

# Transit breakthrough in restoring civil rights

February 22, 2010

## Title VI Complaint by San Francisco Bay Area Coalition Has National Implications

by *Urban Habitat*

In the first successful action of its kind in the nation [Urban Habitat](#), helped organize a coalition that filed a civil rights complaint to stop \$70 million in stimulus funds from being allocated to a \$500-billion boondoggle elevated “people-mover” known as the Oakland Airport Connector (OAC). The funds will be shifted to Bay Area transit agencies to help avert service cuts, fare hikes and layoffs that will affect hundreds of thousands of people, as the coalition recommended.

The complaint, filed by the nonprofit law firm Public Advocates on behalf of Urban Habitat, TransForm and Genesis, charged the Bay Area Rapid Transit agency (BART) with failing to take the needs of communities of color and low-income communities into account when planning the OAC project.

BART has historically ignored the transit needs of thousands of low-income Black, Latino, Asian and white residents of the Bay Area and the federal government has given them a free pass. The OAC was no exception. [1]

Title VI of the 1964 Civil Rights Act, and the Department of Transportation (DOT) regulations set up to enforce it, require an “equity analysis” of new projects to be sure that service and fare changes will not have discriminatory impacts.

A key break in the community’s battle to re-allocate the funds came in June 2009 when Urban Habitat Transportation Director Bob Allen discovered the BART had never actually submitted a required equity analysis to the Metropolitan Transportation Commission. (See FTA letter to MTC dated Feb 3, 2010.)[2] He informed the MTC of this fact in public testimony and in follow-up letters to both BART and MTC lawyers but BART denied it—and refused to conduct an actual equity analysis. As a result Urban Habitat and allies filed an official complaint in September 2009.

BART (apparently accustomed to operating under the supervision of the Bush era FTA) confidently assumed a few pages of hastily collated information would be sufficient to rectify their failure to address the civil rights impacts. But once the FTA investigation of the complaint was complete, FTA Chief Peter Rogoff sent a letter to BART and MTC rejecting BART’s so-called action plan to address Title VI violations.

He advised Metropolitan Transportation Commission (MTC) to reallocate the funds before a March 5 deadline. “I am required to reject your plan... Given the fact that the initial Title VI complaint against BART was well founded, I am not in a position to award the ARRA funds to BART while the agency remains out of compliance,” Rogoff wrote. “It is imperative that BART, as a recipient of FTA funds, come fully into compliance with Title VI as soon as possible.” [3]

The key reason that BART didn’t want to do the study—it would have showed that the project was unjust.[4]

In addition to a direct investigation of BART the FTA has also initiated a review of the Metropolitan Transportation Commissions handling of all its federal grants Title VI compliance reviews.[5]

In a separate letter to MTC Executive Director Steve Heminger on February 3, the FTA stated that “the fact that BART has not conducted the necessary service equity analysis for the OAC project or fare equity analysis raises concerns that your agency does not have procedures in place to monitor its subrecipients.” FTA ordered MTC to provide information within 30 days.

This is a positive sign that might indicate the Executive Branch is ready to start enforcing civil rights law when it comes to transportation infrastructure funding and perhaps other federal spending as well. It also makes a clear case for restoring the ability of community organizations and individuals to file suit to enforce civil rights law.

### **The power to enforce civil rights law**

For over 35 years the 1964 Civil Rights Act gave advocates the ability to use Title VI regulations to dismantle segregation and uproot discriminatory practices. The LA Bus Riders Union’s 10-year Consent Decree has been a landmark Title VI case.[6] However, in *Alexander v. Sandoval (2001)*, the U.S. Supreme Court took away the ability for individuals and organizations to bring private lawsuits to enforce disparate impact regulations, reasoning that Congress had never expressly created such a “private right of action.” As a result, federally-funded activities that have harmful and disproportionate effect on people of color can only be challenged in court if one can demonstrate intentional discrimination, which is rarely possible.

The Sandoval decision has had a chilling effect on civil rights enforcement, leaving communities of color with limited recourses to challenge policy decisions that have racially inequitable outcomes. This is particularly true in the area of transportation, where billions of dollars in investments are stake, and where communities of color already suffer from a disproportionate share of transportation-related burdens while lacking access to safe, affordable and reliable transit.

Though people of color no longer literally sit at the back of the bus, they still get shoved to the back of the line when transit funding is handed out. For example, the MTC consistently favors funding for rail while shortchanging bus systems. Its \$13 billion transit expansion program dedicates 94 percent of the project costs to rail, while buses receive only 4 percent.

This adverse treatment falls mostly on transit-dependent riders. Nearly 60% of AC Transit riders depend exclusively on the bus, while 80% of BART riders and 83% of CalTrain riders own cars. [7] Being dependent on buses with long waits, long walks and long trips hampers people's access to jobs, services, childcare and recreation, marring the quality of life on every front.

Urban Habitat has joined a national coalition, **Transit Riders for Public Transit (TRPT)**, coordinated by the Labor/Community Strategy Center to restore the private right of action under Title VI of the Civil Rights Act of 1964. Congress should expressly establish a private right of action in the Federal Surface Transportation Authorization Act (FSTAA) to enforce the disparate impact regulations adopted by the DOT.

By restoring private enforcement of the DOT's antidiscrimination regulations, the FSTAA will give local communities a well-proven tool to redress existing transportation disparities while ensuring inclusive treatment and equitable outcomes in future transportation investments.

To find out more about the ongoing [OAC campaign](#).

For more information on the [TRPT national campaign](#).

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[1] In its defense, BART claimed that since current ridership of the bus shuttle service to the airport were affluent (39% of passengers making over \$100,000 per year, 66% making over \$50,000) the proposed 100% fare increase (\$3 to \$6) would be no problem for the new tram service riders.

[2] "The complaint alleges that BART did not conduct a service equity analysis of its Oakland Airport Connector project. Also, noted in the complaint sent to FTA, on July 8, 2009, Mr. Bob Allen of Urban Habitat spoke during a public meeting before Metropolitan Transportation Commission (MTC) staff advising of BART's "failure to produce the required equity analysis for this project." As a follow up to this public meeting a letter was sent to the Programming and Allocation Committee of MTC, dated July 8, 2009, by Mr. Allen outlining the service equity requirements." [http://urbanhabitat.org/files/FTA OCR compliance letter to MTC 2-3-10-1.pdf](http://urbanhabitat.org/files/FTA%20OCR%20compliance%20letter%20to%20MTC%202-3-10-1.pdf)

[3] [http://urbanhabitat.org/files/Feb 12 BART MTC Letter\\_0.pdf](http://urbanhabitat.org/files/Feb%2012%20BART%20MTC%20Letter_0.pdf) or html: <http://urbanhabitat.org/tj/oac/pr/2-12-10>

[4] The OAC proposal would have erected an elevated "people-mover" that would whisk travelers over the black and Latino East Oakland neighborhoods between the station and the airport. The 3.2-mile tram would cost an estimated half-billion dollars to build—and \$6 to ride one way, putting it well out of reach of area residents and the thousands of low-wage workers at and near the airport. The project would have not only diverted stimulus funds from basic transit needs, but would have continue sucking scarce dollars out of the system going forward. Project supporters made much of the potential construction jobs that would have been created in building the rail connector but ignored the employment and transit access needs of the actual communities surrounding the project and gave short shrift to the many long-term jobs that will be created by spending the money in a more equitable manner.

[5] [http://urbanhabitat.org/files/FTA OCR compliance letter to MTC 2-3-10-1.pdf](http://urbanhabitat.org/files/FTA_OCR_compliance_letter_to_MTC_2-3-10-1.pdf)

[6] <http://www.thestrategycenter.org/campaign/consent-decree-compliance>

[7] (“Bay Area Transit—Separate and Unequal” *Race, Poverty & the Environment*, <http://urbanhabitat.org/node/313>.)

## **CHALLENGING STRUCTURAL RACISM ON THE GROUND: SUCCESSFUL STRATEGIES**

Friday 12, 2010 at the [Transforming Race Conference](#) from 9:30 – 10:45 a.m.



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