

**TESTIMONY
OF STEVEN A. DIAZ**

**BEFORE
SUBCOMMITTEE ON ENERGY POLICY,
NATURAL RESOURCES AND REGULATORY
AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

**HEARING ON
PRIVATE SECTOR PARTICIPATION
IN GROUND TRANSPORTATION**

WASHINGTON, D.C.

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Mr. Chairman and Members of the Subcommittee:

I am Steven Diaz, an attorney in private practice in Washington, D.C. I served as Chief Counsel of the Federal Transit Administration from 1989-1993 and as a member of the U.S. Architectural and Transportation Barriers Compliance Board from 1985-1989. I also served as Deputy City Attorney of the City and County of San Francisco, California from 1974-1985 and as the founding Chairman of the Transit and Intermodal Transportation Law Committee of the Transportation Research Board. I have spent half of my thirty years of practice in public service and half in private practice. I have spent all of the past thirty years practicing in the area of mass transportation law. I am honored by the Subcommittee's request for my testimony this morning.

My testimony today represents my own personal opinion of long-standing and is addressed to the issue of private sector participation in the mass transportation programs of the Federal government. Particularly, I will address the rescission by the Clinton Administration of the Private Enterprise Policy of the Federal Transit Administration which was adopted in the Reagan Administration. I have separately submitted to the Subcommittee a number of supplemental documents in support of my testimony.

It is beyond controversy to note that the need for mass transportation infrastructure in the United States continues to grow exponentially and far in excess of any reasonable expectation of public appropriations to support it. That is the reason that in 1991 a deeply bi-partisan majority passed landmark Intermodal Surface Transportation Efficiency Act encouraging the leveraging of infrastructure appropriations with private investment.

As the single largest source of mass transportation investment, the Federal government plays a central role in encouraging, leading and facilitating expenditures and policies used around the country to implement mass transportation programs. From the beginning of the Federal mass transit program, Congress has demanded that federally appropriated funds be used to increase the mass transportation available to our citizens, not merely to replace private ownership with public ownership, and not to duplicate or undermine existing transportation facilities and activities offered by private investment.

The principle of leveraging public investment with private capital underlies the Charter Regulation and the School Bus Regulation of the Federal Transit Administration. It is the same principle which brought into being the phrase “to the maximum extent feasible” with regard to the use of private operators of mass transportation services in the Federal Transit Act.

Leveraging infrastructure investment is a matter of getting and keeping America moving, a practical matter, not a matter of ideology or partisan purpose. Both great Republicans and great Democrats have forged the policy of leveraging public with private efforts in the field of mass transportation. As the supplemental materials I have supplied to the Subcommittee demonstrate, the pursuit of the maximum use of private operators and other private resources in mass transportation long has been supported by such leaders as Senators George Mitchell, Bob Dole, Mark Hatfield, Bob Graham of Florida and the late Daniel Patrick Moynihan of New York.

Indeed, David Osborne, coauthor of the book *Reinventing Government*, who was one of the principal advisors to the Administration of President Bill Clinton, specifically praised the FTA Office of Private Sector Initiatives and the agency’s private sector

guidance as a model for the effective management of government-assisted transit programs. Mr. Osborne implored the Federal Transit Administration not to rescind its private sector guidance.

This practical approach is shared by America's elected state and local leaders as well. Public sector leaders such as Mayor Kurt Schmoke of Baltimore and Mayor Frank Jordan of San Francisco, Governor Lawton Chiles of Florida, and Governor William Donald Schaffer of Maryland, among others, specifically endorsed the policy prior to its rescission.

The strong positive effect that private sector-oriented transit programming has traditionally had in minority communities is underscored by the statistics cited by former Congressman Alan Wheat in the letter he wrote to try to persuade the FTA not to abandon its private sector guidance.

Similarly, the Eastern Paralyzed Veterans Association noted its concern for the negative impact upon the disability community of a Federal withdrawal from a strong private sector participation policy.

The Office of Advocacy of the Small Business Administration, one of the Congress' unique watchdog agencies, also admonished the Department of Transportation not to abandon the private enterprise guidance. In a scholarly review of the sources for the guidance and a reasoned analysis of its impact, the Office of Advocacy spoke with candor and urgency in support of the policy regulations.

Each of these writers had a different emphasis in supporting a strong Federal policy for the utilization of private sector operators, but the wide array of commentators and their separate reasons are themselves indications of the scope and significance of the

contribution that private operators of mass transportation services have made. There is every reason to encourage such participation, and indeed to strengthen this important and vital element of our national transportation infrastructure which has always been a mandatory (if not always enforced) feature of the Federal transit program.

You have heard from a number of witnesses who have given a good overview of why reform is needed. A Federal mandate for the utilization of private sector transit operators, not in competition with public agencies, but as a natural community resource to assure more and more varied sources of mass transportation services will help meet the nations' urgent transit requirements.

Although it is sometimes said that the Federal Transit Administration is "not a regulatory agency" it defies common sense to say that billions of dollars of Federally appropriated funds are simply given out with no concomitant Federal fiduciary obligation. Money is appropriated by Congress for specific purposes -- and upon specified conditions -- hence the 18 existing FTA regulations already in the Code of Federal Regulations. If Congress is serious about encouraging Federal transit infrastructure investment with private equity, it must require an implementing regulation to that effect. This is especially true in light of the enforcement experience we have without such a regulation as demonstrated by the case studies which have been presented to the Subcommittee.

There can be no reasonable objection to measuring the efficiency and economy of alternative service models if our common objective is more and better transit.

Competition, the engine of our economy, is necessarily the best way to challenge and encourage the development and implementation of the most efficient and economic mass

transportation possible. After all, in management in the public sector, as in the private sector, it is always a question of getting the most “bang for the buck.” The Private Enterprise Policy was an invaluable fiscal tool which served the government and the people very well.

Mr. Chairman, I thank the Subcommittee for its interest in my views and would be pleased to respond to any questions you may have for me.