

# 2024 LEGISLATIVE AGENDA AND REGULATORY PRIORITIES

Conference of Minority Transportation Officials

4121 Wilson Blvd, Suite 901,  
Arlington, VA 22203

[info@comto.org](mailto:info@comto.org)  
202-506-2917



COMTO champions equity in transportation, striving to maximize opportunities and participation for minority individuals, veterans, people with disabilities, and certified MWDBE businesses. The minority transportation community has faced systemic barriers, historical inequities, lack of diverse leadership representation, unconscious biases, data gaps in discrimination, lack of accountability, and limited governmental resources. Overcoming these challenges requires a multi-faceted approach, including policy changes, targeted investments, workforce development, community engagement, and a commitment to equity at all levels of transportation organizations:

**Workforce Development:**

- Identify skill gaps, training, and retraining needs for existing workers, particularly underserved groups.
- Provide local hiring/training incentives to promote workforce diversity.
- Expand, clarify, and educate members on programs like Justice40 to create job opportunities and workforce development programs benefiting minority populations.
- Ensure transparency and accountability in IIJA workforce development programs.
- Include underserved groups on the Intelligent Transportation Systems advisory committee.
- Provide local hiring/training incentives in solicitations that promote workforce diversity.

**Innovation/New Technologies/AI:**

- Include minority communities and disadvantaged businesses in scaling up and making electric vehicle adoption more affordable nationwide.
- Mandate design and construction contracting opportunities for small, minority, women, and veteran-owned businesses in federal EV and charging station funding.
- Promote equitable deployment of EV infrastructure and unmanned aircraft systems.
- Embrace and encourage minority use of AI technologies related to transportation, such as robotaxis, which can reduce manpower needs and increase employment.
- Mandate design and construction opportunities for battery recycling and solar panel facility creation.
- Mandate contract design and construction opportunities, including prime contracts, for AMTRAK, Brightline, and other HSR/Commuter rail projects.
- Establish clear performance targets and accountability measures.

**Disadvantaged Business Initiatives:**

- Monitor and hold agencies accountable for implementing the newly approved DBE/ACDBE program modifications; establish clear performance targets, measures, and accountability mechanisms.
- Encourage participation in Equity in Infrastructure to increase contracts going to Historically Underutilized Businesses (HUBs).
- Promote adherence to NET30 payment to subcontractors.
- Establish DBE competitive set-asides projects at USDOT similar to the new 8(a) program model.
- Unbundle mega-projects for prime design, engineering, and construction contracting opportunities.
- Encourage agencies and prime contractors to provide insurance/bonding solutions and explore alternatives.
- Increase federal DBE goals beyond the decades-old 10% and implement consistent DBE size standards across government agencies.
- Promote facilitation of Contractors Licensing protocols for DBE/MBE contractors.
- Pursue an FRA DBE program that will withstand legal challenges.

**Mobility & Accessibility:**

- Highlight accessibility needs of the disability community.
- Educate on the benefits of hiring those with disabilities.
- Advocate for enforcing ADA requirements and incentivizing accommodations beyond ADA.
- Encourage accessibility standards and regulations in the design, construction, and operation of transportation infrastructure and vehicles and engage with disability advocacy groups to improve accessibility in transportation.
- Encourage training transportation staff to assist passengers with disabilities and be sensitive to their needs.

**Climate Change, Energy & Environment:** COMTO supports the Justice40 Initiative, which aims to:

- Address environmental justice, particularly transportation emissions impacting minority neighborhoods.
- Enhance mobility and connectivity by linking isolated or underserved minority communities to the broader transportation network.
- Promote equitable transportation planning.

It is important to note that promoting diversity, equity, and inclusion in transportation remains crucial for ensuring fair access, opportunities, and representation for underserved communities and marginalized groups. However, organizations may need to carefully review and potentially modify their Diversity/Equity/Inclusion (DEI) policies and programs to comply with evolving legal interpretations and rulings:

### **Challenges to DBE/MBE Programs:**

There have been several recent legal challenges to minority business programs and race-conscious policies aimed at promoting diversity and inclusion in contracting and entrepreneurship. These recent court rulings and lawsuits aim to eliminate race-based presumptions in determining eligibility for minority business programs, emboldened by the Supreme Court's affirmative action decision. They argue that such presumptions violate equal protection principles and discriminate against non-minority individuals and businesses. A few notable cases:

#### **1. Nuziard v. Minority Business Development Agency (MBDA)**

- In March 2024, a federal judge in Texas issued a nationwide permanent injunction barring the Minority Business Development Agency (MBDA) from considering race or ethnicity in determining eligibility for its programs. The court ruled that the MBDA's presumption of social disadvantage for certain racial minority groups was unconstitutional and violated equal protection principles.
- The court struck down the MBDA's "rebuttable presumption" that African Americans, Hispanic Americans, Native Americans, and other minority groups are socially disadvantaged, finding it was not narrowly tailored to achieve a compelling government interest. This follows the precedent set by the Supreme Court's ruling in *Students for Fair Admissions v. Harvard*, which restricted race-conscious admissions policies.

#### **2. Ultima Services Corp. v. U.S. Department of Agriculture**

- In July 2023, a federal district court in Tennessee ruled that the Small Business Administration (SBA) could no longer use a "rebuttable presumption" process to certify companies as socially disadvantaged for the 8(a) program based solely on the owners' race or ethnicity.
- Importantly, the SBA now requires all 8(a) applicants, regardless of race or ethnicity, to submit a "Social Disadvantage Narrative" demonstrating how they have personally faced discrimination impacting their entry into or advancement in the business world.

#### **3. Lawsuit against Progressive's grant program for Black entrepreneurs**

- A case challenging Progressive's grant program for Black entrepreneurs under Section 1981 is ongoing. The Equal Employment Opportunity Commission (EEOC) filed an amicus brief arguing that such private-sector affirmative action plans should be assessed using a "reasonableness" standard, rather than strict scrutiny.

#### **Other challenges include:**

- A federal lawsuit against the Small Business Administration's minority preference program, filed by a service-disabled veteran alleging discrimination.
- Lawsuits by conservative legal groups like Pacific Legal Foundation and Wisconsin Institute for Law & Liberty targeting race-based presumptions in federal, state, and local minority business programs.
- Challenges by contractor associations against the constitutionality of certain state/local minority business enterprise (MBE) programs, such as in Shelby County, Tennessee.

These cases aim to set legal precedents against race-conscious policies and minority business programs, emboldened by the Supreme Court's recent affirmative action rulings. They argue that such programs violate equal protection and discriminate against non-minority individuals and businesses. While promoting diversity remains important, these legal challenges could significantly impact the eligibility criteria, application processes, and overall implementation of minority business programs across various levels of government.

#### **Successful DBE Programs:**

COMTO is pleased to announce that In April, the USDOT finalized new rules governing and reforming the ACDBE/DBE program to which COMTO contributed significantly in providing comments and put. A summary of the final rules can be found here: <https://www.transportation.gov/dbe-rulemaking/summarypage>. It is significant to note that the USDOT Disadvantaged Business Enterprise (DBE) program for transportation contracts has survived recent legal challenges thus far.

**The key points regarding the DBE programs that have survived court scrutiny:**

- In the case *Dunnet Bay Construction Co. v. Borggren*, the Seventh Circuit Court of Appeals upheld the federal DBE program and its implementation by the Illinois Department of Transportation.
- While the court found some issues "troubling", such as the burden on non-DBEs and overconcentration analysis, it ultimately ruled that a state implementing the federal DBE program "is insulated from [narrow tailoring scrutiny] absent a showing that the state exceeded its federal authority."
- This suggests that as long as states follow the federal guidelines for the DBE program, courts are likely to uphold it as a valid exercise of Congress's authority.

**Recent Challenges to USDOT DBE Program:**

- A trucking business and a milling business sued the U.S. Department of Transportation in 2022, alleging the DBE program discriminates against white-owned businesses by presuming certain racial groups are socially and economically disadvantaged.
- The lawsuit seeks to end the DBE program in light of the Supreme Court's ruling on affirmative action in college admissions, arguing the "rebuttable presumption" of disadvantage is unconstitutional. "Rebuttable Presumption" is a legal concept where a fact is presumed to be true unless proven otherwise.
- However, the Seventh Circuit's ruling in *Dunnet Bay* suggests the federal DBE program may continue to be upheld by courts if implemented properly by states and localities.

While facing ongoing legal challenges, the DBE program for federally-funded transportation contracts appear to have withstood scrutiny so far, provided states agencies carefully follow federal guidelines and requirements in its implementation. Examples of specific successful agency DBE programs include the New York MTA, the Port Authority of New York/New Jersey and the Dallas Area Rapid Transit (DART), to name just a few.