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Attachment R

Testimony of Amy F. Robertson, Co-Executive Director,
in Support of SB20-151
Senate Transportation & Energy Committee, March 3, 2020

Thank you Madame Chair and members of the committee. My name is Amy Robertson and I am an attorney and the Co-Executive Director of the Civil Rights Education and Enforcement Center ("CREEC"), a Denver-based civil rights nonprofit.

CREEC strongly supports SB20-151. I am authorized to state that the ACLU of Colorado also strongly supports SB20-151.

I will address Section 2 of the bill, which provides a state court remedy for violations by RTD of Title VI of the Civil Rights Act of 1964 ("Title VI")[1] and Title II of the Americans with Disabilities Act of 1990 ("Title II").[2]

For the past 25 years, both at CREEC and our earlier private law firm, I have conducted education and training as well as individual and impact litigation under federal and state civil rights laws. I am very familiar with Title VI and Title II and their regulations. In addition, we have been involved in two of the three impact ADA cases against RTD: one brought in 2000 and settled in 2001; and the most recent, remedying noncompliant light rail cars, which resolved in 2017 with retrofitted and new light rail cars.

I want to make two crucial points about Section 2:

1. It imposes **no new substantive requirements**; and

2. It provides a **more efficient, less risky remedy** for violations of these existing requirements.

Section 2 of the pending bill incorporates Title VI and Title II as well as the respective regulations enforcing each of those statutes. These regulations have been in force since 1970 (in the case of Title VI)[3] and 1992 (in the case of Title II).[4] Both sets of regulations **have always prohibited – and prohibit to this day – actions that "have the effect of" discriminating** against protected individuals,[5] otherwise known as "disparate impact" discrimination.

Let me say that again: **disparate impact discrimination on the basis of race in providing federally-funded transportation services has been illegal since 1970 and remains so today**. A Supreme Court decision in 2001 made it impossible to enforce *in court* a claim for disparate impact race discrimination under

Title VI. The prohibition remains in the regulations, RTD remains bound by these regulations, and these regulations can still be enforced by the United States Department of Transportation.

Furthermore, if the Department of Transportation finds a violation of the Title VI regulations that it cannot resolve informally, "compliance . . . may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance."[6] So the only current enforcement mechanism for disparate impact race discrimination has the potential for dire consequences, including withdrawal of federal dollars from RTD.

Title II of the ADA and its regulations remain enforceable in federal court; however, as RTD has experienced, this process can be time-consuming and expensive for everyone involved: for riders who want to ensure compliance with the law; and for RTD itself.

Section 2 of SB 151 would permit both Title VI and Title II claims to be brought in Colorado state court, a more efficient, less expensive, and – for RTD – a less risky forum than either federal court or the regulatory agency that has the power to cut the purse strings.

Public transportation is essential for disabled people and communities of color. Members of these communities should be able to secure equal treatment without the expense of a federal lawsuit or the systemic risk to RTD that an administrative complaint presents.

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[1] 42 U.S.C. § 2000e *et seq.*
[2] 42 U.S.C. § 12131 *et seq.*
[3] 35 Fed. Reg. 10080 (June 18, 1970).
[4] 56 Fed. Reg. 35716 (July 26, 1991).
[5] 49 C.F.R. § 21.5(b)(2) (Title VI); 28 C.F.R. § 35.130(b)(4) (Title II).
[6] 49 C.F.R. § 21.13(a).