

AC Transit  
1600 Franklin Street  
Oakland, CA 94612

October 9, 2024

Dear General Manager Hursh,

Public Advocates has reviewed the “2024 AC Transit Realign Update Title VI Service Equity Analysis” posted on your website on Friday, October 4th. Unfortunately, the calculation of disparate impact and disproportionate burdens was done using an incorrect methodology and compared the wrong value to the Board Policy 518 threshold. Applying a methodology consistent with Board Policy 518 and the FTA Title VI Circular would reveal that the proposed Realign service changes would, in fact, have disparate impacts for people of color and disproportionate burdens for low-income people. Before moving Realign forward, the District must correct its Title VI and Environmental Justice analysis and consider alternatives that avoid, minimize, or mitigate the disparate impacts and disproportionate burdens that are found.

The role of the Title VI and Environmental Justice equity analysis<sup>1</sup> is to ensure that transit service changes do not impact people of color and low-income populations disproportionately. Without this backstop in federal regulations the historical inequities in transportation could continue to increase. It is critical that the analysis is done correctly and that there aren’t disparities in any service changes. We should be working to reverse historical inequities.

The FTA Title VI circular sets guidance for agencies’ policies that set the analysis methodology and threshold for major service changes. The AC Transit Board Policy 518 states:

*The measure of disparate impact involves a comparison of impacts borne by people of color populations compared to impacts borne by non-people of color populations. Title VI equity analyses will compare existing service or fares to proposed changes and calculate the absolute change as well as the percent change. When the proportion of people of color populations or riders adversely affected by the proposals is 15% (or more) than the proportions of non-people of color populations or riders adversely affected, such changes will be considered to have a disparate impact.*

The central premise of the policy is that the impacts on a protected class should not be 15% or more than the impacts on the non-protected class. Understanding whether this policy has been properly applied hinges on calculating percent changes, which is difficult because they are relative.

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<sup>1</sup> We are concerned with both the Title VI (race) and Environmental Justice (income) analysis done by AC Transit, but this memo focuses on the Title VI component.

Calculating the percentage change between two numbers is not a matter of simple subtraction, which yields the **absolute** difference, but rather involves a comparison of two numbers without regard to their values. For example, the percent difference between 10 and 20 is the same as the percent difference between 1000 and 2000, even though the absolute difference is not the same. Subtracting a percent from another percent yields the percentage point difference, but not the percent difference. For example, if on-time performance was 75% last month and 70% this month, it went down 5 percentage points, but not 5%. It went down 6.67% using the formula (*change in value* ÷ *original value*) × 100.

### **The Title VI Analysis of Realign is Inconsistent with Board Policy 518**

The analysis in the Realign equity analysis does not rely on the **percentage** difference between the proportion of people of color and non-people of color impacted, as required by Board Policy 518, but rather on the **absolute** difference between these numbers. The methodology used subtracts the proportion or percent of people of color impacted from the proportion or percent of non-people of color impacted resulting in the absolute difference. Comparing this absolute difference to the 15% threshold does not support a valid determination about whether there is a disparate impact.

For example, Table 4 (page 27) finds a -0.18% percent change for people of color with access to service after Realign and -0.09% percent change for non-people of color after Realign. On the line % Difference the math appears to be  $-0.18 - (-0.09) = -0.09$ . This tells us that there is an absolute difference of -0.09 between these numbers, *not* that there is a 0.09% difference between the impacts.

The methodology used in the Realign equity analysis is also inconsistent with the methodology in the AC Transit 2023 Title VI program. The FTA Title VI circular also directs agencies to apply their disparate impact policy to monitor their service standards and policies as part of their Title VI program. AC Transit's 2023 Title VI service monitoring uses a calculation of percentage difference and compares it to the 15% threshold<sup>2</sup>.

The methodology AC Transit used in the 2023 Title VI program calculates the percent difference by dividing the absolute change in value by the average of the two numbers, all multiplied by 100. On-Time Performance (Table 3 on page 176) is a useful example because it is also comparing the percentage difference between two percentages. The *absolute* difference between percentage on-time performance for people of color and non-people of color for weekday 2020 is 0.62 (76.92%-76.30%) while the *percent difference* is 0.81% (0.62/76.8 times

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<sup>2</sup> Service monitoring includes comparing differences in absolute numbers (for example headways in minutes) in addition to comparing percentages. Calculating a percent difference between 27.75 minutes and 33.73 minutes clearly can't be accomplished by subtracting the two values and comparing this number to 15%. This is another reason why the methodology used in the Realign analysis doesn't make sense; the methodology should be consistent across service changes and service monitoring.

100). This analysis correctly uses the percent difference rather than the absolute difference to compare to the 15% threshold in Board Policy 518<sup>3</sup>.

In addition to being inconsistent with the wording of AC Transit’s policy, the simple subtraction methodology used in the Title VI Analysis of Realign is wholly inadequate to evaluate disparate impact. A 15 percentage point absolute difference between the impacts on people of color and non-people of color would insulate all but the most drastic service changes from a potential finding of disparate impact. For example, a service decrease that reduces service by 1% for white census blocks and 15% for people of color census blocks would not be considered a disparate impact under this methodology. Similarly, it would be nearly impossible for overall service changes of 2%, 5%, or even 10% system-wide to surpass this threshold. A 15 percentage point absolute difference is too high a threshold to be meaningful.

### **The Title VI Analysis of Realign Fails to Demonstrate Fixes to Disparities Identified in 2023 Title VI program**

In addition to comparing the incorrect number to the threshold, the Realign equity analysis fails to demonstrate that it achieves the goal of eliminating disparities found in the 2023 Title VI program for headways as promised. The service monitoring for headways found disparities for minority route headways, especially on the weekends for 2021 and 2022. In response AC Transit stated, “... *the Monitoring Program findings will be helpful as the District looks to restructure service in 2024 to respond to the impacts of the global pandemic and the associated funding shortfall. Staff will use these results to develop recommendations that would re-balance the headways with a goal of eliminating any disparities* ” (page 176).

Public Advocates gave public comment on the Title VI program in October 2023 noting these disparities and expressed concern that AC Transit was not using the same definition of equity in Realign as it uses in its Title VI Program. The Realign equity analysis needs to include analysis of the proposed headways, to the extent possible with the existing data, to ensure it fixes the past disparities.

### **A Proper Analysis of Realign Would Reveal Disparate Impacts and Disproportionate Burdens**

Using the same methodology in the 2023 Title VI program we calculated the first four tables in the Realign equity analysis compared to the 15% threshold. It does not pass on any of them.

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<sup>3</sup> The percent difference methodology isn’t the only way to calculate the percent change. It averages the two values instead of calculating it from the perspective of the impacts on the protected class. For example, the MBTA uses a ratio of % change for protected population/% change for non-protected population. See [their policy for a useful explanation of how to do the calculation](#) using this methodology.

<i>Results using Percentage Difference Methodology</i>	Protected class % change	Non-protected class change	Absolute value of difference	Average of two values	Percent difference	Greater than 15%
Table 4- Access for People of Color	-0.18	-0.09	0.09	-0.135	-67%	<b>Yes</b>
Table 5- Access for Low-Income	-0.04	-0.01	0.03	-0.025	-120%	<b>Yes</b>
Table 6 - Amount of Service for People of Color	-1.08	0.11	1.19	-0.485	-245%	<b>Yes</b>
Table 7- Amount of Service for Low-Income	-1.13	-0.44	0.69	-0.785	-88%	<b>Yes</b>

**Next Steps**

The FTA Title VI circular is very clear on steps a transit agency needs to take when there is a finding of a disparate impact on the basis of race, color or national origin. AC Transit needs to correct its analysis and then modify the proposal to avoid, minimize, or mitigate the potential disparate impacts. The AC Transit Board should not approve Realign before these modifications and a new equity analysis is produced.

We are happy to meet with you to discuss this matter.

Sincerely,



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 Senior Policy Advocate for Transportation Justice



Sam Tepperman-Gelfant  
 Managing Attorney

Cc: General Counsel Aimee Steele, District Secretary Linda Nemeroff, Board President Young, Vice-President Shaw, Director Peeples, Director Syed, Director Walsh, Director Beckles, Director McCalley