Advocates for Basic Legal Equality, Inc.

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August 10, 2011

Federal Highway Administration
Office of Civil Rights.
Attention: Title VI Program Coordinator
1200 New Jersey Avenue, S.E.
8th Floor E81-314
Washington, DC 20590

United States Department of Transportation
Office of Civil Rights
Attention: Title VI Program Coordinator
1200 New Jersey Ave., SE
Washington, DC 20590

Re: **Complaint Filed under Title VI of the Civil Rights Act of 1964**

Dear Sir or Madam:

On behalf of our client, Leaders for Equality and Action, Inc.[1] (LEAD), Advocates for Basic Legal Equality, Inc. (ABLE) formally files this complaint under Title VI of the Civil Rights Act of 1964 ("Title VI"), 49 CFR §21.5, and the Department of Transportation (DOT) and Federal Highway Administration (FHWA) Title VI Handbook. For the reasons stated herein, we request that the FHWA and DOT undertake a full Title VI compliance investigation into the City of Beavercreek, Ohio, to determine if the City of Beavercreek's denial of the Greater Dayton Regional Transit Authority's application to place bus stops on Pentagon Boulevard near the Fairfield Commons Mall constitutes a violation of Title VI. We further request

[1] Leaders for Equality and Action in Dayton (LEAD) is a coalition of 20 church congregations in the Dayton area united to bring about social justice and fairness in the Dayton, Ohio area. LEAD was founded in 1992 and is a 501(C3) tax exempt, non-profit and non-partisan organization. LEAD brings together large numbers of people across racial, denominational and economic lines to make a difference in our community and in local decision-making. Through its process of listening to the concerns of its members through small group meetings, LEAD has identified Jobs, Education and Public Transportation as areas of concern. In April of 2010, LEAD held a large public meeting with over 800 people from across the Miami Valley in attendance, at which representatives of the Montgomery County Commission, Montgomery County RTA and the owner of two major suburban malls agreed to work toward expanding bus service to suburban malls which are centers of employment.

that the FHWA take all appropriate action to ensure the City of Beavercreek's compliance with Title VI.

1. Factual Background.

The Greater Dayton Regional Transit Authority ("RTA") serves routes that are directly adjacent to the City of Beavercreek.[2] It has transit stops at Wright State University in Fairborn, Ohio, located on the opposite side of I-675 from the area in Beavercreek that RTA sought to serve with new stops. The RTA is physically, financially and legally able to serve the Fairfield Commons Mall area. However, Beavercreek is not a member entity of the RTA. Currently, public transit riders who need to access the Fairfield Commons Mall and surrounding areas must walk across a heavily trafficked six lane bridge that is extremely dangerous for pedestrians.

The need for improved transit to the Mall area has been long identified. In 1993, the Greene County Transportation Coalition examined the need and endorsed expanded RTA service to the Mall as the best way of meeting that need. Exhibit 1. Beavercreek is located in Greene County. The Miami Valley Regional Planning Commission (MVRPC), which includes Beavercreek as a board member, has also consistently identified the Fairfield Commons Mall area as an area of job growth in need of increased public transit.[3]

In March of 2010, the Greater Dayton Regional Transit Authority and the City of Beavercreek began discussing the installation of public transit stops near the Fairfield Commons Mall. By the end of 2010, RTA and the Beavercreek Department of Public Works/ Public Administrative Services Department, which is responsible for roads, had worked through a number of issues. On November 16, 2010 the director of that department, David Beach, notified RTA that their application was "suitable for forwarding to City Council." Exhibit 2. On November 30, 2010, RTA submitted an application for three stops in the public right of way on Pentagon Boulevard, located near the mall, a newly constructed hospital, and the branch campus of a

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[2] The City of Dayton is located roughly at the center of Montgomery County, Ohio and is transportation center for the region around it. The City of Beavercreek is a suburban city located in the adjacent Greene County near to the eastern border of Montgomery County. The Fairfield Commons Mall area in Beavercreek is an 11 mile drive from downtown Dayton.

[3] Human Services Transportation Coordination Plan, www.mvrpc.org/transportation/long-range, 2030 Long Range Transportation Plan, www.mvrpc.org/transportation/hstc/coordination-plan.

community college. The new stops would be served by extending RTA's Route 1, which runs from Dayton's west side through downtown Dayton, and includes stops at Wright State University. Under the terms of the RTA's application, the RTA would have assumed the costs of installing and maintaining the transit stops. The application of the Dayton RTA is attached hereto as Exhibit 3.

The Ordinance which governs such applications, Beavercreek Ordinance No. 00-39 (Sept. 25, 2000), requires applications to meet the requirements set forth in the 'Design Criteria for Public Transit Stops" on file with the Director of Public Works, and requires the Director to "forward said applications with his recommendations on to the City Council." Exhibits 4, 5. The application was reviewed by the Director of Public Works, who found that all of the design criteria had been satisfied. He then forwarded the application to the City Council. Exhibits 6, 7.

The Ordinance also required Beavercreek to hold a public hearing to allow for input "regarding the location, design, and construction of Public Transit Stop facilities." Beavercreek City Council held that hearing on February 14, 2011. RTA's presentation at that hearing along with letters of support is attached as Exhibits 8 and 9. Several people spoke in favor of the application and Council members acknowledged that RTA had met all of the requirements and that their review authority was limited. (Exhibit 10, p. 4 comments of Council member Vann, also p. 6 comments of member Giambrone.) Other council members, however, said they were going to follow citizens who were opposed to the stops. (Exhibit 10, p. 5; comments of members Howard and Wallace.) The exchange caused the City's attorney to warn there was danger in being swayed by opposition to the proposal that was not related to permissible legal standards. (Exhibit 10, p.6, comments of Mr. McHugh).

Indeed, before the February 14th hearing and after it, Council members received e-mails expressing opposition to the application. One e-mail, which urged others to contact the Council, ended with the warning that "we can not allow West Dayton to strong arm its way into Beavercreek." West Dayton is a predominantly African American section of the city of Dayton. Other e-mails sent to Council insisted that RTA bus service would bring crime from the City of Dayton to Beavercreek.

Several days after the February 14 hearing the RTA executive director sent a detailed letter to the Council members addressing the issues raised at that meeting. Exhibit 11.

At the next two public Council meetings where the RTA proposal was on the agenda, March 14 and 28, several council members voiced concerns over increased crime, citing the Salem Mall, Dayton Mall, and the RTA stops in the center of downtown Dayton, implying, without any basis, that public transit riders were responsible for crime at these locations. These locations are associated in the public mind with incidents of crime by African American youths in the City of Dayton, and are well known in the community as symbols and code words for exaggerated racial fears. Several council members expressed their wish to have RTA install closed circuit video cameras within the proposed transit stops that the police could monitor live. Council members again stated that if the citizens of Beavercreek did not want the transit stops, the Council was under an obligation to vote against the RTA application. Exhibits 12 and 13.

Several days before the March 28 council meeting where the vote on this application was taken, the City of Beavercreek produced a list of additional requirements for RTA to meet. Exhibit 14. The new requirements in some instances merely reiterated existing requirements which the RTA had already met. However, in other instances they went far beyond or outright contradicted the design criteria adopted pursuant to Ordinance No. 00-39. For example, Beavercreek wanted RTA to provide heated and air conditioned shelters and to provide 18" thick concrete pads, when its own Guidelines called for 10".[4]

RTA leaders met with Beavercreek officials on March 24 to discuss these new demands. The RTA agreed to some of these new demands and opposed others. The RTA wrote memoranda explaining why some of the new requirements were unnecessary. Exhibits 15, 16, 17.

Despite this, at the March 28, 2011 council meeting the Beavercreek City Council voted 6-0 to reject the RTA's application. See Exhibit.13. In response, the Dayton Daily News, which had extensively covered the issue, wrote an editorial entitled "B-creek Vote Against RTA embarrassing." It said, "Beavercreek's City Council had no good reasons to keep the Greater Dayton RTA from having three bus stops

[4] The Director of RTA responded to this by explaining that the only place he is aware of that requires air-conditioned bus shelters is in Dubai in the United Arab Emirates.

on Pentagon Boulevard near the Mall at Fairfield Commons and Kettering Health Network's new hospital. But it voted against the stops anyway. The council's demands of RTA would be comical it the situation weren't so sad... The animosity toward RTA, Montgomery County and bus riders generally was intense and alarming... Denying access to public transportation disproportionately affects people who don't have cars, who are poor, who take low wage jobs, including retail positions at the mall... Many recognize the objections council gave as a ruse for some people's prejudices." Exhibit 18.

2. The City of Beavercreek is required to comply with Title VI regulations.

The City of Beavercreek is a past and current recipient of federal funding. These funds include grants coming directly from the U.S. Department of Transportation's Federal Highway Administration (FHWA), as well as numerous other federal agencies. See List of Grants received by Beavercreek, attached as Exhibit 19. Some of the funds come to Beavercreek through intermediaries such as MVRPC. Since 1997 Beavercreek has received tens of millions of dollars in such grants. Within the City of Beavercreek, the Department of Public Works/ Public Administrative Services Department receives and administers grants related to road improvement.

Indeed, the bridge over I-675 which the RTA Route 1 bus would pass while driving from its existing stops at Wright State to the proposed new stops in Beavercreek is scheduled to be widened in 2011 using $990,000 in Federal funds. Exhibit 20, (PID #85167). There are fourteen other road related projects in Beavercreek that have not yet begun construction but which have been approved to receive Federal funds.

The City of Beavercreek's Department of Public Works/ Public Administrative Services Department is a "program or activity" that is subject to the requirements of Title VI. See 42 USC §2000d-4(a) (1) (A); 42 USC §2000d-4(a) (1) (B). This is the same department that is responsible for the installation of public transit stops.

49 CFR §21.23(e) provides that the Title VI requirements imposed on recipients of federal funding apply to all the operations of any department of a local government to which Federal financial assistance is extended. In addition, the City of Beavercreek is required to provide assurances that it is in compliance with Title VI

on each of its applications for federal funding under 49 CFR §21.7. For these reasons, Beavercreek's decision to install or not to install transit stops is subject to the requirements of Title VI.

3. The City of Beavercreek's administration of its FHWA funding violates Title VI.

Title VI of the Civil Rights Act of 1964 ("Title VI") prohibits recipients of federal funding from excluding persons from participation in programs or denying persons the benefit of programs on the basis of race. See 42 USC §2000d; 49 CFR §21.5(a). 49 CFR §21.5(b) (1) (VI) further prohibits recipients of federal transportation funding from denying a person from participating in programmatic services on the basis of race. Moreover, 49 CFR 21.5(b)(2) precludes recipients of federal transportation funding from utilizing criteria or methods in administering programs which have the effect of subjecting persons to discrimination on the grounds of race, or which have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race. 49 CFR 21.5(b)(3) additionally precludes recipients from making selections which have the effect of discriminating on the basis of race when determining the site or location of facilities, which would include the decision to reject the installation of public transit stops.

Greene County, Ohio, in which the City of Beavercreek sits, is approximately 6% African American, while the City of Beavercreek is less than 1% African American. In contrast, the more populous Montgomery County, the primary county the RTA serves, is approximately 20% African American, while the City of Dayton, which is the seat of Montgomery County, is approximately 40% African American. Beavercreek and Greene County are overwhelmingly White, with a very low African American population, while Dayton and Montgomery County have a substantial African American population.

Moreover, a disproportionately large percentage of African Americans in Montgomery County rely on public transportation when compared to white residents. Approximately 73% of RTA riders are minority, while only 27% are White. African Americans make up the largest portion of the RTA's ridership, at 64% of total ridership. Exhibit 21. Moreover, nearly 12% of African Americans in Dayton ride public transportation to work, compared to 3.7% of whites. 8.2% of African Americans in Montgomery County ride public transportation to work,

compared with 1.5% of whites.[5] A data map done by the Kirwan Institute of the Ohio State University clearly displays the comparatively high public transit ridership and comparatively low number of vehicle drivers in the African American communities, when compared to white communities. Exhibit 22

African Americans in the RTA's service area disproportionately rely on public transportation when compared with their white counterparts. Accordingly, lack of public transportation disproportionately affects African Americans in the region. Indeed, job counselors in the Dayton area have repeatedly argued that the inability of African Americans job seekers to obtain transportation to the Beavercreek area has been a major barrier to employment. Attached are affidavits of three such job counselors. Exhibits 23, 24, and 25.

While the public discussion by the Beavercreek City Council involved costs, crime and alternatives such as GreeneCats para-transit services, these concerns were not substantiated. The Dayton RTA would have assumed the entirety of the expenses associated with the installation and maintenance of the proposed stops. Beavercreek also failed to put forth any evidence that the installation of public transit stops would lead to an increase in crime. Claims about the adequacy of existing para-transit services are misplaced, as the GreeneCATS para-transit services are insufficient to meet demand, and are focused on a narrow segment of riders. See Exhibits 11, 18. Finally, while the council cited public opposition to the transit stops, this opposition overstated the results of some emails while ignoring support for the stops from within the community. And of course public opinion is not a valid reason for Beavercreek to violate its obligations under Title VI as a recipient of federal highway funds.

The City of Beavercreek's criteria and methods for deciding whether to allow RTA transit stops in Beavercreek, which resulted in denial of the application for those stops, had the effect of subjecting African Americans, who disproportionately ride public transit, to discrimination. The City's refusal to allow the RTA to site transit stops in Beavercreek had the effect of excluding minority transit riders from full use of its roads, many of which are federally funded. Accordingly, the City of Beavercreek has violated the provisions of

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5 http://factfinder.census.gov/servlet/DTSelectedDatasetPageServlet?_lang=en&_ts=327240439526.

Title VI and 49 CFR §21.5(b) 1(vi), 49 CFR §21.5(b) (2) and 49 CFR §21.5(b) (3).

4. **The FHWA should take all necessary steps to correct the City of Beavercreek's violation of Title VI.**

For those reasons set forth above, the City of Beavercreek is not in compliance with Title VI of the Civil Rights Act of 1964. Accordingly, the FHWA should take all necessary steps to ensure that the City of Beavercreek comes into full compliance with the requirements of Title VI pursuant to the FHWA's powers under 23 CFR §200.11. If necessary, such steps should include launching on on-site investigation of the City of Beavercreek's programs, discontinuing all present and future DOT and FHWA funding to the City of Beavercreek for road projects, and/or referring this matter to the U.S. Department of Justice for further investigation. See 49 CFR §21.13.

On behalf of our client, LEAD, we would like to thank the DOT and FHWA for its attention to this complaint. LEAD looks forward to your response to its complaint, and to working alongside the DOT and the FHWA in addressing this issue.

Sincerely,

Ellis Jacobs by SAH

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