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January 27, 2022

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
Office of the Secretary
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary Buttigieg:

Congratulations to you and the Biden Administration on the historic passage of the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act). As the largest federal investment into infrastructure projects in more than a decade, the act will touch every facet of the American economy and impact millions of American lives. The Bipartisan Infrastructure Law will grow the economy, enhance our competitiveness, create good jobs, and make our economy more sustainable, resilient, and just.^[1] However, the law is not solely an investment in American economic efficiency and productivity - it is an investment in the American people. As President Biden has said, we must “invest in our country and in our people by creating good-paying union jobs, tackling the climate crisis, and growing the economy sustainably and equitably for decades to come.”^[2] We write to you today on that goal of equity.

Under your leadership, we can ensure that the needs of communities are considered and that all Americans, regardless of race, color, or national origin, benefit from the Bipartisan Infrastructure Law by putting Title VI of the Civil Rights Act of 1964 (Title VI) at the forefront of your funding decisions and spending oversight. Title VI forbids discrimination, denial of

benefits, and exclusion from participation in any program or activity receiving Federal financial assistance on the ground of race, color, or national origin.^[6] While the other Titles of the Civil Rights Act of 1964 have advanced equal access to jobs, reduced racial and gender-based discrimination in employment, and enhanced equal access to public accommodations, these successes have been largely the result of private enforcement.^[7] Title VI has no private right of action and its enforcement is entirely the responsibility of the Federal Government and in the case of the Bipartisan Infrastructure Law funding, primarily the responsibility of your Department of Transportation.

To eliminate discrimination and achieve equitable benefits and participation in the programs under the Infrastructure Law, the 18 undersigned organizations from across the US urge you to (1) ensure that the Office of the Secretary (OST) has a robust Title VI program for grants awarded by OST, (2) undertake efforts and studies to determine the effectiveness of existing Title VI programs within the Department's agencies and take appropriate action to guarantee the Department is ensuring full compliance with Title VI across its funding programs and (3) vigilantly enforce existing Title VI programs both affirmatively in making funding decisions and in reacting to complaints from the public regarding discrimination based on race, color, or national origin.

Projects like the Claiborne Expressway in New Orleans or I-81 in Syracuse left out the people most in need of affordable, equitable transportation options. The interstate highway system was built through countless low-income communities, many of which were historically African-American, and destroyed those communities and their access to good jobs and affordable housing. The DOT risks repeating these mistakes and again burdening low-income communities and communities of color with the harms of infrastructure building without any of the resulting

benefits. One example is the Cross-Bronx Expressway which ripped through neighborhoods of the South Bronx and forced more than 1,500 families to leave their homes.^[3] Even today, the community still suffers from the effects of construction with studies showing that proximity to the expressway is linked to some of the highest rates of diabetes, obesity, and asthma in the city.^[4] Despite this ongoing harm, the Cross-Bronx Expressway is a likely recipient of funds from the Infrastructure Law.^[5]

Under your administration and this Infrastructure Law, we can halt building infrastructure that unfairly burdens communities of color. While the law attempts to remedy some of these past harms through the Reconnecting Communities program, that effort is less than 1% of the funding authorized in the Law. The Department of Transportation can begin not just to remedy past harms but also to ensure the remaining 99% of funds do not repeat the mistakes of the past, that they are distributed equitably, and that all communities can share in their benefits.

Ensure That OST Has A Program That Implements Title VI Requirements

The infrastructure law allocates more than \$3.5 Billion in funds to be distributed through competitive grants administered by the Office of the Secretary of Transportation. As of today, the procedures for filing a Title VI complaint regarding these programs is unclear. OST's Department of Civil Rights does not give guidance specifically regarding Title VI complaints like the Department's other agencies. Confusingly, the DOOCR gives advice to file a complaint "with the DOT Operating Administration with whom the violation occurred." We recognize that the Office of the Secretary has not administered grants at the scale of the Infrastructure Law, but *before* grants are made, OST should develop a Title VI program in line with those of the Department's other Operating Administrations.

Determine The Effectiveness Of Existing Title VI Programs And Take Appropriate Actions To Ensure Title VI Compliance Across Funding Programs

Though the DOT's June Order regarding Title VI programs across the Department is promising, there remains a lack of resources available to the public to understand the effectiveness of these programs and the department's administration of these programs is opaque. There is no public disclosure of complaints or even their subject matter in a systematic way across operating administrations. There is also no information regarding how or whether complaints are resolved. Compliance reports, which are also not always publicly available, are infrequent. It is important that the agency has robust Title VI programs, but more important that these programs are effective, that the public is aware of them, and that they capture the concerns of communities.

The Infrastructure Law should have planning and programming steps which rely on a systematic, interdisciplinary approach for avoiding discrimination based on race, color, or national origin while simultaneously promoting equity in any decision-making process. This approach should include procedures and processes that utilize relevant data to determine the effectiveness of those Title VI Programs. The Federal Transit Administration's Request for Information regarding revisions to its Title VI Circular demonstrates the commendable steps your administration is already taking to improve the effectiveness of Title VI programs, but the comments are dominated by state departments of transportations and transit agencies. A systematic approach, focused on ensuring that the voices of all stakeholders are heard, would better ensure that the revisions considered by the FTA are making Title VI programs more effective.

Ensure Vigilant Enforcement Under Existing Title VI Programs Both Affirmatively in Making Funding Decisions and in Reacting to Complaints from the Public

Title VI and its implementing regulations obligate recipients of federal financial assistance to ensure nondiscrimination in federally assisted projects. Implementation of the Infrastructure Law must be accompanied by a promise of vigilant enforcement and a clear prohibition against discrimination based on race, color, and national origin. The public deserves accountability and transparency in ensuring that the Infrastructure Law will provide meaningful access to transportation infrastructure and meaningful participation in the transportation planning process regardless of race, color, or national origin.

Your department and the Biden-Harris Administration have already demonstrated an admirable commitment to advancing equity in transportation projects. The White House's convening of Civil Rights leaders to discuss the equitable implementation of the Infrastructure Bill demonstrates the ability of administration to affirmatively seek input from those facing discrimination. The March letter to the Texas Department of Transportation pausing the North Houston Highway Improvement Project (NHHIP) to evaluate Title VI concerns is a promising example of the Department's ability to ensure compliance with Title VI and a wonderful example of listening to the concerns of local communities.^[8] As you said at the ASCE Solutions Summit, the Bipartisan Infrastructure Law will "help us marshal the full power of American ingenuity, innovation, and capacity, [...] because all the answers don't have to come from Washington; it's just that more of the resources should." The answers to ensuring an equitable transportation system lie primarily with local communities. Without a private right of action, it is imperative that the DOT actively and affirmatively engage these communities across the country to ensure Title VI compliance in the planning, implementation and operation of transportation projects and aggressively enforce Title VI requirements.

This Law represents a critical time for infrastructure building in the United States. Our country has a long history of flawed decision-making when building infrastructure, a history that still echoes through communities that have been impacted by discriminatory transportation projects. But, as you have recognized, we do not “have anything to lose by confronting the simple reality that [racism went into those design choices] [...] and we have everything to gain by acknowledging it and then dealing with it.”^[9] The Biden-Harris Administration has the opportunity to guide our nation into a more equitable future during the next decade of infrastructure building. We welcome the opportunity to discuss these issues with you further; the signatories of this letter can be contacted at bmagnuson@AppleseedNetwork.org or at the address at the top of this letter. Thank you for your leadership in implementing this historic law.

Sincerely,

[Appleseed Foundation](#)

[Alabama Appleseed](#)

[Arkansas Appleseed Legal Justice Center](#)

[Chicago Appleseed Center for Fair Courts](#)

[Colorado Center on Law and Policy](#)

[Greater Hartford Legal Aid](#)

[Kansas Appleseed Center for Law and Justice, Inc.](#)

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[Mississippi Center for Justice](#)

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[New Jersey Appleseed Public Interest Law Center](#)

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[North Carolina Justice Center](#)

[Public Justice Center](#)

[SC Appleseed Legal Justice Center](#)

[Shriver Center on Poverty Law](#)

[Texas Appleseed](#)

[William E. Morris Institute for Justice](#)

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^[1]<https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/>

^[2]<https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-historic-bipartisan-infrastructure-deal/>

^[3]<https://www.nytimes.com/2001/10/07/nyregion/neighborhood-report-bronx-up-close-decades-later-doing-cross-bronx-expressway.html>

^[4]<https://www.publichealth.columbia.edu/public-health-now/news/planting-park-cross-bronx-expressway-would-save-money-and-lives>

^[5]<https://www.nytimes.com/2021/11/15/nyregion/infrastructure-bill-new-york.html>

^[6] 42 U.S.C. §2000d.

^[7] See e.g., Heart of Atlanta Motel v. United States, 379 U.S. 241, 85 S. Ct. 348 (1964) (Title II); Bostock v. Clayton Cty., 140 S. Ct. 1731 (2020) (Title VII).

^[8] The Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America issued by the Federal Highway Administration on December 16, 2021 is another good first step towards ensuring that highway Federally-funded transportation projects are more sustainable and equitable, and we encourage the Department to ensure that these kinds of policies are institutionalized and enforced. FHWA Memorandum, HPL-1 and HCC-1, December 16, 2021.

^[9] <https://www.whitehouse.gov/briefing-room/press-briefings/2021/11/08/press-briefing-by-principal-deputy-press-secretary-karine-jean-pierre-and-secretary-of-transportation-pete-buttigieg/>