council.¹⁰⁹ In the aftermath of the abovementioned hearing, Columbia created a committee to study the public transportation problem and advise any present solutions for SCE&G.¹¹⁰ This committee, formally known as the Central Midland Regional Planning Council, intended to improve the public transportation system for Columbia residents without taking on the system's responsibility.¹¹¹ Through the Council's involvement, Columbia's public transportation service finally received federal funding from the Urban Mass Transportation Administration in 1985.¹¹²

While most of this funding was reimbursed to SCE&G for its maintenance of the bus system, some of the funding was geared towards a bus transfer facility in Columbia and new bus services in West Columbia.¹¹³ Even further, the Council contracted bus services for the disabled community, allowing this population to use public transportation when SCE&G had

104. See, e.g., *SCE&G'S CHARTER BUS SERVICE*, COLUMBIA RECORD, May 29, 1984, at 21 (an example of one of SCE&G's bus advertisements).

105. See, e.g., *THE SCE&G GAME PLAN*, STATE, Sep. 3, 1983, at 5-A (an example of the advertised "SCE&G Football Coach" program).

106. Bryant, *supra* note 100, at 2-C.

107. *Id.*

108. *Id.* (emphasis added).

109. *Id.*

110. *Id.*

111. See *id.*

112. Mike Livingston, *Columbia Awaits U.S. Grant to Improve Area Bus Service*, STATE, Sep. 28, 1985, at 2-C.

113. *Id.*

neglected to improve its services to accommodate those who could not board its regular buses.¹¹⁴ Additional public oversight continued with increased funding for Columbia's bus system. South Carolina passed the Public Transportation Passenger Rights Act.¹¹⁵ With bus drivers complaining of "pandemonium," on Columbia's buses with "[boom boxes] blasting music . . . alcohol-induced arguments, screamed profanities and a fight now and then," this legislation sought to restrict bus passenger activity.¹¹⁶ The Public Transportation Passenger Rights Act made unruly activity unlawful with a punishment of thirty days in jail or a \$200 fine.¹¹⁷ Further, the Act gave bus drivers the authority to refuse ridership to intoxicated and unruly individuals.¹¹⁸

Columbia's involvement did create some change in its public transportation system. However, the city's refusal to completely engage with the bus system meant there would be no significant change in SCE&G's views and behavior regarding public transportation. Without taking over the bus system, Columbia could not force SCE&G to make improvements, and Columbia's position on the bus system remained that it could not afford to take over the system.¹¹⁹ SCE&G could not make money off the bus system either. In its 1984 Annual Report, SCE&G stated its "transit operations [had] been unprofitable since 1948" and the company was making "[e]fforts to reduce operation losses," through "route revisions, purchase of lower cost, refurbished coaches instead of expensive new coaches, and improved communications with municipalities, regulatory agencies, and customers," even more significant than those previously done.¹²⁰

This policy from SCE&G further worsened the condition of the bus system and sparked outrage among Columbia's residents.¹²¹ While SCE&G maintained these cuts were done to reduce the cost of running the bus system, community members alleged SCE&G was intentionally deteriorating the bus system in preparation for a buyout.¹²² Regardless, Columbia's public

114. *SCE&G to Add Transportation for Handicapped*, STATE, Sep. 25, 1987, at 5-C.

115. S.C. CODE ANN. § 58-23-1830 (1986); see also David Reed, 'Leave the Driving to Us', *General Assembly Passes Law Regulating Passenger Behavior*, STATE, May 16, 1986, at 3-C (describing the creation of the statute and its early application to public transportation).

116. Reed, *supra* note 115.

117. S.C. CODE ANN. § 58-23-1830(a)(1)-(6), (d) (1986).

118. *Id.* at § 58-23-1830(b)-(c).

119. Bryant, *supra* note 100, at 2-C.

120. SCANA, SOUTH CAROLINA ELECTRIC & GAS COMPANY ANNUAL REPORT 17 (1984).

121. *Buses*, STATE, May 7, 1992, at 5B.

122. Tracy L. Brown, *Midlands Bus Riders Tell SCE&G Service is Lacking*, STATE, May 12, 1992, at 3B.

transportation system suffered under these conditions, and ridership on its buses decreased by 60% from 1986 to 2002.¹²³

B. From Private to Local Government Control

By the 1990s, local governments concluded that a buyout of Columbia's public transportation system was necessary to reverse course. SCE&G reached an agreement with Charleston to buy itself out of providing Charleston's bus service in 1997.¹²⁴ However, Columbia, Richland County, and Lexington County needed time to prepare for such a significant exchange. As the local governments planned a buyout, SCE&G found a loophole ending its eighty-year mandate.¹²⁵ By merging with a North Carolina power company and becoming a multi-state business, SCE&G was prohibited from providing transportation services to Columbia under a 1935 law.¹²⁶ This merger and its implications significantly altered the tone of negotiations between Columbia and SCE&G. SCE&G was no longer forced to run Columbia's public transportation system. In fact, the SEC mandated that SCE&G get out of the public transportation business within two years.¹²⁷

Through these developments, the City of Columbia agreed to meet with SCE&G and negotiate SCE&G's buyout from its public transportation contractual duties and transition to Columbia's takeover of the public transportation system. The City of Columbia negotiated to initially receive \$15,000,000 from SCE&G by 2003 and \$17,290,000 over the next seven years.¹²⁸ The deal also extended the power company's monopoly over providing gas and electric power to Columbia for thirty additional years.¹²⁹ Finally in 2002, SCE&G's seventy-seven-year obligation to provide Columbia's public transportation system was over.¹³⁰

This exchange did not drastically change the performance of Columbia's public transportation system. The managers overseeing the bus system under SCE&G kept their positions and responsibilities, transitioning to public employees.¹³¹ While SCE&G's funds were essential in the continued performance of Columbia's new public transportation system, Columbia

123. THE COMET, THE COMPASS A FIVE YEAR GUIDE TO TRANSIT IN THE MIDLANDS 6 (2015).

124. Leroy Chapman Jr., *Bus System Can Transfer Smoothly*, STATE, June 8, 1997, at A1.

125. See Jeff Wilkinson and Dave L'Heureux, *SCANA Ordered to Give Up City Bus Operation by 2002*, STATE, Feb. 12, 2000, at A1.

126. *Id.*

127. *Id.*

128. Wilkinson, *supra* note 29.

129. *Id.*

130. See PUB. SERV. COMM'N OF S.C., No. 2002-521 (2002).

131. *S.C. Bus Operation Changes Hands*, METRO, Jan. 1, 2003.

struggled to allocate resources towards improving the bus system.¹³² Columbia had inherited a neglected system that needed serious upheaval to meet the accommodations of Columbia's residents.¹³³ Ridership declined by 53% as the City of Columbia struggled to fund its new expense.¹³⁴ By 2009, SCE&G had finished its required payments from the transportation system exchange, and Columbia was no closer to a solution.¹³⁵

C. *The Development of the COMET*

Columbia's ultimate solution to fund its public transportation system culminated in the 2012 Penny Tax Referendum.¹³⁶ The Penny Tax acted as a sales and use tax on drawing one cent from all transactions in Richland County.¹³⁷ This tax was estimated to "generate more than \$1 billion," with \$600 million going "to road widening, paving dirt roads, [and] creating new sidewalks," and \$400 million [going] to Columbia's bus system.¹³⁸ As Penny Tax funds began to roll in, Columbia's public transportation system rebranded as the COMET in 2014.¹³⁹

The Penny Tax funds did not automatically transition to an improved public transportation system. With the first Penny Tax funds being used towards improving the area surrounding the Colonial Life Arena,¹⁴⁰ institutions began to question how this new source of revenue was being spent. By 2015, the South Carolina Department of Revenue (DOR) found evidence of public corruption and opened an investigation into how the Penny Tax money was being managed.¹⁴¹ Richland County initially "responded that it was 'shocked and alarmed' and expressed a willingness to 'immediately invoke measures to protect and preserve county money and assets.'"¹⁴² However, when DOR ceased all allocations of Penny Tax funds to the County,

132. See Dawn Hinshaw, *Saving the Bus System*, STATE, Sept. 25, 2006, at A4 (discussing the obstacles the City of Columbia had to overcome to allocate funds to the bus system).

133. See *id.*

134. The COMET, *supra* note 123.

135. See *id.* (depicting by the graph the continual decline in ridership through 2009 even after SCE&G had completely divested itself from the transit system).

136. Bland, *supra* note 47.

137. See Hughes, *supra* note 48.

138. Bland, *supra* note 47.

139. Scheib, *supra* note 98.

140. Sarah Ellis, *Innovista Greene Street Project Breaks Ground This Week*, STATE (June 8, 2015), <https://www.thestate.com/news/local/article23421306.html> [<https://perma.cc/2R35-3BQY>].

141. John Monk, *SC Agency Questions Richland County's Handling of Penny Sales Tax*, STATE (Dec. 14, 2015), <https://www.thestate.com/news/local/article49711830.html> [<https://perma.cc/FLW5-ZS7T>].

142. Richland Cnty. v. S.C. Dep't of Revenue, 422 S.C. 292, 302, 811 S.E.2d 758, 763 (2018).

Richland County filed suit against the DOR.¹⁴³ While this suit was settled in 2021,¹⁴⁴ residents of Richland County were left with only a preliminary estimate of \$40 million being misspent.¹⁴⁵

Concurrent with the Penny Tax dispute, the COMET continued to struggle with ridership on its promoted routes.¹⁴⁶ While the number of bus trips has doubled since the implementation of the Penny Tax,¹⁴⁷ those buses were not necessarily filled. The COMET implemented security cameras on its buses in 2016 to provide additional security measures on its buses.¹⁴⁸ Since the introduction of the COMET, its bus services have been extended to the University of South Carolina initially on a contractual basis and then through an expanded shuttle service.¹⁴⁹ The COMET has also moved the final stop of many of its buses to the corner of Lucius Road and River Drive, a significant distance from the original bus stop in downtown Columbia¹⁵⁰ which correlates with Columbia's other efforts to push public services outside of the downtown Columbia area.¹⁵¹

Recently, Richland County Council has passed another resolution authorizing county officials to prepare for another Penny Tax referendum in 2024.¹⁵² This 2024 Penny Tax referendum would raise funds to be spent on

143. *Id.* at 303–04, 811 S.E.2d at 764.

144. Bristow Marchant & David Travis Bland, *Richland County Reaches Settlement with State Agency on Multi-Million Penny Tax Feud*, STATE (July 21, 2021), <https://www.thestate.com/news/local/article252921963.html> [<https://perma.cc/U35U-AFPQ>].

145. Jacob Reynolds, *\$40 Million of Richland County Penny Tax Money May Have Been Misspent, Lawmaker Says*, WLTX (Nov. 5, 2019), <https://www.wltx.com/article/news/local/penny-tax-money-preliminary-audit/101-b46441ab-27a9-44cc-9a36-3a510c0e536d> [<https://perma.cc/ZQ7F-SB24>].

146. Sarah Ellis, *It's a Free Bus to Downtown Hot Spots. Why Aren't More People Riding It?*, STATE (Nov. 5, 2017, 6:58 PM), <https://www.thestate.com/news/local/article182942371.html> [<https://perma.cc/MV6W-SJL3>].

147. Clif Leblanc, *Many Columbia Buses to be Equipped with Security Cameras by Early 2018*, STATE (Nov. 10, 2016, 9:28 PM), <https://www.thestate.com/news/local/article114065588.html> [<https://perma.cc/C62K-XEN8>].

148. *See id.*

149. *The COMET, UofSC Sign \$1.5 Million Contract for Shuttle Service*, WLTX (June 30, 2020, 10:44 AM), <https://www.wltx.com/article/money/consumer/comet-bus-university-southcarolina-sign-million-dollar-contract-shuttle-service-columbia-southcarolina/101-e9bd8c99-cef2-45f8-8e12-3d0f5bf5af8e> [<https://perma.cc/Q97G-SKMG>].

150. Tai Wong, *COMET Bus System Moving Transfer Hub Out Of Downtown*, WLTX (Mar. 21, 2022, 12:40 PM), <https://www.wltx.com/article/news/community/comet-bus-system-moving-its-transfer-hub/101-9e3ce4c0-c15c-48c7-8678-526077bc24bb> [<https://perma.cc/DCD2-7QXM>].

151. *See* Andrew Fancher, *Homeless Initiative Brings Pushback from Local Service Providers*, WIS (Aug. 16, 2023, 10:47 PM), <https://www.wistv.com/2023/08/17/homeless-initiative-brings-pushback-local-service-providers/> [<https://perma.cc/ZKE4-55WE>].

152. *See* Hughes, *supra* note 48.

the “public bus system, along with other possible transportation-related projects in the county.”¹⁵³

III. THE DISPARATE IMPACT OF COMET POLICIES AND PRACTICES

A. Access to Essential Services

Through the economic and sociological developments in the United States in the previous century, transportation has become an absolute necessity for any individual.¹⁵⁴ Employment opportunities, childcare, healthcare, and other necessary amenities are all fundamentally linked to consistent transportation.¹⁵⁵ Without transportation, access to these resources is significantly hindered. While the majority of South Carolinians commute to work through personal vehicle transportation,¹⁵⁶ public transportation is a necessity for South Carolinians who cannot afford a personal vehicle. As of 2019, people in South Carolina “at the federal poverty level spend an average 73% of their income on transportation and 112% for both housing and transportation.”¹⁵⁷ These figures represent significant increases over the national averages of “64% and 108%, respectively.”¹⁵⁸ Specifically in the Midlands region, 17% of Richland County’s population and 9% of Lexington County’s population lived below the poverty line as of 2020.¹⁵⁹ In “the higher density areas of Columbia,” there were “as many as 2,013 zero-vehicle households per square mile,” as of 2020.¹⁶⁰ For people in the Midlands region who cannot afford private transportation, the COMET is the only public transportation resource available to provide transportation and access to the amenities mentioned above.

153. *Id.*

154. See Matthew A. Dombroski, *Securing Access to Transportation for the Urban Poor*, 105 COLUM. L. REV. 503, 507–08 (2005).

155. See *Lawsuit Challenges South Carolina’s Wealth-Based Driver’s License Suspensions*, ACLU (Oct. 31, 2019), <https://www.aclu.org/press-releases/lawsuit-challenges-south-carolinas-wealth-based-drivers-license-suspensions> [https://perma.cc/H88J-S59N] (highlighting the necessity for transportation in the context of license suspension issues in South Carolina).

156. *Commuter Transportation in South Carolina*, DATA USA (2021), <https://datausa.io/profile/geo/columbia-sc/?compare=south-carolina#transportation> [https://perma.cc/X6S6-DMCM].

157. SOUTH CAROLINA: STRUCTURAL FACTORS ASSOCIATED WITH POVERTY 4 (2020), https://sistersofcharitysc.com/wp-content/uploads/2021/12/SOC_Report2020_Executive-Summary.pdf [https://perma.cc/4VUH-BG8R].

158. *Id.*

159. CENTRAL MIDLANDS COUNCIL OF GOVERNMENTS 2019 HUMAN SERVICES TRANSPORTATION COORDINATION PLAN 6 (2020), https://centralmidlands.org/wp-content/uploads/Final-Report_CMCOG_HSTP.pdf [https://perma.cc/J9MU-WQPR].

160. *Id.*

Outside of its standard transportation services, the COMET also provides services for other public entities in the Midlands region in need of transportation. However, conflicts arise when individuals rely on these public entities and are banned from using the COMET's services. For individuals being released from incarceration at the Alvin S. Glenn Detention Center, the COMET's services are relied on by individuals who do not have anybody to pick them up on their release date.¹⁶¹ For individuals experiencing issues related to housing in the Midlands region, access to specific services and necessary resources are linked to the COMET. Access to Columbia's Inclement Weather Center (now renamed Rapid Shelter Columbia) can only be achieved "via the COMET bus or transport from Columbia Police Department."¹⁶² This Center opens to the public on nights when temperatures drop below 40 degrees.¹⁶³ For the homeless population of Columbia, this Center provides an essential service to provide safety during cold nights and can only be accessed through reliance on the COMET's services.

While some services exist within walking distance of downtown Columbia, Columbia's local government has communicated its position regarding these services. Services initially provided in downtown Columbia have been consolidated away from downtown to "ensure that everybody is able to enjoy [Columbia's] entertainment district."¹⁶⁴ Despite pushback from local service providers,¹⁶⁵ Columbia has continued to emphasize this stance with discussions of homeless services being removed from Columbia's downtown area.¹⁶⁶ Removing these services from the downtown Columbia area to locations outside of reasonable walking distance creates further reliance on the COMET's services for Columbia's homeless population to access these resources.

The examples discussed above highlight just some of the critical services the COMET provides to its riders and emphasize the vital place the COMET maintains in the Midlands region as the sole method of public transportation. However, a trespass charge against an individual by the COMET can wholly remove access to public transportation in the Columbia area.

Under Section 16-11-620 of the South Carolina Code, any individual who enters an area after being warned not to or any individual who fails or refuses to leave an area after being told to do so is fined two hundred dollars or

161. See Flanagan, *supra* note 38.

162. Neville, *supra* note 37.

163. *Id.*

164. Fancher, *supra* note 151.

165. *Id.*

166. Morgan Hughes, *Columbia Leaders Want Transitions, Other Homeless Services Moved from Downtown to Address Crime*, STATE (June 13, 2023, 1:47 PM), <https://www.the-state.com/news/local/article276355861.html> [https://perma.cc/96B7-NVUE].

imprisoned for thirty days.¹⁶⁷ Individual bus riders attempting to use the COMET's services can receive a trespass charge for entering the COMET's property without "legal cause or good excuse," or failing or refusing to leave the COMET's property after being told to do so.¹⁶⁸ Through this statute, the COMET enforces strict authority regarding who is allowed to engage with its services.¹⁶⁹ This enforcement does not only apply to the COMET's buses. The COMET's property extends to its multiple bus stations and bus stops throughout the Midlands.¹⁷⁰ For the low-income population the Columbia, South Carolina area, a trespass charge from the COMET can arise from a multitude of different reasons including riding the bus without a ticket.¹⁷¹ Ultimately, it is up to the bus driver's or CPD officer's discretion whether an individual is on Columbia property without a "legal cause or good excuse."¹⁷²

While the criminal punishments for a trespass charge extend to two hundred dollars or thirty days imprisonment,¹⁷³ the COMET creates additional punishments for specific trespass charges against the bus system. If an individual is charged once with trespassing against the COMET, that individual is banned from using the COMET's services for six months.¹⁷⁴ If an individual is charged twice with trespassing against the COMET or once with damaging the COMET's property, that individual is permanently banned from using the COMET's services.¹⁷⁵

Individuals charged with trespassing against the COMET not only have to wrestle with the potential of a month of incarceration, but they also must find alternative means of transportation while banned from using the COMET's services. With no other method of public transportation in the Columbia area, these individuals are left to choose between risking additional penalties using the COMET's services or walking to their destinations.¹⁷⁶ Access to the COMET's services is necessary for these individuals to access all the above amenities and services.

167. S.C. CODE ANN. § 16-11-620.

168. *Id.*

169. There is no clear explanation as to why the COMET and CPD utilize Section 16-11-620 to suspend riders from using the COMET's services instead of the South Carolina Public Transportation Passenger Rights Act outside of the specific parameters included in the Passenger Rights Act necessary to be removed from the bus.

170. *See generally* THE COMET ROUTE GUIDEBOOK 10-74 (2023), <https://catchthecometsc.gov/wp-content/uploads/2023/05/comet-route-booklet-22-A5-v6.pdf> [<https://perma.cc/78VL-U2TA>].

171. *See generally* S.C. CODE ANN. § 16-11-620.

172. *See generally id.*

173. *Id.*

174. Fig. 1 *supra* note 46.

175. *Id.*

176. Based on the author's research, there is no public information discussing how the COMET's bus drivers correctly identify individuals with trespass bans from the COMET.

B. Disparate Impact and Constitutional Rights

The COMET's policies regarding trespass do not explicitly violate the Constitutional rights of its riders. First, there is no Constitutional right to intrastate public transportation.¹⁷⁷ Second, there is no evidence to suggest that the COMET's behavior has a discriminatory purpose as required under a Title VII challenge.¹⁷⁸ However, scholars have argued that the right to access public transportation should be viewed as both a Constitutional and a civil right.¹⁷⁹ Further, the COMET's conduct regarding trespass charges frustrates the Constitutional rights of minoritized and low-income groups in the Midlands region.

Generally, Constitutional rights associated with travel and transportation have been separated into the right to interstate travel, the right to intrastate travel, and freedom of movement.¹⁸⁰ These rights are “distinguishable by the geographic scale over which they protect mobility.”¹⁸¹ While the right to travel has been firmly emphasized as a right to interstate travel through the Commerce Clause and the Privileges and Immunities Clause under *Saenz v. Roe*,¹⁸² a right to intrastate travel has been upheld in multiple federal circuits.¹⁸³ Outside the courtroom, the NAACP has also codified the civil right to access public transportation.¹⁸⁴

Regarding the disparate impact of the COMET's trespass charges, the COMET's procedures specifically harm minoritized and low-income groups attempting to use the COMET's services. Based on the COMET's records, thirty-six individuals were charged with trespassing from March 16, 2020, to April 23, 2023.¹⁸⁵ Of those thirty-six individuals, thirty-three individuals were identified as African American.¹⁸⁶

177. See Dombroski, *supra* note 154, at 522 (discussing the nonexistence of the right to intrastate travel when compared to the right to interstate travel).

178. *Pers. Adm'r of Mass. V. Feeney*, 442 U.S. 256, 279 (1979) (explaining that intent for “discriminatory purpose” must go beyond volition or awareness; the policy enactor must choose its course of action “because of” not “in spite of” the adverse effects upon an identifiable group).

179. See, e.g., Dombroski, *supra* note 154, at 522 (discussing the importance of public transportation for low-income populations and how a right to access transportation would help these populations).

180. *Id.* at 524.

181. *Id.*

182. *Id.* at 521–22.

183. *Id.* at 522–23.

184. ESTABLISHING THAT ACCESS TO PUBLIC TRANSPORTATION SYSTEM IS A BASIC CIVIL RIGHT, NAACP (2016), <https://naacp.org/resources/establishing-access-public-transportation-system-basic-civil-right> [<https://perma.cc/C5UG-G48N>].

185. Fig. 1 *supra* note 46.

186. *Id.*

For Columbia's low-income population, the COMET's records highlight an inability to protest a ban from using the COMET's services. Of the thirty-six individuals charged with trespassing against the COMET, none of them appealed their trespass ban with all responses reading "[f]ailed to appeal by due date."¹⁸⁷ Without access to the resources required to fund a proper appeal to dispute the COMET's ban, these individuals are left helpless with no opportunity to protect their access to public transportation in the Midlands region due to a trespass charge against them. The COMET's records reflect that its appeal process is not a tangible endeavor for its low-income riders facing a trespass charge and are in jeopardy of losing access to the COMET's bus system.¹⁸⁸

C. *Administrative Clarity and Government Accountability*

"The accountability of administrative agencies to the general public is a 'hallmark of modern democratic governance.'"¹⁸⁹ Without that accountability, individuals are left without any real opportunity to contest the process by which government agencies work. However, transparency between any government agency and its citizens is required to effectively hold that agency accountable.¹⁹⁰ For the COMET, there is a fundamental disconnect between the administration of its policies and those policies' ramifications on the low-income communities of the Midlands region of South Carolina.

This disconnect is especially prevalent through the administration of the trespass charges discussed above by the COMET and the City of Columbia Police Department (CPD) against low-income communities. The punishments associated with the trespass charge, a six-month ban from the COMET's services along with either a fine of two hundred dollars or imprisonment for thirty days,¹⁹¹ are intended to be coupled with additional administrative procedures to ensure no individual is wrongfully restricted from using the COMET's services. Further, it is designed to give any defendant the ability to address the trespass charge and protect their right to access public transportation services. However, this ability to appeal is not clearly expressed either publicly on the COMET's website or made available to individuals charged with trespassing against the COMET. None of the thirty-six individuals listed in the COMET's database who were charged with trespassing against the COMET since 2020 appealed their trespass charge.¹⁹²

187. *Id.*

188. *Id.*

189. Shkabatur, *supra* note 42, at 82.

190. *See id.* at 83.

191. S.C. CODE ANN. § 16-11-620.

192. Fig. 1 *supra* note 46.

For the appeal results, the COMET listed that every one of these individuals “[f]ailed to appeal by due date.”¹⁹³

The extent of CPD’s involvement in enforcing trespass charges by the COMET is also unclear. Based on the COMET’s previously discussed records, seven of the 36 individuals charged with trespassing against the COMET were “[t]respasted [b]y,” CPD.¹⁹⁴ COMET Security Sub-Committee records present contracts signed with CPD and Cayce Department of Public Safety to create special duty assignments for police officers to work on COMET property.¹⁹⁵ Through this contract, CPD officers are tasked with ensuring people at the COMET’s bus stops and shelters who are not riding buses are removed, responding to incidents on COMET buses, and “familiarizing themselves with passengers and employees.”¹⁹⁶

To understand the lack of administrative clarity surrounding the COMET’s policies, it is important to understand the current law on the COMET and all regional transit authorities in South Carolina. In South Carolina, the Regional Transportation Authority Law governs regional public transportation services’ administration, makeup, and management.¹⁹⁷ For a regional transportation service to be activated, the governing bodies, “which include at least ninety percent of the population of the proposed service area,” must create a plan of action outlining the general framework for the proposed transportation service.¹⁹⁸ Under Section 58-25-40 of the Regional Transportation Authority Law, the governing body of the regional transport authority must be appointed by “the governing bodies of the municipalities and counties within,” the transportation service area.¹⁹⁹ These board members can be elected officials and can serve in an ex officio capacity.²⁰⁰ The legislative delegations of member counties can also appoint board members.²⁰¹ The governing body is also responsible for electing one of its members to be chairman, or vice-chairman and fulfill any additional required officer roles.²⁰² These board members can only be removed by the governing body that appointed them “for misconduct, malfeasance, or neglect of duty in office.”²⁰³ The governing body also has the authority to “employ an executive director,” who can, in turn, “employ any employees as may be necessary for

193. *Id.*

194. *Id.*

195. See *Central Midlands Regional Transit Authority Security Ad-Hoc Subcommittee Agenda*, *supra* note 40, at 6–10.

196. *Id.*

197. S.C. CODE ANN. § 58-25-10.

198. *Id.* at § 58-25-30.

199. *Id.* at § 58-25-40(1).

200. *Id.*

201. *Id.*

202. *Id.* at § 58-25-40(4).

203. *Id.* at § 58-25-40(5).

the proper administration of the duties and functions of the [transportation] authority.”²⁰⁴ These transportation authorities have the authority to, among other listed things, “[d]o all acts necessary for the provision of public transportation services.”²⁰⁵

Under the Regional Transportation Authority Law, transportation authorities such as the COMET have broad authority to control all facets of access to public transportation. However, the Regional Transportation Authority does not include checks on regional transportation authorities to ensure their services are adequately provided to the citizens of the service area. The Supreme Court of South Carolina has recognized that DOR must ensure tax funds associated with regional transportation authorities “comply with . . . revenue laws DOR is charged with enforcing.”²⁰⁶ That decision only arose because Richland County disputed state agency oversight over the administration of COMET and road construction funds and only applied to the financial decisions of one county associated with the COMET.²⁰⁷ While the counties and cities are ultimately responsible for their appointees at the COMET, there is a lack of general oversight over the COMET’s conduct.

This lack of oversight extends to more than governmental oversight. The nature of South Carolina’s regional transportation authority’s makeup creates a fundamental disconnect between its governing body and the individual using its services. The COMET extends this disconnect by failing to avail itself to public participation and scrutiny. South Carolina citizens have the constitutionally protected right to vote in local elections.²⁰⁸ However, that right does not extend to participation through the entire political process. South Carolina citizens have limited input or insight into local transit authorities’ appointment decisions.²⁰⁹ For the COMET, this limited oversight creates a disconnect through which the people using the COMET’s bus services cannot exercise any control over it. While governmental accountability stems from participation in the political process and Freedom of Information Act (FOIA) requests,²¹⁰ these insights into the political process are not feasible for everyone and are frustrated through the COMET’s practices. The COMET holds its board meetings on weekdays at noon. For low-income populations, participation in the political process through hearings or other vehicles of change is impractical, as these populations cannot afford to take time away from essential responsibilities to have their

204. *Id.* at § 58-25-40(6).

205. *Id.* at § 58-25-50(q).

206. *Richland Cnty. V. S.C. Dep’t of Revenue*, 422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018).

207. *See id.* at 292, 811 S.E.2d at 758.

208. S.C. CONST. ANN. art. II, § 4.

209. *See* § 58-25-40.

210. *See* 5 U.S.C. § 552.

voices heard. Further, FOIA requests contain “substantial time and cost barriers,”²¹¹ which prevent any individual from holding the COMET accountable for its policies and further highlighting how these policies disparately impact the low-income population the COMET services.

IV. PROMOTING EQUAL ACCESS TO PUBLIC TRANSPORTATION

Columbia and the surrounding Midlands region are just some of the areas in the United States that face access to public transportation issues among their populations. The issues seen within the COMET’s policies are present in transportation authorities throughout the United States.²¹² For example, in Nashville, Tennessee, low-wage workers have been pushed out of the city core and to the suburbs “likely because of the high cost of living in the central city.”²¹³ These low-wage workers have limited access to employment through public transportation.²¹⁴ While Nashville has continued to spend billions of dollars to reform its public transportation system, the issues facing Nashville’s transportation authority continue to persist.²¹⁵

In Atlanta, Georgia, a group of professors conducted a study in 2020 to understand how different communities interacted with Atlanta’s public transportation system.²¹⁶ This study examined services in DeKalb and Fulton counties to determine if different communities each had equal access to public transportation.²¹⁷ Ultimately, the study found “disparities in transit connectivity for low-income and minority populations,” in public transportation services for Fulton and DeKalb counties.²¹⁸

However, cities across the United States have implemented procedures to improve the connectivity between public transportation services and marginalized groups and increase protection for indigent riders attempting to use public transportation services. Community Action Agencies have created public transportation specifically emphasized for low-income residents to

211. Shkabatur, *supra* note 42, at 89.

212. *See generally* Wesley Jenkins, *The Unequal Commute*, URBAN (Oct. 6, 2020), <https://www.urban.org/features/unequal-commute> [<https://perma.cc/2KSB-SFPD>].

213. *Id.*

214. *Id.*

215. *See generally* Eli Motycka, *Nashville Heads for Another Transit Referendum*, NASHVILLE SCENE (Nov. 28, 2023), https://www.nashvillescene.com/news/citylimits/nashville-transit-referendum/article_eb23c1c0-8d69-11ee-bac9-0f1c198643fb.html [<https://perma.cc/J9MU-WQPR>].

216. Christopher K. Wyczalkowski et al., *Inequities of Transit Access: The Case of Atlanta*, *GA*, 34 *J. OF COMPAR. URB. L. AND POL’Y* 657, 658 (2020).

217. *Id.* at 662.

218. *Id.* at 678.

promote access to essential services.²¹⁹ In Macomb County, Michigan, one Community Action Agency implemented a transportation system to assist low-income residents with transportation for medical appointments.²²⁰ Other states, including Ohio and Oklahoma, instituted transportation programs for rural residents without previous access to transportation services.²²¹ However, Community Action Agencies, such as the ones mentioned above, have historically been capitalistically driven and economically motivated.²²² States have also passed legislation to protect indigent populations by creating a Homeless Bill of Rights. In Rhode Island, California, and Connecticut, a person experiencing homelessness has the right to “move freely,” on public transportation.²²³ These statutes create a basis on which members of the indigent population can defend themselves against targeted incarceration and attacks based on status.

In South Carolina, the Lowcountry Rapid Transit system is in the preliminary stages of creating South Carolina’s first mass transit system aimed at connecting affordable housing to Charleston’s downtown areas.²²⁴ While legislation was introduced in the South Carolina General Assembly to create a process for cities and counties to create similar transit systems, that legislation did not reach the voting stage.²²⁵

V. CONCLUSION

Public transportation remains a complicated issue with no easy solution to meet the needs and desires of the entire populace of a given area. While many texts highlight public transportation as a source ripe for improvement to create economic and sociological mobility throughout the United States, public transportation’s multifaceted nature precludes any easy solution. There

219. Madelaine Criden, *THE STRANDED POOR: RECOGNIZING THE IMPORTANCE OF PUBLIC TRANSPORTATION FOR LOW-INCOME HOUSEHOLDS 2–3* (2008), <https://nascsp.org/wp-content/uploads/2018/02/issuebrief-benefitsofruralpublictransportation.pdf> [<https://perma.cc/H2T7-CWJ7>].

220. *Id.* at 5.

221. *Id.* at 4–5.

222. *See generally* Etienne C. Toussaint, *Dismantling the Master’s House: Toward a Justice-Based Theory of Community Economic Development*, 53 U. MICH. J.L. REFORM 337 (2019).

223. FROM WRONGS TO RIGHTS: THE CASE FOR HOMELESS BILL OF RIGHTS LEGISLATION 34, 37–38, https://homelesslaw.org/wp-content/uploads/2018/10/Wrongs_to_Rights_HBOR.pdf [<https://perma.cc/A3F5-CZ9S>].

224. *South Carolina’s First Mass Transit System*, LOWCOUNTRY RAPID TRANSIT, <https://lowcountryrapidtransit.com/> [<https://perma.cc/7MF9-ZUJU>]; *see also* LOWCOUNTRY RAPID TRANSIT, TRANSIT-ORIENTED DEVELOPMENT FINAL REPORT (2022), https://lowcountryrapidtransit.com/docs/LCRT_TOD_FinalReport_FINAL_2152022.pdf [<https://perma.cc/Y36T-LWBX>].

225. S.C. Gen. Assembly H. 4013, 125th Sess. (S.C. 2023).

is no simple method to provide public transportation services and meet the needs of every individual. However, the nuance of this issue should not alleviate public transportation authorities, including the COMET, from the responsibility to promote its services to all residents and create policies and procedures to that effect.

In Columbia, South Carolina, public transportation has remained a central issue since the introduction of the city's electric rail system nearly 150 years ago. From SCE&G's public transportation system to Columbia's early attempts to the COMET, the public transportation needs of the Midlands region have yet to be fully met. In its current state, the populations who rely on the COMET's services the most are ultimately marginalized by the COMET's policies and procedures and left with no alternative means of transportation. Through an emphasis on administrative clarity, the passing of legislation protecting the rights of indigent populations in South Carolina, and additional public transportation opportunities in the Midlands region, the COMET can improve conditions for its riders and create a foundation for economic and social mobility so closely associated with public transportation.