



THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

September 18, 2025

The Honorable Wes Moore
Governor of Maryland
Annapolis, MD 21401

Dear Governor Moore:

I want to thank you for meeting with me on March 18, 2025 to discuss Maryland's many transportation needs, including the urgent need to replace the vital Francis Scott Key (FSK) Bridge in Baltimore. As you know, it is a high priority of the Trump Administration to build big beautiful new roads and bridges that enable people and products to move faster and more efficiently, thereby supporting economic growth and prosperity for America. We want the replacement of the FSK Bridge to be a model of how to build quickly and cost effectively.

The U.S. Department of Transportation (DOT) remains committed to continuing collaborative work with the Maryland Department of Transportation (MDOT) to ensure all concerns related to the replacement of the FSK Bridge are fully addressed. This includes a shared focus on effectively managing and monitoring both estimated and actual project costs, scope, and schedule; using Federal funds responsibly; and prioritizing the core project elements critical for success. Central to this commitment it is imperative to maintain the traffic capacity needs of the new bridge. Above all, our intention is to deliver a project that not only meets but exceeds the expectations of the traveling public. To do that, I would like to discuss the plan to reconstruct the FSK Bridge, including the latest estimates of the overall cost and schedule for completion. Since this project will be fully funded by the Emergency Relief Program, DOT will provide oversight to ensure the funds are used appropriately.

Congress granted the Secretary of Transportation important authorities to conduct critical oversight to ensure that Federal highway funds are properly managed, and I take this authority seriously. It is my role to guarantee that federally funded projects benefit the entire Nation through every dollar spent. When a State partners with DOT on major infrastructure projects like the FSK Bridge, it partners with the American people.

It is with this oversight role in mind that I would like to continue our discussion on how DOT can support MDOT in its delivery of critical infrastructure on time, on budget, and in compliance with the law. I am particularly interested in how the State of Maryland plans to achieve key delivery metrics for the FSK Bridge replacement project, including MDOT's estimates of a \$1.8 billion project cost and the 2028 expected completion date.

One additional area of specific concern relates to whether Maryland intends to award contracts for the FSK Bridge project in a manner that relies on the race or sex of contractors. Any reliance on race- or sex-conscious factors in contracting decisions could introduce significant legal vulnerabilities and inefficiencies in the management of the project. As outlined in my "Follow the Law" letter of April 25, 2025, addressed to all recipients of DOT funding, the Equal Protection principles of the U.S. Constitution prohibit State and Federal governmental entities from discriminating on the basis of protected characteristics, including race and sex.

Discrimination based on race is, has been, and will continue to be unlawful, except in rare circumstances. See *Students for Fair Admissions, Inc. v. Harvard (SFFA)*, 600 U.S. 181, 220-21 (2023); see also *Mid-America Milling Co. v. United States Department of Transportation*, Case No. 3:23-cv-00072. Similarly, sex-based classifications violate the Equal Protection Clause absent "exceedingly persuasive" justification. See *United States v. Virginia*, 518 U.S. 515, 533 (1996). These constitutional principles are reinforced by Titles VI and VII of the Civil Rights Act of 1964, (42 U.S.C. §§ 2000d, *et seq.*, & 2000e-2) and by the non-discrimination provisions of the Federal Aid Highway Act of 1973 (23 U.S.C. §§ 140, 324, *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681, *et seq.*).

DOT has determined that the race- and sex-based "presumptions" of disadvantage in DOT's Disadvantaged Business Enterprise (DBE) program are inconsistent with these principles, and it has asked a Federal district court to declare those presumptions unconstitutional. The Solicitor General issued a letter to the Honorable Mike Johnson, Speaker of the U.S. House of Representatives, on June 25, 2025, advising that the U.S. Department of Justice has determined that these aspects of the DBE program are unconstitutional and the Attorney General issued additional guidance to recipients of Federal funding regarding unlawful discrimination on July 29, 2025. DOT is preparing a rulemaking that would amend the DBE program to ensure that it is administered consistently with the U.S. Constitution. DOT intends to publish this rulemaking in the Federal Register in the near future.

I trust our collaboration on the FSK Bridge and other infrastructure projects of vital importance to Maryland and to all Americans will ensure that we chart a path forward to achieve our shared goals, while ensuring compliance with the Constitution and Federal law in the fulfillment of all project requirements, addressing and resolving in a mutually beneficial manner all potential risks that could prevent timely, cost-effective, and efficient project delivery.

I look forward to our next discussion. If I can provide further information or assistance, please reach out or contact Valeriya Remezova, FHWA Division Administrator, Maryland Division, at valeriya.remezova@dot.gov.

Sincerely,



Sean P. Duffy