

# Challenging the Urban Lifestyle: Memphis, Overton Park, and the Interstate 40 Controversy

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The Interstate 40 controversy polarized Memphis, Tennessee from the 1950s to the 1980s. The conflict over the proposed construction of Interstate 40 through the midtown Memphis landmark known as Overton Park generated intense feelings among Memphians. In the midtown Memphis community, those who fought the construction of Interstate 40 sought to preserve the peace and integrity of their neighborhoods while at the same time opposing a vision of the American urban lifestyle that ultimately valued speed and efficiency. The struggle over whether to build the interstate through the park eventually went all the way to the United States Supreme Court, in a commonly cited administrative law case, *Citizens to Preserve Overton Park v. Volpe* (1971).<sup>1</sup>

## **Overton Park: The Heart of the Controversy**

Historically, Overton Park had been a significant part of the urban lifestyle in Memphis. The park's roots stem from the 1858 completion of Central Park in New York City under the architectural leadership of Frederick Law Olmsted, Sr. Olmsted's work eventually led to the development of parks in urban centers throughout the country. Olmsted saw parks as retreats from the continuing growth of America's rapidly industrializing cities in the 1800s. By 1893,

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<sup>1</sup> Peter L. Strauss, "Symposium: Contemporary Issues in Adjudication: Article and Commentary: Revisiting *Overton Park*: Political and Judicial Controls over Administrative Actions Affecting the Community," *UCLA Law Review* 39 (1992): 1251.

Olmsted's efforts resulted in the establishment of the City Beautiful Movement, which gave inspiration to a new public desire to touch up the image of the American city.<sup>2</sup>

In 1898, Memphis Mayor J.J. Williams and the Legislative Council appointed a committee to establish plans for a parkway system in the city. Members of the committee felt that a system of parkways and public parks would add to the overall well-being of Memphis residents by giving visitors recreational opportunities away from the fast pace of city life. With the help of Olmsted's nephew John C. Olmsted and Frederick Law Olmsted, Jr., the city surveyed possible park sites and established a park commission. In 1900 the inaugural Board of Park Commissioners came into being with three members: L.B. McFarland, John R. Godwin, and Robert Galloway. On November 29, 1900, the committee recommended that the "Lea tract was best suited for park purposes." This tract encompassed the land "situated between Poplar Street on the south, Summer Avenue on the north, Trezevant Avenue on the east, and partly by McLean Avenue on the west." By 1901, the commission acquired the tract of land they recommended to the Legislative Council, renamed the land Overton Park in honor of city founder John Overton, and selected George E. Kessler of Kansas City as the architect.<sup>3</sup>

Kessler had a growing landscape architectural practice at the time and had just completed a project in Kansas City designing a network of parkways and parks. Kessler's work in Kansas City brought him wide acclaim as a landscape architect, and he subsequently completed projects in several other cities.

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<sup>2</sup> Overton Park: Vision and Inspiration. Brochure produced by Memphis Heritage, Inc. Available at the Memphis and Shelby County Public Library and Information Center. Memphis, Tennessee.

<sup>3</sup> Overton Park, brochure.

Kessler's leadership in the development of Overton Park led to the construction of several walking paths, carriage roads, and bridges while also retaining the already existing railroad line, which was the most common way for visitors to access the park during the early twentieth century. For the rest of the twentieth century, Overton Park continued to serve as a social center for the city, hosting numerous community activities taking place in the park.<sup>4</sup>

## **Eisenhower and the Federal Interstate Highway System**

In 1955, President Dwight D. Eisenhower made a ground-breaking proposal in his State of the Union address. The president called for "an expanded road program" that would cost in excess of twenty-six billion dollars over ten years. The billions of dollars dedicated to the construction of the new highway system would result in thirty thousand additional miles of interstate highways "over and above" those federally-funded roads that were already in the process of being completed. As he would later point out, Eisenhower envisioned the continued prosperity of the nation hinging upon the construction of a larger and more efficient transportation network.<sup>5</sup>

On February 22, 1955, Eisenhower justified his expanded road program as a way to both enhance the American lifestyle and the economy. Eisenhower argued that there was "inescapable evidence" that the current highways were "inadequate" to meet "growing needs." One of those needs, he felt, was to address the social cost incurred by thirty-eight thousand fatalities per year on American highways. In addition, Eisenhower remarked that the poor conditions of roads increased the overall costs of consumer goods. Thus, with more control over money from cheaper consumer goods, there would be

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<sup>4</sup> Overton Park, brochure.

<sup>5</sup> "Major Proposals Made by President," *The New York Times*, 7 January 1955, 10.

greater personal freedom, highlighting how the expressway system intended to liberate people from prior inconvenience as well as stimulate greater economic growth. Eisenhower went on to argue that in the event of a nuclear attack, the highways must be developed enough to ensure that mass evacuations could occur safely. He also argued that a federal highway program anticipated population growth in the coming years and could accommodate more vehicle traffic. By emphasizing a need for safety as well as freedom of movement, both the national defense and congestion arguments demonstrated how the proposed interstate highway system aimed both at improving peace of mind and becoming an essential part of the way Americans lived their lives. Eisenhower's proposal represented the desire to embrace highway construction as the future of the American social and economic identity, but as the controversy in Memphis demonstrated, his plan would not be implemented without resistance.<sup>6</sup>

Speed defined Eisenhower's road program in its early years. By August 1956, the highway construction project was in full force and over three billion dollars had been allocated to states to begin improvements.<sup>7</sup> Eisenhower remarked in response to the construction: "Prompt state action will help alleviate the great deficiencies in our highway systems and will convert the Federal fund authorizations into usable roads at the earliest possible time."<sup>8</sup> Eisenhower's statements represented the dedication of the federal government to disburse the money allocated to highway improvements as quickly as possible in order to alleviate the inadequacies of federal roads. In the wake of Eisenhower's plan to disperse federal highway funds and

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<sup>6</sup> "Text of President's Message Outlining His Roads Program," *The New York Times*, 23 February 1955, 17.

<sup>7</sup> "Highway Project off to a Fast Start," *The New York Times*, 17 August 1956, 15.

<sup>8</sup> "Highway Project," 15.

build the highway system, the controversy over constructing Interstate 40 through Overton Park began in Memphis, Tennessee when the Bureau of Public Roads signed on to the proposed route in 1956.<sup>9</sup>

The controversy surrounding the road's construction through Overton Park was not the only one to occur in the late 1950s. *The New York Times* reported on January 6, 1957, that the “knottiest question” in the construction of the new interstate highway system was “over acquisition of right-of-way for more than 30,000 miles of the national road network.”<sup>10</sup> The article went on to report that “the acquisition headache is most acute” over proposed “brand new arteries in and around congested urban centers” and “[o]fficials hoping to please...home owners...and at the same time construct a road without disturbing established community patterns face gigantic problems.” A provision of the federal law authorizing the federal highway construction also required “public hearings in advance of any land acquisition,” which at the same time also contributed to the construction delays in 1957, illustrating just how influential local protests had been in halting the implementation of the federal government's plan.<sup>11</sup> The national attention given to local controversies over highway construction demonstrated that the impending protests in midtown Memphis were not unique in the late 1950s. The opposing parties in the controversy, residents on one, and federal, state, and even local government officials on the other, were actually representatives of a larger national contest over different understandings of the future of the American urban lifestyle, which highway expansion suggested.

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<sup>9</sup> *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), 407.

<sup>10</sup> Joseph C. Ingraham, “Roads Slowdown: Red Tape and Rising Costs Hampering U.S. Highway-Building Program,” *The New York Times*, 6 January 1957, D19.

<sup>11</sup> Ingraham, “Roads Slowdown,” D19.

## The Early Years of the Controversy in Memphis, 1955-1964

The Interstate 40 controversy began on July 8, 1955, when city, state, and federal officials discussed the plans issued by Harland Bartholomew and Associates for “a proposed limited access highway route through Memphis.”<sup>12</sup> The design firm had recently presented their plan for a new expressway system in the city to City Engineer Will Fowler to be funded as a part of the new Eisenhower interstate highway system. The plan called for three expressway routes within the city proper. The first route would run south of the city from east to west “along an outer parkway, bordering Wolf River and Nonconnah Creek.” A second route would go “north-south” running essentially parallel with the Mississippi River. The last suggested route would also run east to west through the middle of the city “from the vicinity of Austin Peay Highway (Jackson Avenue) and Highway 70 (Summer Avenue) to the juncture of Auction and Front” where the firm proposed a bridge over the Mississippi River. The expected cost of the project was approximately ninety to one hundred million dollars and was to be sixty-eight miles in length.<sup>13</sup> The first seeds of discussion regarding the construction of the new expressways through the city had been sown. By September 21, 1955, the City Commission gave its blessing to the expressway proposal.<sup>14</sup> In 1956, the federal Bureau of Public Roads affirmed the Overton Park route as well.<sup>15</sup> Thus, in the controversy’s earliest years, the federal, state, and local governments were in agreement that a

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<sup>12</sup> “Discussion is Held on Access Highway,” *The Commercial Appeal*, 8 July 1955, 29. Many of the local newspaper articles from *The Commercial Appeal* and *Memphis Press-Scimitar* were found through the footnotes of Irma O. Sternberg, *Overton Park is Your Park, Memphis!* (Memphis: Tri-State Press, 1971).

<sup>13</sup> “Discussion is Held,” 29.

<sup>14</sup> “Expressway is Ok-ed by City Commission,” *The Commercial Appeal*, 21 September 1955, 16.

<sup>15</sup> 401 U.S. 402, 407.

highway system in Memphis, and particularly in the area of Overton Park, was an asset to the city. Why the city, state, and federal governments saw the system as beneficial was ambiguous at this particular point, but their cohesive position on construction would emerge in the upcoming years.

By 1957, the Tennessee State Highway Department commenced with surveys of the proposed interstate highways.<sup>16</sup> On January 31, 1957, *The Commercial Appeal* reported that the state highway officials wanted to survey two of the proposed routes, including the “east-west route in the vicinity of North Parkway...which runs from there to the eastern circumferential route.” Will Fowler, the city engineer, expressed optimism that construction would begin as early as September 1957, as soon as the “survey work” was complete and the city and county legislative bodies had approved the final routes, which were not “given a fixed location until surveys [were] completed.” Fowler also wrote to the city and county commissioners: “The State Highway Department is anxious to progress the plans for our expressway system as rapidly as possible.” Fowler believed that the project would commence by September of that year, which was a little less than nine months after the article was published in *The Commercial Appeal*.<sup>17</sup> Like the federal government under Eisenhower, the state government was also willing to move forward with construction of the interstate highway system in a very quick manner, and for whatever reason, the city of Memphis was certainly not trying to obstruct their way. Fowler’s position as visibly pro-interstate further demonstrated that as one of the city’s key advisors on the highway project, he certainly did not want to see a delay in construction.

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<sup>16</sup> James Gunter, “State Ready for Surveying of More Expressway Links,” *The Commercial Appeal*, 31 January 1957, 1.

<sup>17</sup> Gunter, “State Ready for Surveying,” 1.

In April 1957, local officials were certain that the proposed interstate routes were not going to change despite the first signs of opposition from local residents. City Engineer Fowler said, "I don't think people should get the idea that these routes are going to be moved around from one place to another...I think they are pretty well fixed, although there may be minor changes." Fowler went on to say that his office was "swamped" with "property owners affected by the proposed routes and 'none of them was happy.'" Based on Fowler's statements, he seemed very certain that the highway routes were basically staying put despite calls from many property owners. On the other hand, another property owner said, "...if they have to move us for progress, then that's the way it's going to be. We will not make a strong fight to try to get the route changed or anything like that." Although there was a very vocal opposition to certain elements of the expressway construction, other individuals saw highway construction as a means to further progress in America, which is much the same way that the Eisenhower administration felt. Eugene Daily of Clark and Daily, which was a partner of the Bartholomew engineering firm, stressed the importance of the "public interest" when dealing with complaining residents. In much the same way that the federal government advocated nationwide expressway construction as a way to further national goals, Daily advocated local construction on the grounds of advancing local goals in order to better the lives of individuals. Thus, in April 1957, the first articulation of positions both for and against the highway project became clear. Moreover, the initial formation of individuals on both sides of the debate emerged simultaneously. Clearly, local residents comprised the bulk of highway resistance, citing the interference that such a project posed to where they lived, and even more importantly, how they lived. In support, the city of Memphis, as personified by

Fowler and Eugene Daily of the design firm, argued that the decision had been made and Memphians were just going to need accept the ramifications made in the name of “progress.” The “public interest” to improve the city through highways seemed to trump individual resident needs and living situations as they currently existed. Thus, the construction of the proposed expressway system seemed inevitable as a means to further one vision of a better urban way of life pushed by city and other higher government officials with a bitter opposition from residents on the other side.<sup>18</sup>

The sentiments of residents around Overton Park that had already inundated Fowler’s office resurfaced in a hearing only days later. Although originally scheduled to discuss only the portion of the highway system that ran in the southeastern part of the city, the April 18 meeting quickly turned into a heated discussion about the “east-west” route through Overton Park. One midtown resident called the construction a “danger to children.” In response, the highway official conducting the hearing said, “It is doubtful if a change can be made at one point without adversely affecting another.” The highway official’s statement reflected the fact that local, state, and federal government authorities were unwilling to change the location of the highways on the basis that it would be a time-consuming effort. The most alarming aspect of the hearing was that detailed maps of the expressway routes were not present for residents and business owners to view, indicating that highway officials may have been only interested in fulfilling the federal requirement for a public hearing and not really listening to concerns from those affected by the possible routes. Residents were upset over the absence of clear maps showing whether or not the proposed interstates would affect their areas of the city. One individual

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<sup>18</sup> James Gunter, “Fowler Sees Few Changes in Plans of Expressways,” *The Commercial Appeal*, 17 April, 1957, 23.

at the hearing complained, “Well, how can we be in a position to object to an expressway if we don’t know its exact location?”<sup>19</sup>

The next day, the state highway commissioner, W.M. Leech, promised “another public hearing” to replace the “fiasco” that occurred on April 18.<sup>20</sup> Leech agreed to present a detailed map explaining where the route was to go and to listen to concerns from residents and business owners. However, Memphis city Commissioner Claude Armour, who seemed sympathetic to the residents, was unconvinced and said, “We need expressways and all of us want expressways. But it seems that if we object to the decisions of the engineers that we won’t get any.”<sup>21</sup> If anything, the hearing and subsequent discussion demonstrated that highway officials were aiming to complete the interstate, whether local residents had a problem with it or not. However, the fact that Fowler and the city commission as a whole neglected to change their position in the wake of the April 18 hearing may have meant that little weight was given to the complaints of Armour or other residents.

A few days later, on April 26, several local politicians emphasized the inevitable construction of the interstate highway system. A liaison between the City Commission and the Park Commission exclaimed, “I hope the expressway engineers will find a way to work out the proposed location in this particular area whereby Overton Park will remain as it is now.”<sup>22</sup> County Commissioner David Harsh echoed the sentiments of Dillard by arguing that at the time

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<sup>19</sup> James Gunter, “Residents Confused at State’s Hearing on City Expressway,” *The Commercial Appeal*, 19 April 1957, 1, 4.

<sup>20</sup> Robert Gray, “New Talks Pledged with Specific Data on Expressway Path,” *The Commercial Appeal*, 20 April 1957, 1.

<sup>21</sup> Gray, “New Talks Pledged,” 1.

<sup>22</sup> Robert Gray, “Commissioners Hope Park Will be Unhurt,” *The Commercial Appeal*, 27 April 1957, 1, 3.

“no one” knew “exactly what the effect will be on the zoo and the park by the proposed right-of-way.” Despite the opinions of several commissioners, the city and county governments could really do nothing other than “hope” that the expressway would not be built through Overton Park because, as Commissioner Henry Loeb pointed out, “State and Federal governments have the final engineering decision.” Higher government authorities clearly had the ultimate say on the fate of the parkland. Preventing construction seemed to be a lost cause.<sup>23</sup> However, once again, the county and city refused to pass a resolution or proclamation condemning the route proposal, further demonstrating that despite the sympathies of a handful of local politicians, the city and county as a whole wanted the plan to proceed.

In light of the protests regarding construction of the interstate through Overton Park in 1957, Fowler attempted to improve the image of the project by displaying artwork detailing the “beauty” of the proposed route.<sup>24</sup> Fowler explained that those in favor of interstate construction had done “a poor selling job” and the drawings of the expressway emphasized “the grassy landscaping between expressway lanes” and “the graceful interchange curves.” In much the same way that residents had advocated saving Overton Park on the basis of its aesthetic beauty, the local highway officials were trying to demonstrate that expressways embodied the same qualities. Supporters argued that no real change in neighborhood attractiveness would occur because of the sheer modern beauty of highway’s presence as an emblem of progress complementing the natural landscape of Overton Park. Both government officials and residents saw environmental beauty as essential to their individual ideals of urban living,

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<sup>23</sup> Gray, “Commissioners Hope,” 1, 3.

<sup>24</sup> Van Pritchartt, Jr., “Expressway Beauty will be Shown,” *Memphis Press-Scimitar*, 2 May 1957, 1.

but one vision included the interstate as a helpful and beneficial force, blending in with the surroundings, while the other saw the construction proposal as invasive and harmful to the natural landscape with nothing to offer except destruction.<sup>25</sup> Once again though, Fowler, instead of directly addressing the concerns of local residents around the park, tried to pass off complaints as unwarranted in light of certain enhancements that highways offered.

Later that year, the two opposing views of the urban lifestyle for the city of Memphis clashed again over the expressway proposal. Approximately three hundred people “representing the Committee for the Preservation of Overton Park” appeared at a City Commission meeting on the construction of the “east-west route” on September 17, 1957. Members of the group would scream “No, No” at the slightest suggestion by a speaker that appeared to be in favor of the route. In what the paper called a “hostile atmosphere,” William Pollard, a member of Harland Bartholomew and Associates, described the firm’s plans for the proposed stretch of new highway that was to go through Overton Park. Pollard explained that the new highway would be “depressed so as to be partially hidden from view” and that “greenery” would be used to hide the fences. In response to angry shouts from the observers, Pollard said, “[Bartholomew and Associates helps] plan parks. We never have recommended the destruction of a park. Our recommendation was for least damage to Overton Park and the most efficient east-west route.” However, in response to a question from an observer of the meeting regarding the total amount of park acreage affected by the highway, Pollard initially said it would require thirty acres, but then he recanted that previous estimate because “he could not keep in mind the many figures connected with the expressway project.” At the

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<sup>25</sup> Pritchardt, “Expressway Beauty,” 1.

City Commission meeting, there was most definitely the feeling that highway officials at all levels of government wanted to see a highway built as quickly as possible, and in their minds, the best way to accomplish that goal was to go through Overton Park.<sup>26</sup>

The intrinsic benefits of Overton Park summed up the argument that the residents made after Pollard had finished with his presentation. Several speakers argued that Overton Park's beauty should be preserved and that the only expressway construction should be in a circular loop around the city, because property values were already sinking based on the idea of a highway going through many urban neighborhoods. Another resident emphasized preserving Overton Park on the basis that "[e]veryone loves the natural beauty of Memphis," while another resident regarded "Overton Park [as] one of the outstanding parks in the nation." Thus, in an effort to add a personal touch to their struggle, residents came to the hearing in an effort to sell their way of life, which centered on a natural landmark, as equally important to the construction of an interstate through the asset of their community.<sup>27</sup>

By 1960, those directly involved with downtown Memphis wanted to see the route through Overton Park built as soon as possible in order to exert their own influence on the future of the city. On February 13, city Commissioner William Farris and City Engineer Fowler agreed to meet with the Downtown Association of Memphis to discuss the status of the Overton Park section of the expressway network.<sup>28</sup> At the time that the group was meeting with Farris, the section in question was last on the list of priorities for the expressway

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<sup>26</sup> Robert Gray, "Foes of Expressway Clamor: Keep Overton Park Intact," *The Commercial Appeal*, 18 September 1957, 1, 3.

<sup>27</sup> Gray, "Foes of Expressway, 1, 3.

<sup>28</sup> "Farris Sets Talks on East-West Leg," *The Commercial Appeal*, 13 February 1960, 1.

system.<sup>29</sup> However, the association passed a resolution earlier supporting a move to make construction of the route through Overton Park an “immediate priority.”<sup>30</sup> In addition, the same day, a letter to the editor of *The Commercial Appeal* addressed “the primary need” of “[e]ast-west traffic” and called the actions of the Downtown Association to try to change the order of construction “correct” because it acknowledged the orientation of the city as one which radiated “eastward” from the downtown area.<sup>31</sup> The efforts of the Downtown Association, and its member business owners, suggest that economic interest in addition to enhanced lifestyle choices played a part in the formation of the highway supporters’ position. Fowler, the city’s ardent supporter of the interstate, suggested that city officials were wedded to the ideas of local business owners. They may have supported the highway’s construction because it provided a direct path of travel from the suburbs to the downtown area, and thus, could also provide a direct path of wealth from individuals in those areas to the core of Memphis. In any case, the Downtown Association’s position by its very nature recognized a changing urban dynamic for Memphis. Local business owners may have recognized the need to move quickly from one part of the city to another as imperative for business success, and consequently, viewed the interstate as a means to provide a healthy business environment for the city. Nonetheless, business owners, in their efforts to improve the local economy were at the same time proposing drastic changes to the way of life for Memphians, especially in the midtown area, who valued the neighborhoods centered on parkland.

The official public hearing in March 1961 on the east-west route would

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<sup>29</sup> “Farris Sets Talks,” 1.

<sup>30</sup> “Farris Sets Talks,” 1.

<sup>31</sup> “East-West Next,” *The Commercial Appeal*, 13 February 1960, 6.

call into question once again the logic of benefits to urban living behind the construction of the expressway through Overton Park. Residents who lived in the area immediately surrounding Overton Park showed up in droves at the public hearing on the fate of the parkland an hour before the meeting was to begin.<sup>32</sup> Pollard, the Harland Bartholomew and Associates representative, began the meeting by first explaining the route and why it was going through the park, but almost immediately midtown Memphis residents interjected with their objections to the construction proposal.<sup>33</sup> Next to speak following Pollard were those who supported the proposal, which included the Downtown Association and the chairman of the Memphis and Shelby County Planning Commission. Lastly, the opposition had its chance to address those at the hearing.<sup>34</sup> Pat Joyner and Frank Ragsdale, both affiliated with the Traffic Advisory Commission, advocated “a full circumferential route around the city” instead of an east-west route, which would slice “through a park” and “an area of substantial homes.”<sup>35</sup> Another resident came forward and said, “We are pleading with you...Do not take our park. It is not a land bank put there for your use.”<sup>36</sup> The last resident’s statement truly summed up the position of those in opposition of construction of the expressway. They believed that parks and parkland were truly priceless commodities that need not be carelessly destroyed in order to create a modern lifestyle, which the expressway would supposedly afford. They viewed the park as an overlooked asset to the people of Memphis that highway officials were entirely ignoring. However, despite the efforts of

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<sup>32</sup> “Throughway Session Theme is ‘How Can We Stop You?,”’ *The Commercial Appeal*, 15 March 1961, 17.

<sup>33</sup> “Throughway Session Theme,” 17.

<sup>34</sup> “Throughway Session Theme,” 17.

<sup>35</sup> “Throughway Session Theme,” 17.

<sup>36</sup> “Throughway Session Theme,” 17.

those in the opposition, three years later, Tennessee Highway Commissioner David Pack explained that “after studying two alternate routes for the east-west expressway it seems certain it will go through Overton Park as originally planned.”<sup>37</sup> Midtown Memphis residents once again suffered a blow. It would take several more years for the effort to be renewed, and even then, against almost insurmountable odds.

### **The Conflict Reemerges, 1966-1969**

Between 1961 and 1966, the efforts to prevent the construction of an expressway through Overton Park seemed “futile.”<sup>38</sup> Jameson Jones, a resident near Overton Park and a former member of the Memphis Planning Commission recalled that houses immediately in the path of the proposed expressway were being demolished to make the area ready for construction of the interstate.<sup>39</sup> The prevailing attitude of those in local government was that the discussion on the highway’s path was complete, there had already been a hearing, and there was truly nothing that could really be done to stop the construction.<sup>40</sup> Jones recalled that according to a staff member with the Memphis Planning Commission: “there [was] no chance” that the highway would be stopped.<sup>41</sup> The expressway’s construction seemed like it was finally going to occur after years of controversy. Those who had advocated for the future lifestyle benefits, including business and political leaders, afforded by an expressway through the city seemed to have won their fight. To many

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<sup>37</sup> “Edward L. Topp, “Overton Park Route Seems All Settled,” *Memphis Press-Scimitar*, 24 September 1964, 1.

<sup>38</sup> Jameson Jones, interview by author, tape recording, Memphis, TN. 20 June 2005.

<sup>39</sup> Jones, interview.

<sup>40</sup> Jones, interview.

<sup>41</sup> Jones, interview.

Memphians, those in the opposition took on the status of mere “do-gooders” defending a lost cause.<sup>42</sup>

Despite the immense support for the construction of the interstate through the park, the Citizens to Preserve Overton Park continued its efforts to save the parkland. Operating since 1957, first as the Committee for the Preservation of Overton Park, and later as the Citizens to Preserve Overton Park (CPOP), the organization became even more heavily embroiled in the controversy after 1964 when the construction seemed to be approaching rapidly. Over the course of almost a decade, the group, which only had around one hundred members at any one time, had been organizing the opposition at public hearings and sending out mailings to educate Memphians of the impact that the expressway would have on midtown and Overton Park. Arlo Smith, the new president of the group and a professor of biology at Southwestern at Memphis, a local college, and Anona Stoner, the new secretary and a resident of midtown Memphis, became the two leading forces behind the organization’s concerted effort to halt the construction of the expressway. They were determined to win the struggle to prevent construction and preserve the way of life that Overton Park enhanced for them.<sup>43</sup>

By December 1967, the debate over construction emerged again in full force. At the urging of Memphis Congressman Dan Kuykendall, federal highway administrator Lowell Bridwell returned to Memphis to reassess the proposed route of the expressway through Overton Park. In light of “a number of Memphians” calling Kuykendall’s office demanding a halt in construction, the congressman decided to “take a stand for a re-examination of the route.”

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<sup>42</sup> Jones, interview.

<sup>43</sup> Gray, “Foes of Expressway,” 1; Strauss, “Symposium: Contemporary Issues,” 1262.

Kuykendall went on to say: "If the highway officials can come up with a case that any other feasible route would be just economic suicide, then I can't be for changing the route." The congressman in his statements alluded to the delicate balance between the two competing visions of the future urban lifestyle in Memphis. He demonstrated that the conflict's competing interests had not changed in the interim years after the public hearing on the route in 1961. The conflict may have seemed settled since 1961, but the issue over the future of Memphis's urban culture had not gone away in the interim and was only just beginning to re-emerge.<sup>44</sup>

On March 5, 1968, the controversy began to heat up once again, embroiling the city in another fight over the expressway between the competing visions of urban lifestyle.<sup>45</sup> The City Council voted unanimously on the resolution of Councilman Gwen Awsumb "that the Expressway through Overton Park not be routed in its present proposed location but that the said proper authorities select another feasible route, with the provision that if no better route can be obtained, the route using the north perimeter of Overton Park and the south part of North Parkway Boulevard be [chosen]."<sup>46</sup> Tennessee Highway Commissioner Charles Speight was shocked to learn of the news that the City Council had decided to abandon its support of the route through the park, which it had held through much of the past decade since the project's inception.<sup>47</sup> The decision confused Speight given how Mayor Henry Loeb supported the route and had given the state and federal authorities the

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<sup>44</sup> "The Overton Park Issue Again," *Memphis Press-Scimitar*, 7 December 1967, 8.

<sup>45</sup> *Minutes of the Council of the City of Memphis* (March 5, 1968). Available at the Shelby County Archives. Memphis, Tennessee.

<sup>46</sup> *Minutes of the Council* (March 5, 1968).

<sup>47</sup> "Council's Move on Expressway Proves Puzzler," *The Commercial Appeal*, 7 March 1968, 61.

assurance that the expressway had local support as well.<sup>48</sup> In fact, Loeb reflected on the action of the City Council by saying: “The decision [in favor of the expressway through Overton Park] has been made many times over for many reasons publicly identified. We need to go ahead.”<sup>49</sup> The actions by the City Council appeared to be a complete turnaround from what the city government had officially endorsed in the past, which would inevitably lead to a showdown between local officials and those in state and federal government who wanted to see an expressway go through Memphis. The solidarity that had existed in the past between federal, state, and local political officials had been broken through the efforts of the Citizens to Preserve Overton Park.

Within a week those in favor of the route became incensed over the City Council’s decision. The federal government began to put pressure on the City Council to change their unexpected position.<sup>50</sup> One councilman, Jerred Blanchard, actually tried to get the council to reverse its previous resolution by moving to reconsider the action taken by the council on March 5, 1968.<sup>51</sup> Blanchard called for a preference to be given to an expressway route “along the north perimeter of Overton Park and the southern part of North Parkway Blvd...provided that such a change would not unreasonably increase the cost of the Expressway to any of the governmental agencies involved, nor unreasonably delay its completion.”<sup>52</sup> However, with the resolution containing the word “rescind,” Blanchard had a hard time securing a second from another

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<sup>48</sup> “Council’s Move,” 61.

<sup>49</sup> “Council’s Move,” 61.

<sup>50</sup> “City Sticks to X-Way Alternate,” *Memphis Press-Scimitar*, 12 March 1968, 1.

<sup>51</sup> *Minutes of the Council of the City of Memphis* (March 12, 1968). Available at the Shelby County Archives. Memphis, Tennessee.

<sup>52</sup> *Minutes of the Council* (March 12, 1968).

member of the City Council.<sup>53</sup> Councilman Phil Perrel finally agreed to second Blanchard's resolution if he substituted "rescind" for "amend."<sup>54</sup> In that case, the motion would not have reversed the previous action taken by the Council, but only modified it. Even with the changes in wording, the Council tabled the resolution,<sup>55</sup> which immediately sparked an angry response from highway officials. The city engineer, Tom Maxson, informed the public that all but fourteen tracts of land had been acquired along the proposed route.<sup>56</sup> His statements made the situation seem as though construction was in progress already and that by voting against the route that had already been approved, the city was doing nothing more than delaying. The City Council wanted an east-west route, but it seemed as though they could not make up their minds as to whether or not they wanted it to go through Overton Park. Consequently, they spoke in generalities, making it very difficult for residents and highway officials alike to know exactly what the city wanted.<sup>57</sup> To the federal government, a statement desiring an "alternate route" was simply not enough, they wanted a detailed alternative.<sup>58</sup> Bridwell, the federal highway administrator, responded that "an alternative route would not 'necessarily'" result in the failure of the highway's construction.<sup>59</sup> The federal government seemed open to suggested changes, but they also appeared to be growing tired of the continuing struggle to get the expressway built in Memphis that had gone on for over a decade.

A few weeks later, Bridwell made his personal position known on the issue.

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<sup>53</sup> "City Sticks to X-Way," 1.

<sup>54</sup> "City Sticks to X-Way," 1.

<sup>55</sup> *Minutes of the Council* (March 12, 1968).

<sup>56</sup> "City Sticks to X-Way," 1.

<sup>57</sup> "City Sticks to X-Way," 4.

<sup>58</sup> "City Sticks to X-Way," 4.

<sup>59</sup> "City Sticks to X-Way," 4.

In an interview with the *Memphis Press-Scimitar*, Bridwell revealed a 1965 study by federal highway officials detailing several alternate routes investigated by the federal government.<sup>60</sup> The study proposed two alternate routes, which were labeled “A” and “B.”<sup>61</sup> Both routes cleared Overton Park: “Line A” cut to the south of the park through the heart of midtown while “Line B” cut to the north of the park through the center of Southwestern at Memphis’s campus.<sup>62</sup> Bridwell dismissed these alternatives on several grounds: cost, “disruption of the existing street layout and traffic patterns,” length (both alternates were longer than the original), and “curvature” in order to direct traffic away from the park.<sup>63</sup> In light of those findings, the study recommended that the expressway go through Overton Park in order to best serve the “public interest.”<sup>64</sup> Now, according to Bridwell, the decision to proceed rested with the City Council.<sup>65</sup> Under the 1966 Federal Aid Highway Act, the City Council had to tell the federal government that either the route through Overton Park was the only “feasible” and “prudent” path or that a “specific” alternative existed.<sup>66</sup> Bridwell then threatened to take the money allocated to the route and put it towards other projects if he did not get a response from the City Council that fit his criteria.<sup>67</sup> The federal highway administrator became very determined to see an

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<sup>60</sup> “It’s City Council’s Move on Expressway Route,” *Memphis Press-Scimitar*, 26 March 1968, 6.

<sup>61</sup> “Official Study of Alternatives to Overton Park Expressway,” *Memphis Press-Scimitar*, 26 March 1968, 13.

<sup>62</sup> Map from “City Council Must Act on Overton X-Way,” *Memphis Press-Scimitar*, 26 March 1968, 13.

<sup>63</sup> “Official Study,” 13.

<sup>64</sup> “Official Study,” 13.

<sup>65</sup> Ed Ray, “Positive Route Held Necessary to Final OK,” *Memphis Press-Scimitar*, 26 March 1968, 13.

<sup>66</sup> Ray, “Positive Route Held,” 13.

<sup>67</sup> Ray, “Positive Route Held,” 13.

end to the controversy and a decision on the type of lifestyle that Memphis was going to pursue.

The same day that Bridwell's position appeared in the *Memphis Press-Scimitar*, the City Council set up a meeting with the federal highway administrator to talk about the expressway plans. Naturally, the City Council was not very pleased that Bridwell had gone directly to the press with information concerning alternatives to the route through Overton Park without informing the councilmen first. Councilman Lewis Donelson chastised Bridwell for not showing the Council "a minimum of respect" by handing over the information he had provided to the *Memphis Press-Scimitar*. Another member of the City Council, Fred Davis shouted, "Bridwell 'didn't give a damn about the council.'" However, despite the intense anger of several of the members at the highway officials, Councilman Bob James encouraged the City Council to fulfill Bridwell's requirements and give the federal government a definitive answer, which he felt, should be an approval of the original route as the old City Commission had done years ago. In James's eyes, the route's development had gone too far to then be changed at the whim of a City Council that had already flip-flopped on the issue. Bridwell and the federal government wanted an answer as to whether or not Memphis wanted an expressway. However, even with the overwhelming divisiveness of the controversy though, five of the thirteen councilmen were absent from the meeting. The attendance problem made the City Council look as if it really did not care to finally resolve the issue or even really get involved.<sup>68</sup>

Finally, on April 5, 1968, the City Council reached a definitive decision

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<sup>68</sup> "X-Way Route Again Before City Council," *Memphis Press-Scimitar*, 26 March 1968, 1.

on the fate of the expressway through Overton Park.<sup>69</sup> The resolution, drafted in an executive session of the City Council and approved by eight councilmen, labeled Overton Park as “the feasible and prudent location for said route and the design as presently made is acceptable to the council.” Councilman Wyeth Chandler said in response: “[The City Council is] hemmed in to the present route.” In addition, Councilman Fred Davis, Jr. recalled: “We are taking something in the name of progress and we can’t replace it.” The City Council realized that it wanted to have an expressway through the middle of the city and consequently were willing to reluctantly sacrifice part of Overton Park to achieve that goal. Although Arlo Smith and the Citizens to Preserve Overton Park were confident that future litigation at the federal level would put an end to the construction effort, the City Council had finally taken a definitive stand on the side of firmly establishing an interstate through the middle of Memphis, much to the satisfaction of local business owners. It seemed after the vote had taken place that “more people [were] going to see Overton Park than ever before” on their commute to work on the newly built Interstate 40, rather than out of a need for relaxation away from urban life.<sup>70</sup> With one vote, the City Council had changed the culture of the city away from a devotion to parkland and open space to a need for efficiency, freedom of mobility, and economic enhancement. Despite the affirmative vote of the City Council, the controversy still continued with midtown Memphis residents now objecting to the design of the expressway itself.<sup>71</sup> The Citizens to Preserve Overton Park took their fight to the state level in April 1969 demanding that highway

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<sup>69</sup> Robert Kellet, “Overton Parkway Route Cleared by City Council,” *Memphis Press-Scimitar*, 5 April 1968, 25.

<sup>70</sup> Kellet, “Overton Parkway Route Cleared by City Council,” 25.

<sup>71</sup> Charles A. Brown, “Still another Hearing on Park X-Way,” *Memphis Press-Scimitar*, 7 April 1969, 19.

engineers depress the expressway through Overton Park “below ground level as low as possible” and the state relented to the proposal.<sup>72</sup> Members of state and city governments seemed receptive to the changes because they did not deal with whether or not the road itself was going to be built, which was considered decided.<sup>73</sup> However, the hearing on the design changes re-awakened the intense vocal opposition present at previous meetings on the issue.<sup>74</sup> Members of CPOP were most upset over the way the hearings were conducted, claiming they were inadequate and insufficiently addressed the preservation of the park.<sup>75</sup> State highway officials were convinced that every possible precaution had been taken to preserve the integrity of the park, but that statement did not satisfy Arlo Smith.<sup>76</sup> Now, CPOP wanted more than just a depressed expressway; they wanted the interstate to go through a tunnel beneath Overton Park.<sup>77</sup> It became increasingly clear that CPOP were not willing to submit to what appeared to be almost impossible odds to halt the construction of the expressway. Time was most definitely ticking with construction slated for the fall of 1969.<sup>78</sup> In the eyes of CPOP members, the symbol of their midtown Memphis community was in dire jeopardy.

On November 4, 1969, Mayor Henry Loeb enthusiastically informed the City Council that federal Secretary of Transportation John A. Volpe had approved the Interstate 40 route through Overton Park with “minor” alterations

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<sup>72</sup> Brown, “Still another Hearing,” 19.

<sup>73</sup> Brown, “Still another Hearing,” 19.

<sup>74</sup> James Chisum, “Expressway through Park is Likely to Start in fall,” *The Commercial Appeal*, 20 May 1969, 1.

<sup>75</sup> Chisum, “Expressway through Park,” 1.

<sup>76</sup> Chisum, “Expressway through Park,” 1.

<sup>77</sup> Chisum, “Expressway through Park,” 1.

<sup>78</sup> Chisum, “Expressway through Park,” 1.

from the proposal submitted by state highway officials.<sup>79</sup> Volpe had previously put a “hold order” on the project in response to the possibility of “depressing and covering the expressway” under Overton Park. However, the federal Department of Transportation concluded that with the route’s location already fixed the covering option was not possible. On the other hand, the Tennessee Department of Transportation did agree to lower the level of the road another two feet more than what had been proposed by state highway officials. At the moment of Loeb’s announcement most of Memphis assumed that the expressway would finally be built after over a decade and a half of debate, discussion, and protest. It seemed as though a chapter in the life of the city had come to an end and a new future was born that had vastly different priorities than the past.<sup>80</sup>

Litigation remained as a last resort. On December 2, 1969, the Citizens to Preserve Overton Park along with two individual plaintiffs, William Deupree and Sunshine Snyder, and several national conservation groups filed suit in Washington, DC against Volpe seeking “a declaratory judgment and a preliminary injunction to block construction” on Interstate 40 through Overton Park by forbidding the release of federal funding.<sup>81</sup> Mayor Loeb was naturally displeased with the news of a lawsuit and defiantly said: “If this is an impediment to the construction of this expressway, then we’ll fight it, as we have fought every other one. We are going to build this expressway system. Our determination to build this road is a part of our determination to build a

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<sup>79</sup> Jefferson Riker, “Park Freeway Gets ‘Final’ OK,” *The Commercial Appeal*, 5 November 1969, 13.

<sup>80</sup> Riker, “Park Freeway,” 13.

<sup>81</sup> “Memphians Sue to Stop Overton X-Way Funds,” *Memphis Press-Scimitar*, 2 December 1969, 1.

better Memphis. Therefore, there will be no deviation from it.”<sup>82</sup> Although local officials had given their assent to the interstate project, CPOP members were not willing to give up what they considered a prized part of their city’s identity. The Interstate 40 controversy was about to evolve from a local Memphis issue to a national issue with national ramifications.

### **The Legal Challenge: The Controversy Goes to Federal Court, 1969-1970**

The Federal Aid Highway Act of 1966 and the Department of Transportation Act had dramatic effects on the impending Interstate 40 litigation. The Federal Aid Highway Act of 1966 mandated interstate officials at the federal level to complete “all possible planning, including consideration of alternatives...to minimize any harm to... [any] park” that was in the path of a proposed expressway.<sup>83</sup> The Department of Transportation Act also forbid the use of public parkland unless “there was no feasible and prudent alternative to the use of such land, and...there was included in any such program all possible planning to minimize harm to any park or recreational area used for such purposes.”<sup>84</sup> In 1968, Congress modified the two laws by including the wording of the Department of Transportation Act provision in a new Federal Aid Highway Act of 1968 and established a “discretionary authority” for those involved in highway route decisions to use “wisdom and reason” to not overrule “clearly enunciated local preferences.”<sup>85</sup> The new provisions became

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<sup>82</sup> “Memphians Sue,” 1.

<sup>83</sup> Federal Aid Highway Act of 1966, 80 *Statutes at Large* 766, 771 as quoted in Strauss, “Symposium: Contemporary Issues,” 1263.

<sup>84</sup> 401 U.S. 402, 402.

<sup>85</sup> H.R. Conference Report 1799, 90<sup>th</sup> Congress, 2d Session 32 (1968) as quoted in Strauss, “Symposium: Contemporary Issues,” 1287.

known as the “Parkland Statutes.”<sup>86</sup> Congress essentially gave the Department of Transportation an ability to make judgment calls when it came to highway projects. Ideally, the individual in charge would make a decision that pleased both sides of a particular issue. However, as the litigation in the *Overton Park* case demonstrated, the secretary of transportation had a hard time striking a balance in accordance with the wishes of certain local residents as well as state and federal officials.

In the wake of repeated attempts by Congress to make a national statement in support of a balance between open space and expressway construction, the issue over Overton Park was ripe for litigation as CPOP felt that the law was on their side when they filed suit in district court in Washington, DC in December 1969. The group retained the services of a young attorney named Jack Vardaman. Originally from Alabama, Vardaman had served a Supreme Court clerkship under Justice Hugo Black before entering private practice. Initially, the suit filed by CPOP named only Secretary of Transportation John Volpe as a defendant, but the D.C. District Court subsequently required the plaintiffs, which by that time included several national environmental groups as well, to name the Tennessee Secretary of Transportation Charles Speight as a co-defendant. As a result of the ruling, the case was transferred to the U.S. District Court for the Western District of Tennessee and the courtroom of Judge Bailey Brown. Local Memphis attorney Charles Newman was also brought on by CPOP at that time.<sup>87</sup>

The case of *Citizens to Preserve Overton Park v. Volpe* had its hearing on February 20, 1970 over the issue of a motion for summary judgment. To

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<sup>86</sup> Charles Newman, interview by author, tape recording, Memphis, TN. 6 July 2005.

<sup>87</sup> Newman, interview.

CPOP, the Parkland Statutes required the Secretary of Transportation to openly declare a route through a park as the only “feasible” and “prudent” option, which the defense denied as a requirement. In addition, the plaintiffs contended that both defendants had not provided for a sufficient public hearing that was in accordance with the Federal Aid Highway Act of 1968. The Bureau of Public Roads had previously prepared a written memorandum about public hearings that required a “verbatim written transcript” and notice to the public of their ability to submit “written statements.” However, the press failed to tell the public that written statements could be provided and a faulty tape recorder missed several bits of testimony, which to the plaintiffs violated federal highway policy. The defense countered with the argument that they were in compliance with all federal laws and if they did in fact “deviate” from “procedures” those actions were “harmless.” In addition, the defense argued that the Bureau of Public Roads memorandum was not a “regulation” making its compliance voluntary and not compulsory as the plaintiffs argued that the hearing in question dealt only with the design and not the route itself, making injunctive relief an improper remedy. Lastly, the defense argued that Volpe’s decisions on the safeguarding of the park during the course of the construction were not “arbitrary” or “capricious.” The arguments made by CPOP in the district court decision seemed desperate as the construction of Interstate 40 was looming right over the heads of those in midtown Memphis.<sup>88</sup>

Judge Brown ultimately sided with the defense and denied an injunction. The court concluded that the Bureau of Public Roads memorandum was indeed a “regulation” but was not intended to have the “effect” of policy because it was not found in any compilation of federal policies. With regards to the “lack of

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<sup>88</sup> *Citizens to Preserve Overton Park v. Volpe*, 309 F. Supp. 1189 (1970), 1191-4.

notice” of “written statements,” Brown emphasized that the notice was given through the mail and over forty such statements were sent from Memphians back to highway officials, including statements from several members of CPOP. Several of the individuals whose testimony was lost due to a faulty tape recorder sent in “written statements” as well and the court pointed out that there was not a single individual or affidavit produced by the plaintiffs that showed a particular person had not been heard. Thus, the court concluded that since the hearing was only regarding the design and the highway officials made efforts to fix their mistakes, the “deviations” from policy were “harmless.” Brown then ruled against the plaintiff’s argument that the Secretary of Transportation was bound under the Parkland Statutes to render a decision as to whether or not the route was the only “feasible” and “prudent” option. He ruled on the grounds that the law did not explicitly require such a decision and the court was not going to “imply one.” Essentially, Brown decided in his opinion to exercise judicial restraint on the issue and allow the progress of an interstate that was already well on its way to beginning. The challenge against the emerging new urban lifestyle met its first major legal blow.<sup>89</sup>

The Citizens to Preserve Overton Park also had little luck at the Sixth Circuit Court of Appeals. In a two to one decision, the Circuit Court ruled in favor of Volpe and Speight on the same grounds as the district court with Judge Frank Celebrezze voting in favor of the Citizens to Preserve Overton Park. The court ruled that the plaintiffs had to show that the actions of Volpe exceeded a “presumption of regularity” in their administrative actions. Courts considered administrative officers to be following the law correctly unless the plaintiffs demonstrated otherwise. According to the circuit court, the plaintiffs failed to meet that burden because

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<sup>89</sup> 309 F. Supp. 1189, 1193-5.

they had not shown that Volpe ignored the Parkland Statutes, only that he had not publicly announced the lack of an alternative, which the circuit court ruled he was not legally obligated to do anyway. Once again, like Judge Brown, the circuit court was unwilling to compel Volpe to do something he was not explicitly obligated to do and chose to exercise judicial restraint. The Court of Appeals also rejected the argument made by plaintiffs that the public hearing was inadequate and called the irregularities “harmless error.”<sup>90</sup>

Celebrezze’s dissent, on the other hand, championed the cause of the Citizens to Preserve Overton Park. The judge argued that the majority opinion gave the secretary of transportation the sole power to decide if an alternative is “feasible” and “prudent,” leaving citizens out of “decisions that may well have greater direct on [their] lives...and the physical environment in which they live than any other government action.”<sup>91</sup> Consequently, Celebrezze took the stance that “the courts must scrupulously oversee” the actions of administrative officials to ensure that their “words” are “weighed and scrutinized in the manner of courtroom evidence.”<sup>92</sup> Celebrezze also referred to “public parklands” as “the only remaining weekend sanctuaries for vast numbers of city dwellers from the polluted urban sprawl,” and since “Congress recognized this fact” highway officials must do more than simply fulfill the letter of the law by setting up hearings, but needed to pay attention to and take into account the concerns of individuals directly affected by government action.<sup>93</sup> Consequently, Celebrezze recognized the goal of CPOP to preserve their way of life, which was rapidly disappearing to the winds of economic efficiency. In November 1970,

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<sup>90</sup> *Citizens to Preserve Overton Park v. Volpe*, 432 F. 2d 1307 (1970), 1307, 10, 14-5.

<sup>91</sup> 432 F. 2d. 1307, 1315.

<sup>92</sup> 432 F. 2d. 1307, 1315.

<sup>93</sup> 432 F. 2d. 1307, 1318.

CPOP petitioned Justice Potter Stewart to issue a stay on the ruling, and after full consideration by the Court, it was granted.<sup>94</sup>

## **The Supreme Court, 1971**

The case appeared before the Supreme Court on January 11, 1971. Vardaman argued first as the representative of the petitioner. Once again, the Citizens to Preserve Overton Park argued that Volpe needed to go on the record and say that the route through Overton Park was the only one that was both “feasible” and “prudent,” which both lower courts had denied as a legal responsibility. Additionally, Vardaman told the Court that Volpe had never made an “independent determination” of the Overton Park route’s compliance with the Parkland Statutes, but had instead listened to the wishes of the City Council, and thus he also had not fulfilled his legal responsibilities. Furthermore, Vardaman argued that two alternate routes north and south of Overton Park were “feasible and prudent,” making Volpe also seem as if he was in violation of federal law. Lastly, Vardaman contended that even if the route through the park was the only “prudent and feasible” option then Volpe was still in violation of the Parkland Statutes because he had not provided “all possible’ methods” to protect the park. Tunneling had been one option considered by highway officials and CPOP felt that it was better than simply depressing the road beneath ground level. Since Volpe had not advocated that particular option, Vardaman argued, he was in violation of the Parkland Statutes, for not taking “all possible” precautions to preserve the integrity of the park. As had been done in the lower court arguments, CPOP advocated preserving the symbol of their lifestyle, which to them was in danger of

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<sup>94</sup> *Citizens to Preserve Overton Park v. Volpe*, 400 U.S. 931 (1970); *Citizens to Preserve Overton Park v. Volpe*, 400 U.S. 939 (1970).

destruction if the Supreme Court did not rule their way. The respondents essentially argued the same as they had before, mainly that the secretary of transportation was not bound by law to make a formal finding of feasibility and prudence and that they had taken the necessary precautions to preserve the park's integrity.<sup>95</sup>

Environmental concerns had really just begun to fill the Court's docket around the time that *Overton Park* arrived in 1971. The 1960s showed the first challenges to previously established precedents in which property owners could essentially do what they wanted with their land as long as they owned it. Occasionally, state courts were successful in protecting the environment, but only if the property owner in question hurt another individual through their lack of conservation. The federal government historically had tended to stay out of environmental concerns. However, in the mid-1960s, the passage of the Parkland Statutes was consistent with a new effort on the part of the federal government to address environmental issues. As previously alluded to, the federal government gave federal administrators the ability to judge the environmental effects of their actions. The *Overton Park* case would be one of the first opportunities for the Court to examine administrative actions that had been decided in the context of a new movement to preserve the environment.<sup>96</sup>

In an eight to zero decision (Justice William O. Douglas did not participate) the Court ruled in favor of the Citizens to Preserve Overton Park, recognizing the local and national significance of parkland.<sup>97</sup> Justice Thurgood Marshall wrote the majority opinion for the Court and began:

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<sup>95</sup> 401 U.S. 402, 403-4, 8-9.

<sup>96</sup> Martin H. Belsky, "Environment," In *The Oxford Companion to the Supreme Court* (New York: Oxford University Press, 1971), 255-6.

<sup>97</sup> 401 U.S. 402.

“The growing public concern about the quality of our natural environment has prompted Congress in recent years to enact legislation designed to curb the accelerating destruction of our country’s natural beauty.”<sup>98</sup> With the very first words of his opinion Marshall acknowledged the need for open space as a part of national heritage. Overton Park was no different than any other park in America according to the high court. Marshall argued that the temptation to use parkland for highway construction existed because of the ease by which it could be obtained due to public ownership and the lack of a need for individuals to give up their residence or place of work.<sup>99</sup> However, Congress placed the “protection of parkland” at a higher level by the very fact that it passed the Parkland Statutes, emphasizing a need for protection over what is more expedient.<sup>100</sup> In addition, the Court gave a very broad interpretation of the Parkland Statutes.<sup>101</sup> The Court interpreted “feasible” as “anything that modern engineering could accomplish” and understood “prudent” alternatives to be those that did not drastically affect established communities.<sup>102</sup> Marshall clearly saw the threat of expressways to urban open space and the consequences that such decisions would have on American cities. Consequently, he sided with the Citizens to Preserve Overton Park and released a judicial endorsement of efforts to preserve open space within communities.

Aside from making an endorsement of open space preservation, Marshall also included an opinion of Volpe’s actions with regards to the Interstate 40 route. On the allegations from the petitioners that Volpe’s actions were

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<sup>98</sup> 401 U.S. 402, 404.

<sup>99</sup> 401 U.S. 402, 412.

<sup>100</sup> 401 U.S. 402, 412-3.

<sup>101</sup> Newman, interview.

<sup>102</sup> Newman, interview.

“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” the Court made it very clear that it was “not empowered to substitute its judgment for that of the agency.”<sup>103</sup> However, the Court did rule that the secretary of transportation had made a definitive decision on the route by the very nature of the agency commencing with right of way purchases and thus had implied that it was the only “feasible” and “prudent” route.<sup>104</sup> At the same time though, the Court remanded the case back to district court on the grounds that there was not a complete administrative record which was necessary for judicial review to take place.<sup>105</sup> A complete examination of what the secretary of transportation had used in the process of making a decision would reveal if he was in accordance with the Parkland Statutes.<sup>106</sup> If the lower court were to send the case back to the secretary of transportation, any future decision reached by that officer “must be viewed critically” by the courts in light of Congress’ wishes to preserve parkland, thus granting the judiciary enormous powers to review administrative decisions.<sup>107</sup> The secretary of transportation and highway officials knew that if they revealed their complete administrative record they would be unable to show that the route proposed was the most “prudent” and “feasible” in accordance with the Supreme Court’s ruling that parkland trumps the construction of expressways when there were possible alternatives.<sup>108</sup>

Two other justices issued concurring opinions as well. Justice Brennan argued that the case should be sent directly back to the secretary of

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<sup>103</sup> 401 U.S. 402, 416.

<sup>104</sup> 401 U.S. 402, 419.

<sup>105</sup> 401 U.S. 402, 419.

<sup>106</sup> 401 U.S. 402, 420.

<sup>107</sup> 401 U.S. 402, 420.

<sup>108</sup> Newman, interview.

transportation rather than to the district court because of Volpe's ignorance of a congressional mandate to preserve parkland.<sup>109</sup> Justice Blackmun also wrote a concurrence explaining how he felt the record was "sketchy" because of the controversy's longevity, but nonetheless supported the majority in the case.<sup>110</sup> All three opinions demonstrated the Supreme Court's belief that the congressional legislation was meant to temper progress with the need to preserve open space within cities. In other words, his argument was in favor of the retention of a way of life that included the importance of parkland. The tendency during the time was to continually build to make America a great nation both economically and socially. But at the same time, the country was at risk of losing its heritage. Overton Park had been a part of Memphis's local history ever since its inception and was easily in danger of being permanently marred. The Court recognized the development of a new urban lifestyle whereby expedience, and maybe economic fortune, became more important than visible surroundings. However, the justices also hoped also to establish that concerns about preserving parklands would need to be taken seriously. The Court hoped that with a more careful examination of the facts, a better decision could be reached that would be fair to all parties concerned and remain in accordance with federal law.

### **Aftermath of the Supreme Court's Decision**

After the ruling came down from the Supreme Court calling for another examination of the evidence, Judge Brown once again heard arguments over the expressway in district court. However, this time, there was a long and detailed trial in which experts from both sides testified about the impact that

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<sup>109</sup> 401 U.S. 402, 421.

<sup>110</sup> 401 U.S. 402, 422-3

an expressway would have on the park. In addition, the newly passed National Environmental Policy Act became a significant factor at the trial. The law required the secretary of transportation to “disclose” the impact of a particular project, like the route through Overton Park, on the environment and to address the effects of alternatives as well. “Full disclosure” had to be made, and the CPOP hoped that with the new federal law, the defendants would be forced to tell the court that there were other construction options that would do less damage to the surrounding environment. As the trial progressed, the CPOP showed that the supporters failed to conduct a thorough study because of the threat of being forced to use another option besides the park. At the conclusion of the trial, Judge Brown ruled that the secretary of transportation’s plan for Interstate 40 did not meet the requirements of the Parkland Statutes as interpreted by the Supreme Court, effectively sending the case back to Secretary of Transportation Volpe for revision.<sup>111</sup>

In the succeeding years, many new designs appeared, but were consistently rejected because they were not considered in compliance with federal law. By the mid-1970s, the designers had returned to the idea of submerging the road beneath ground level and placing a cover over the top, but the cost had reached over three hundred million dollars. CPOP continued to oppose the idea by notifying the community of their position. At around the same time as discussion of the tunneling option was ongoing; a provision in the Federal Aid Highway Act had been changed. Ever since the passage of the act there had been a provision to allow states to spend the money originally allocated to a particular expressway on another roadway project by removing their proposal from consideration for the initial route. Around

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<sup>111</sup> Newman, interview.

the mid-1970s, the act was changed to allow that money to be used for “any transportation purpose.” At the same time, if the state opted for the money it would be adjusted for inflation when it was finally used, making it an even more advantageous decision. CPOP jumped at the opportunity to convert the funds to use for something else and were able to get city planner Mike Ritz to agree to support the conversion of funds.<sup>112</sup>

Gradually, the Memphis Chamber of Commerce and other business leaders also supported the plan, but the state, through the remainder of the decade, decided against the tunnel proposal.<sup>113</sup> By the late 1970s, a delegation including representatives from the Memphis Chamber of Commerce and other community leaders met with Tennessee Governor Ray Blanton.<sup>114</sup> The individuals made their presentation to the governor and “asked on behalf of the city” to swap the funds for the highway, but the governor scoffed at the idea and “insulted” everyone there, ultimately telling them to leave.<sup>115</sup> His successor, Lamar Alexander, was sworn in early under allegations that Blanton had been “selling pardons.”<sup>116</sup> Ultimately, through extensive negotiation under rumors that the federal government would repeal the clause, Alexander teamed up with the city to get over three hundred twenty million dollars in exchange for the highway, which was then used to construct a system of trolleys through midtown and downtown as well as other roads. As a result, the east-west route was never built through the park. Instead, Interstate 40 was routed around the northern edge of Memphis along the same route as the Interstate loop that

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<sup>112</sup> Newman, interview.

<sup>113</sup> Newman, interview.

<sup>114</sup> Newman, interview.

<sup>115</sup> Newman, interview.

<sup>116</sup> Newman, interview.

circles the city, Interstate 240. By the early 1980s, the state started selling back the right-of-way lots and the controversy came to a conclusion.<sup>117</sup>

Although the highway through Overton Park was never built, some Memphians to this day have strong feelings about the issue. Overton Park served as a center of social and civic engagement through much of the twentieth century. By the 1950s though, Americans in general began to embrace highway construction as a means of modernization. With highways came lifestyle changes in urban areas, which included the possible economic advantages of faster and more efficient means of travel and new choices about where to live and work. Memphis, like many American cities, faced a choice between the economic advantages associated with highway construction and the potential destruction of parkland and historic urban communities. Although Memphis's political and business leaders favored building the highway through Overton Park, the efforts of a small group of citizen activists succeeded in winning a Supreme Court case and in preserving the park for generations to come.

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<sup>117</sup> Lanier, interview.