



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

JUL 12 2011

1200 New Jersey Ave., SE  
Washington, D.C. 20590

In Reply Refer To: HCR-40  
DOT #2011-0025

**SENT VIA E-MAIL**

**(b) (6)**

Dear **(b) (6)**:

The Federal Highway Administration (FHWA) has completed its investigation of the complaint of discrimination you filed against the Virginia Department of Transportation (VDOT) alleging a violation of Title VI of the Civil Rights Act of 1964 (Title VI). Specifically, you alleged that the VDOT denied the requests for a median break on Birdneck Road from the Mount Olive Baptist Church, the Rehoboth Baptist Church, and the Saint Stephen Church of God in Christ, based on race (African American).

The evidence obtained during the investigation does not support the allegation raised in the complaint. The evidence shows the following:

- You alleged that the requests from the three African American churches for a free, unrestricted, crossover concrete median break on Birdneck Road were denied by the VDOT, while Caucasian property owners along Birdneck Road have free, unrestricted, crossover concrete median breaks on North and South Birdneck Road installed by and under City-VDOT agreements financed with Federal highway construction funds.
- The VDOT asserts that safety is a top priority in all of its projects and Department guidelines have been applied fairly and consistently. Where exceptions have been made, they have been made with major considerations for the safety of the traveling public.
- The VDOT stated that the Birdneck Road Project (project) belongs to the City of Virginia Beach through a construction project agreement between the City of Virginia Beach and the VDOT. The City of Virginia Beach denied your request for the median breaks. The VDOT concurred with the decision. However, since the agreement connects VDOT and the City of Virginia Beach for any changes after construction, the VDOT responded to the complaint.
- The original construction of the project was approved in 1977. The current construction of the project was approved in 2006. The VDOT stated that the median breaks for the project were developed in conformity with the Virginia's Road Design Manual, Appendix C, Section C-1 Design Features.

- Table C-1-1 in the Appendix shows crossover spacing and sight distance requirements to be applied on all divided highways without full control access. The minimum sight distance requirement indicated in the table must be met at all crossover locations. Other crossovers will only be allowed after an individual traffic safety and operational study is conducted.
- The VDOT acknowledges that exceptions have been made. However, they have been made in accordance with accepted FHWA criteria and without regard to race. The VDOT uses the design exceptions criteria contained in the Department's Instructional and Information Memorandum developed in July 2002.
- Regarding the request by the three African American churches, the VDOT stated that the Mount Olive Church has a full crossover. The Rehoboth Baptist Church and St. Stephen Church are located across the street from each other in the functional area of the intersection near Hughes and Birdneck Roads, which is a safety hazard for a full median crossover. By the FHWA's own assessment, the installation of a full crossover at such a location creates a safety hazard—"Driveways located within the functional area may create too many conflict points within too small an area for motorist to safely negotiate . . . ."
- Record evidence shows that your request was denied because of insufficient spacing.
- The record further shows that the VDOT received a total 14 requests for median breaks in 2009 and 2010. Of that number, 9 requests were denied—3 from African American individuals and organizations, 3 from Caucasian organizations, and 3 from individuals whose race could not be identified.

### **THEORIES OF DISCRIMINATION AND ELEMENTS OF PROOF**

Title VI prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance. The purpose of Title VI is to ensure that public funds are not spent in a way which encourages, subsidizes, or results in discrimination.

Title VI claims may be proven under two primary theories: intentional discrimination/disparate treatment and disparate impact/effects. Under intentional discrimination, the recipient engages in intentional discrimination based on race, color, or national origin. Under the disparate impact/effects theory, the recipient uses a neutral procedure or practice that has a disparate impact on individuals of a particular race, color, or national origin, and such practice lacks a "substantial legitimate justification."

The complaint under investigation involves the intentional discrimination/disparate treatment theory of discrimination.

#### **Intentional Discrimination/Disparate Treatment**

An intentional discrimination/disparate treatment claim alleges that similarly situated persons are treated differently because of their race, color, or national origin. To prove intentional discrimination/disparate treatment, it must be shown that a challenged action was motivated by

an intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant's race, color, or national origin, but that the recipient acted, at least in part, because of the complainant's race, color, or national origin.

The investigating agency must first determine if the complainant can raise an inference of discrimination by establishing a prima facie case. The elements of a prima facie case may vary depending on the facts of the complaint, but such elements often include the following determination:

1. Whether the complainant is a member of a protected class;
2. Whether the complainant applied for, and was eligible for, a federally assisted program;
3. Whether despite the complainant's eligibility, the complainant was rejected; and,
4. Whether others not in the complainant's protected class were afforded the benefit for which the complainant was rejected.

The elements of proof are discussed below.

1. **Whether the complainant is a member of a protected class.**

You are a member of a protected class by nature of your race, African American.

2. **Whether the complainant applied for and was eligible for a federally assisted program.**

You requested a median break on a project covered by Title VI.

3. **Whether despite the complainant's eligibility, the complainant was rejected.**

The record shows that you requested a median break on the project and your request was denied.

4. **Whether others not in the complainant's protected class were afforded the benefit for which the complainant was rejected.**

The record shows that at least three Caucasian organizations that requested median breaks on the same project were also denied.

Based on the above analysis, a prima facie case of discrimination has not been established.

**DECISION**

The FHWA concludes that the evidence obtained during the investigation does not support the allegation that Title VI was violated when the VDOT denied your request for a median break.

The record shows that your request was denied because of insufficient spacing. The record further shows that the VDOT also denied the requests of Caucasian organizations for the same reason.

This concludes processing of this complaint by the FHWA and no further action will be taken.

Sincerely yours,

A handwritten signature in black ink that reads "Brenda F. Armstead". The signature is written in a cursive style with a large initial 'B'.

Brenda F. Armstead  
Director, Investigations and Adjudications