

---

---

IN THE  
**Supreme Court of Virginia**

RECORD NOS. 130954, 130955

ELIZABETH RIVER CROSSINGS OPCO, LLC,

*Appellant,*

v.

DANNY MEEKS, *et al.*,

*Appellees.*

VIRGINIA DEPARTMENT OF TRANSPORTATION,

*Appellant,*

v.

DANNY MEEKS, *et al.*,

*Appellees.*

**BRIEF OF *AMICI CURIAE***  
**NATIONAL CONFERENCE OF STATE LEGISLATURES**  
**AND THE AMERICAN ROAD & TRANSPORTATION**  
**BUILDERS ASSOCIATION**

James J. O’Keeffe, IV, Esq. (VSB 48620)  
Abigail E. Murchison (VSB 80728)  
GENTRY LOCKE RAKES & MOORE  
SunTrust Plaza  
10 Franklin Road S.E., Suite 800  
Roanoke, VA 24011  
(540) 983-9300  
(540) 983-9400 (Fax)  
okeeffe@gentrylocke.com  
murchison@gentrylocke.com

*Counsel for Appellees*

## Table of Contents

Table of Authorities.....	ii
Interests of the Amici Curiae.....	1
Nature of the Case and Material Proceedings Below.....	2
Statement of Facts.....	2
Assignments of Error.....	2
Argument.....	3
1. The standard of review is de novo.....	4
2. Across the country and in Virginia, deficient transportation infrastructure poses real problems for citizens and businesses—but fixing it would require a massive capital investment in the face of a sour economy and a challenging political climate.....	4
3. Public-private partnerships provide state governments with a workable solution to the infrastructure-investment dilemma.....	8
4. Virginia is a national leader in the use of public-private partnerships, to the great benefit of its citizens.....	11
5. The trial court’s opinion endangers the Project, which the political branches have determined to be critical to the safety and economy of the Hampton Roads region.....	14
6. The trial court’s ruling threatens Virginia’s transportation infrastructure as a whole.....	16
Conclusion.....	22
Certificate.....	23

## Table of Authorities

### Cases

<i>Corr v. Metro. Wash. Airports Auth.</i> , 800 F. Supp. 2d 743 (E.D. Va. 2011).....	21
<i>Montgomery Cnty. v. Va. Dep't of Rail &amp; Public Transp.</i> , 282 Va. 422, 719 S.E.2d 294 (2011).....	4
<i>Murphy v. Mass. Turnpike Auth.</i> , 462 Mass. 701, 971 N.E.2d 231 (2012) .....	20
<i>Peninsula Neighborhood Ass'n v. Wash. State Dep't of Transp.</i> , 142 Wash. 2d 328, 12 P.3d 134 (2000) .....	20-21

### Constitutional Provisions

Va. Const. art VI, § 2 .....	4
------------------------------	---

### Statutes

640 Ill. Comp. Stat. 5/5 (2011) .....	19
La. Rev. Stat. Ann. § 48.2072 (2006).....	20
Md. Code Ann., Public-Private Partnership Agreements, § 10-A-401 (West 2013) .....	19, 20
Va. Code § 17.1-302.....	4
Va. Code § 56-557.....	11
Va. Code § 56-558.....	11
Va. Code § 56-559.....	11
Va. Code § 56-560.....	11

Va. Code § 56-565..... 11

**Other**

95 Express Lanes, *Learn More About the Express Lanes: Special Update for Overlook Residents*,  
[http://www.95expresslanes.com/uploads/1000/27-Final\\_Update\\_to\\_Overlook\\_Residents.pdf](http://www.95expresslanes.com/uploads/1000/27-Final_Update_to_Overlook_Residents.pdf);  
<http://www.95expresslanes.com/partnership>,  
(last visited July 17, 2013) ..... 18

495 Express Lanes,  
<http://www.495expresslanes.com/project-background>;  
<http://www.495expresslanes.com/pricing>,  
(last visited July 17, 2013) ..... 18

ARTBA, *Highways Needing Resurfacing or Reconstruction, and Deficient Bridges* (February 28, 2013) ..... 5

ARTBA, *2012 U.S. Transportation Construction Industry Profile*,  
[http://www.transportationcreatesjobs.org/Economic\\_Profile.pdf](http://www.transportationcreatesjobs.org/Economic_Profile.pdf)..... 6

Jonathan I. Levy, et al., *Evaluation of the Public Health Impacts of Traffic Congestion: A Health Risk Assessment, Environmental Health* (Oct. 27, 2010),  
[www.ehjournal.net/content/9/1/65](http://www.ehjournal.net/content/9/1/65)..... 7

Klaus Schwab, World Economic Forum, *The Global Competitiveness Report 2012-2013*,  
[http://www3@weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13](http://www3@weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13)..... 5

NCSL, *Public-Private Partnerships for Transportation: A Toolkit for Legislators* (Dec. 9. 2010),  
<http://www.ncsl.org/documents/transportation/PPPTOOLKIT.pdf> ..... passim

NCSL, *Public-Private Partnerships for Transportation: A Toolkit for Legislators*, Jan. 2013 Updates & Corrections,  
<http://www.ncsl.org/documents/transporration/>

PPPTOOLKIT-update-Jan2013.pdf ..... 12

Pocahontas 895,  
[http://www.pocahontas895.com/about\\_pocahontas\\_895.html](http://www.pocahontas895.com/about_pocahontas_895.html);  
[http://www.pocahontas895.com/about\\_pocahontas\\_895./public\\_private\\_partnership.html](http://www.pocahontas895.com/about_pocahontas_895./public_private_partnership.html);  
[http://www.pocahontas895.com/using\\_pocahontas\\_895/toll\\_prices.html](http://www.pocahontas895.com/using_pocahontas_895/toll_prices.html)  
(last visited July 17, 2013) ..... 17

Press Release, *Governor McDonnell Ceremonially Signs Virginia's Historic Bi-Partisan Transportation Funding Bill* (May 13, 2013),  
<http://www.governor.virginia.gov/news/viewRelease.cfm?id+1809> .... 8

Public-Private Transportation Act (PPTA) Working Group Minutes (Dec. 10, 2012),  
<http://www.vappta.org/resources/PPTA%20Working%20Group%2012%2010%202012%20Minutes.pdf> ..... 6, 7, 13

Richmond Metropolitan Authority,  
<http://www.rmaonline.org.faq.html>  
(last visited July 17, 2013) ..... 18, 19

Sara Forden, *Norfolk Tunnel Plan Thrown Out by Virginia Judge*, Bloomberg Businessweek (May 3, 2013),  
<http://www.bloomberg.com/news/2013-05-02/virginia-judge-throws-out-toll-plan-for-norfolk-project.html> ..... 15

Sean T. Connaughton, Secretary of Transportation, *Update to the House Appropriations Committee, Downtown Tunnel/ Midtown Tunnel/MLK Extension Project* (June 17, 2013),  
<http://hac/virginia.gov/Committee/files/2013/06-17-13/Transporration.pdf> ..... 14, 15, 17

United States Dep't of Transp., *2010 Status of the Nation's Highways, Bridges, & Transit: Conditions & Performance, Executive Summary*,  
<http://www.fhwa.dot.gov/policy/2010cpr/execcdsum.htm#c8h> ..... 5

Virginia Office of Transportation Public-Private Partnerships,

*Legislative Fact Sheet* (Jan. 9, 2013),  
[http://www.vappta.org/resources/P3%20Legislative%  
20Fact%20Sheets%20012513%20Version%204.pdf](http://www.vappta.org/resources/P3%20Legislative%20Fact%20Sheets%20012513%20Version%204.pdf) ..... 7, 12, 13, 17

Virginia Office of Transportation Public-Private Partnerships,  
Projects, <http://www.vappta.org/projects.asp>  
(last visited July 17, 2013) ..... 12, 16

The National Conference of State Legislatures (“NCSL”) and the American Road & Transportation Builders Association (“ARTBA”) submit this brief as Amici Curiae in support of the Virginia Department of Transportation and Elizabeth River Crossings OpCo, LLC.

The Circuit Court’s holding below is unprecedented and wrong for the reasons Appellants explain in their briefs. The Amici will defer to the Appellants’ legal analysis and focus instead on the practical effects of the trial court’s ruling, as that is where their interests lie.

### **Interests of the Amici Curiae**

NCSL is a bipartisan organization that serves the legislators and staffs of the nation’s fifty states, its commonwealths, and territories. NCSL provides research, technical assistance, and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL advocates for the interests of state governments before Congress and federal agencies, and regularly submits amicus briefs in cases, like this one, that raise issues of vital state concern.

Typically, however, NCSL files amicus briefs only in cases proceeding in federal court. It makes an exception here because of the importance of the issues involved and Virginia’s status as a national leader in the use of public-private partnerships.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply, finance, and construct transportation projects throughout the country. ARTBA's industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs. For the past twenty-five years, ARTBA and its members have been heavily involved in public-private partnership transportation projects throughout the country. ARTBA members participate in both the design and construction of public-private partnership projects in multiple states, including Virginia.

### **Nature of the Case and Material Proceedings Below**

The Amici adopt the statements of the case in the Appellants' briefs.

### **Statement of Facts**

The Amici adopt the statements of facts in the Appellants' briefs.

### **Assignments of Error**

This appeal involves four assignments of error from VDOT, three assignments of error from Elizabeth River, and two assignments of cross-error from the Appellees. The Amici's arguments relate to all nine assignments of error and cross-error.



## Argument

Public-private partnerships in general, and Virginia's Public-Private Transportation Act of 1995 in particular, provide precisely the sort of tools that states need to meet the transportation-infrastructure challenges that we face in the twenty-first century. They enable projects necessary to relieve traffic congestion, protect the safety of the travelling public, and strengthen our global competitiveness. And they can efficiently allocate project risks and costs between the private sector and the Commonwealth—and by extension its taxpayers.

The decision below invalidates a key feature of the Act by finding that it gives “unfettered power to [VDOT] to set toll rates,” unconstitutionally delegating the General Assembly's legislative authority. JA 1497. Equally problematic, the trial court held that the General Assembly had combined project segments “solely for revenue producing purposes,” transforming VDOT tolls into an unconstitutional tax by an unelected body. JA 1496-97. These holdings imperil not only the Midtown Tunnel/Downtown Tunnel/MLK Extension project (the “Project”)—a critical \$2 billion transportation facility—but the continued viability of public-private transportation projects in the Commonwealth.

## **1. The standard of review is de novo.**

The trial court's summary-judgment ruling involves a question of law that this Court will review de novo. *Montgomery Cnty. v. Va. Dep't of Rail & Public Transp.*, 282 Va. 422, 435, 719 S.E.2d 294, 300 (2011). The General Assembly's actions are presumptively constitutional, and this Court will resolve any doubt in favor of the Act. *Id.* There is "no stronger presumption known to the law." *Id.*

Consistent with this presumption, no law may be declared unconstitutional under the Constitution of Virginia "except on the concurrence of at least a majority of all justices of the Supreme Court." Va. Const. art VI, § 2. The votes of senior justices do not count toward this majority requirement. Va. Code § 17.1-302(F).

## **2. Across the country and in Virginia, deficient transportation infrastructure poses real problems for citizens and businesses—but fixing it would require a massive capital investment in the face of a sour economy and a challenging political climate.**

Our transportation infrastructure is reaching a crisis point. Over 160,000 miles of major highways that qualify for federal aid are in need of resurfacing or reconstruction, according to ARTBA analysis of data from the Federal Highway Administration. A well-developed infrastructure is critical to economic growth and our fundamental ability to bring goods to

market<sup>1</sup>—to say nothing of safety. To cite just one example, 23.2 percent of the nation’s bridges are either structurally deficient or functionally obsolete.<sup>2</sup>

Fixing these problems would require a massive cash infusion. The United States Department of Transportation estimates that a combined investment level of \$170 billion annually is necessary to make all economically justifiable improvements to the national highway and bridge system.<sup>3</sup> Currently, however, our investment levels do not even meet the minimum level needed to maintain present conditions, which puts our economic competitiveness at risk. Our federal, state, and local governments combined spend only \$91 billion annually on capital investments.<sup>4</sup>

This issue goes beyond even safety and competitiveness. Highway and bridge construction activity is an engine of economic growth for the

---

<sup>1</sup> Klaus Schwab, World Economic Forum, *The Global Competitiveness Report 2012-13*, at 5, available at [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf).

<sup>2</sup> ARTBA, *Highways Needing Resurfacing or Reconstruction, and Deficient Bridges* (February 28, 2013), attached as Exhibit A.

<sup>3</sup> United States Dep’t of Transp., *2010 Status of the Nation’s Highways, Bridges, & Transit: Conditions & Performance, Executive Summary, Chapter 8*, available at <http://www.fhwa.dot.gov/policy/2010cpr/execsum.htm#c8h>.

<sup>4</sup> *Id.*

national economy. The transportation-construction industry supports the equivalent of nearly 3.5 million American jobs and over \$354 billion in total economic activity.<sup>5</sup> Transportation-construction activity generates \$135.2 billion annually in direct and induced wages, contributing an estimated \$1.3 billion in each year in state payroll tax revenue and an additional \$10.3 billion in federal payroll taxes.<sup>6</sup>

The situation in Virginia largely mirrors the national picture. The Commonwealth supports the United States' third-largest highway system, including 1,118 miles of interstate highways, 8,111 miles of primary roads, and 43,405 miles of secondary roads.<sup>7</sup> This infrastructure faces myriad challenges, including the need for extensive rehabilitation to improve safety and efficiency, as well as crippling traffic congestion in population centers like Northern Virginia and Hampton Roads.<sup>8</sup> While "congestion" may sound like a mere inconvenience, it is anything but: Virginia experiences at least

---

<sup>5</sup> ARTBA, *2012 U.S. Transportation Construction Industry Profile*, at 7, available at [http://www.transportationcreatesjobs.org/Economic\\_Profile.pdf](http://www.transportationcreatesjobs.org/Economic_Profile.pdf).

<sup>6</sup> *Id.* at 9.

<sup>7</sup> See Public-Private Transportation Act (PPTA) Working Group Minutes, Attachment A at 6 (Dec. 10, 2012), available at <http://www.vappta.org/resources/PPTA%20Working%20Group%2012%2010%202012%20Minutes.pdf> (hereinafter PPTA Minutes).

<sup>8</sup> See *id.*

\$1 billion in total annual congestion costs.<sup>9</sup> VDOT estimates that Virginia’s total congestion cost over the 28-year period from 2013 to 2040 in the urban crescent alone will approach \$77 billion, resulting from 5.6 billion hours of delay.<sup>10</sup> In addition to these delay costs, congestion poses a public safety risk. It directly endangers drivers’ lives, delays first responders in the event of an emergency, and carries negative implications for the health of the general public.<sup>11</sup>

At the same time, limited gas tax revenues and uncertain federal funding have left VDOT with insufficient resources to solve these problems on its own through traditional methods.<sup>12</sup> In May 2013, Virginia adopted a bipartisan transportation bill, HB 2313, that should ameliorate some of these problems going forward—but as the Governor’s press release announcing the bill’s signing noted, it followed “nearly three decades of inaction on the critical challenges facing transportation funding in

---

<sup>9</sup> See Virginia Office of Transportation Public-Private Partnerships, *Legislative Fact Sheet*, at 7 (Jan. 9, 2013), available at <http://www.vappta.org/resources/P3%20Legislative%20Fact%20Sheets%20012513%20Version%204.pdf> (hereinafter Fact Sheet).

<sup>10</sup> *Id.*

<sup>11</sup> See generally Jonathan I. Levy *et al.*, *Evaluation of the Public Health Impacts of Traffic Congestion: A Health Risk Assessment*, Environmental Health (Oct. 27, 2010), available at [www.ehjournal.net/content/9/1/65](http://www.ehjournal.net/content/9/1/65).

<sup>12</sup> PPTA Minutes, Attachment A, at 6.

Virginia....”<sup>13</sup> During that time, alternative funding mechanisms were vitally important.

**3. Public-private partnerships provide state governments with a workable solution to the infrastructure-investment dilemma.**

Against this backdrop, as state governments have worked to meet massive transportation infrastructure needs with stagnant tax revenues, they have found it increasingly necessary to leverage their limited resources through alternative project financing arrangements.

One such arrangement is the public-private partnership. In its most basic terms, a public-private partnership is an agreement that lets a private company take on a larger role in an infrastructure project than was traditionally possible, while keeping the public sector ultimately accountable for the project and the overall service to the public.<sup>14</sup>

Numerous features of the public-private partnership structure make it attractive to state governments tackling major projects. For example,

---

<sup>13</sup> Press Release, *Governor McDonnell Ceremonially Signs Virginia's Historic Bi-Partisan Transportation Funding Bill* (May 13, 2013), available at <http://www.governor.virginia.gov/news/viewRelease.cfm?id=1809>. The adoption of HB 2313 shows how seriously the political branches take the problem of transportation infrastructure. It is also another example of the political will and foresight that led Virginia to adopt the 1995 Act in the first place.

<sup>14</sup> NCSL, *Public-Private Partnerships for Transportation: A Toolkit for Legislators*, at 1 (Dec. 9, 2010), available at <http://www.ncsl.org/documents/transportation/PPPTOOLKIT.pdf> (hereinafter Toolkit).

public-private partnerships allow public- and private-sector partners to allocate risk efficiently among themselves. In many traditional transportation projects, the public sector—and by extension the taxpayers—bears *all* of the risk.<sup>15</sup> Public-private partnerships, by contrast, allow the partners to allocate risk efficiently in connection with their specific responsibilities under the project.<sup>16</sup> When a private-sector partner like Elizabeth River assumes a risk, it becomes responsible for either solving potential problems that might arise in that phase of the project or accepting the financial losses.<sup>17</sup>

Here, for example, the Commonwealth will retain ownership of the Project's facilities. Elizabeth River's interest is limited to a 58-year permit to construct, maintain, and operate them. JA 306-08. Elizabeth River assumes the "risk of delivering the project on a performance-based, fixed-price, fixed date contract." JA 282, 530; *see* JA 309.

Allocating risk to the party best able to manage it has the added benefit of making it less likely that each individual risk will materialize in the first place, thereby reducing the overall project risk.<sup>18</sup> Properly apportioning

---

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 10.

risk can also result in significant project cost and time savings compared with other procurement methods.<sup>19</sup>

Public-private partnerships are attractive for another reason: They allow governments access to private-sector money that would not otherwise be available for public-transportation projects.<sup>20</sup> By facilitating access to otherwise unavailable private-sector capital, public-private partnerships can pursue projects that otherwise might have been delayed or scrapped because of fiscal constraints.<sup>21</sup> The benefits to citizens can be enormous. By one estimate, more than \$180 billion in private capital was available for infrastructure investment in December 2010.<sup>22</sup> Additional financing vehicles like Grant Anticipation Revenue Vehicles (GARVEEs)—which VDOT used here—help stretch taxpayer dollars further by spreading the public sector’s investment in a project over an extended period of time.<sup>23</sup>

Of course, public-private partnerships cannot create money out of thin air. If a private-sector partner provides financing, it will need to cover its costs and also make a return on its investment – either from a revenue

---

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*



stream generated by the facility, like tolls, or from public-sector compensation.<sup>24</sup> Otherwise, the partnership model simply will not work.

#### **4. Virginia is a national leader in the use of public-private partnerships, to the great benefit of its citizens.**

Virginia has been a national leader in the use of public-private partnerships for infrastructure projects. In 1995, after concluding that existing procurement methods were inadequate to meet the Commonwealth's transportation needs, the General Assembly enacted the Public-Private Transportation Act to enable public-private partnerships to develop and operate transportation facilities. Va. Code § 56-558(A)(1), (2). The Act authorizes a "responsible public entity," a governmental agency like VDOT, to enter into a "comprehensive agreement" with a private entity to build and operate a qualifying project. *Id.* §§ 56-559 through 56-560. The private entity may be authorized to impose "user fees," *id.* § 56-565(A), such as "rates, tolls, fees, or other charges," *id.* § 56-557. But the agency may not approve a comprehensive agreement without undertaking an extensive investigation and without making the detailed findings required by Code § 56-560(C).

When it passed the Act in 1995, Virginia was one of the first states to enact legislation enabling public-private partnerships for transportation

---

<sup>24</sup> *Id.* at 5.

projects. By January 2013, thirty-three states and Puerto Rico had adopted laws authorizing public-private partnerships for transportation,<sup>25</sup> and through December 2010 more than \$46 billion had been invested in projects under those statutes.<sup>26</sup> Virginia's Act has become a national model because it includes appropriate safeguards to ensure that only necessary projects are funded, and that appropriate financial structures are crafted for each project.<sup>27</sup>

As a result, the Act has been effective in getting projects built and furthering the public's interest in transportation improvements while protecting public funds. Since 1995, Virginia citizens have benefited from development and implementation of \$5 billion in critical transportation projects statewide under the Act.<sup>28</sup> Five projects have been completed under the Act, seven are in construction, one is in procurement, and ten more are under consideration.<sup>29</sup> Some of these are truly substantial

---

<sup>25</sup> NCSL, *Public Private Partnerships for Transportation: A Toolkit for Legislators, Jan. 2013 Updates & Corrections*, at 1, available at <http://www.ncsl.org/documents/transportation/PPPTOOLKIT-update-Jan2013.pdf>.

<sup>26</sup> Toolkit at 1.

<sup>27</sup> See Fact Sheet at 3.

<sup>28</sup> Fact Sheet at 9.

<sup>29</sup> See Virginia Office of Transportation Public-Private Partnerships, *Projects*, <http://www.vappta.org/projects.asp> (last visited July 17, 2013). Many of these projects use tolls, like the already-completed 495 Express

undertakings. Construction of the 495 Express Lanes, for example, supported more than 16,000 jobs in Virginia and injected nearly \$3.5 billion into the Commonwealth's economy.<sup>30</sup> By one estimate, the project accounted for 20% of Fairfax County's total economic growth in 2009.<sup>31</sup>

The Act also has allowed Virginia to do more with limited taxpayer funds. For every dollar of public funds that Virginia invests in a project under the Act, it realizes \$6-\$7 dollars in private-sector investment.<sup>32</sup> While Virginia maintains ownership and oversight of these projects, the Act lets the Commonwealth shift risk to the private sector, protecting Virginia's taxpayers. By using private capital and privately backed debt, the Commonwealth avoids taking on increased debt, preserves bond capacity, and protects public credit ratings.<sup>33</sup>

And, of course, the Act enabled the Project, which is the culmination of decades of work to reduce congestion in this part of Hampton Roads. *E.g.*, JA 141-43. To date, the Project has created about 1,700 jobs.<sup>34</sup> When completed, it will save the average round-trip commuter 30 minutes a day.

---

Lanes on the Capital Beltway and the Route 895 Pocahontas Parkway.  
*See, e.g.*, Fact Sheet at 6.

<sup>30</sup> Fact Sheet at 4.

<sup>31</sup> *Id.* at 6.

<sup>32</sup> PPTA Minutes, Attachment A, at 14; Fact Sheet at 4.

<sup>33</sup> Fact Sheet at 4.

<sup>34</sup> *See* Fact Sheet at 3.

JA 496, 530. The political branches recognize it as “one of the highest transportation priorities in the Commonwealth,” JA 269, and the Governor has underscored that the Project is “critical to the mobility, safety and the economy of the Hampton Roads region,” JA 530.

**5. The trial court’s opinion endangers the Project, which the political branches have determined to be critical to the safety and economy of the Hampton Roads region.**

Left uncorrected, the trial court’s ruling will prohibit the completion of the Project, at least as currently contemplated by the Comprehensive Agreement between VDOT and Elizabeth River. This would likely dismantle the Project entirely, costing the Commonwealth hundreds of millions of dollars and the Hampton Roads area thousands of jobs.

Under the terms of the Comprehensive Agreement, the inability to toll the Project would constitute a “compensation event” and possibly a VDOT default.<sup>35</sup> Completing the Project while paying Elizabeth River “compensation-event” damages would cost the Commonwealth \$169 million annually for the remaining 57-year contract term, a penalty with a

---

<sup>35</sup> See Sean T. Connaughton, Secretary of Transportation, *Update to the House Appropriations Committee, Downtown Tunnel/Midtown Tunnel/MLK Extension Project*, at 31-32 (June 17, 2013), available at <http://hac.virginia.gov/Committee/files/2013/06-17-13/Transportation.pdf> (hereinafter Connaughton).

net present value of \$1.99 billion.<sup>36</sup> The Commonwealth would not fare much better by terminating the Project. As of May 1, 2013, VDOT estimates that it would pay termination damages of \$380 million.<sup>37</sup> Coupled with the \$326 million already spent by VDOT, termination of the Project could cost the Commonwealth over \$700 million in all.<sup>38</sup>

If VDOT terminates the Project, Virginia citizens will bear the brunt of the blow. Terminating it would not only cost many of the jobs that the Project created, but it would endanger the safety of the community. The existing tunnel's heavy two-way traffic flow creates significant danger for motorists. For this and other reasons, the Governor has described the Project as "vital to the safety" of the region.<sup>39</sup>

The trial court's ruling, if not reversed, would thus not only impose enormous costs on the Commonwealth, but it would endanger citizens and frustrate the carefully developed policy judgments of the political branches of Virginia's government. *See, e.g.*, JA 269, 530.

---

<sup>36</sup> *Id.* at 32.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Sara Forden, *Norfolk Tunnel Plan Thrown Out by Virginia Judge*, Bloomberg Businessweek (May 3, 2013), <http://www.bloomberg.com/news/2013-05-02/virgina-judge-throws-out-toll-plan-for-norfolk-project.html>.

## **6. The trial court's ruling threatens Virginia's transportation infrastructure as a whole.**

An affirmance of the trial court's ruling would reverberate far beyond Hampton Roads. The safety and vitality of Virginia's transportation network depends in part on public-private partnerships authorized by the Act—which the trial court's opinion calls directly into question.

Virginia leads the nation in creating public-private partnerships in the transportation sector, and until May 21, 2013, it was poised to continue in that role. In addition to five completed projects, the Commonwealth currently has eighteen PPTA projects under construction, procurement, or consideration.<sup>40</sup> Virginia attracts the best project participants because of the success of its existing projects. An uncorrected ruling prohibiting VDOT from setting tolls (based on appropriate safeguards) would hamstring Virginia's efforts to attract the best private partners for needed infrastructure projects.<sup>41</sup> Worse, it would strip the legislature of a tool that it has used with demonstrable success to protect the public's safety and financial interests.

Further, many of Virginia's most essential transportation projects developed under the Act involve tolls on users. An affirmance could require

---

<sup>40</sup> Virginia Office of Transportation Public-Private Partnerships, *Projects*, <http://www.vappta.org/projects.asp> (last visited July 17, 2013).

<sup>41</sup> *Id.* at 2.

VDOT to terminate these projects or pay damages under their contracts – potentially costing Virginia taxpayers over \$3.4 billion,<sup>42</sup> and eliminating tens of thousands of jobs.<sup>43</sup>

For example, the Pocahontas 895 Parkway, a four-lane, 8.8-mile toll road southeast of Richmond, was developed as a public-private partnership between VDOT and Transurban, a leading international toll road owner and manager.<sup>44</sup> As part of this agreement, Transurban collects tolls ranging from \$1.50 to \$3.25 (for two-axle vehicles) to manage and maintain the roadway.<sup>45</sup> This partnership directly benefits Virginia taxpayers, who have saved more than \$240 million in future maintenance costs.<sup>46</sup>

VDOT entered into a similar public-private partnership with Transurban for the 495 and 95 HOT Lanes Projects, which are slated to replace \$260 million of aging infrastructure, including bridges and overpasses, and develop high-occupancy toll (or “HOT”) lanes designed to

---

<sup>42</sup> See Connaughton at 34.

<sup>43</sup> See Fact Sheet at 3.

<sup>44</sup> See Pocahontas 895, [http://www.pocahontas895.com/about\\_pocohontas\\_895.html](http://www.pocahontas895.com/about_pocohontas_895.html) (last visited July 17, 2013).

<sup>45</sup> See Pocahontas 895, [http://www.pocahontas895.com/about\\_pocahontas\\_895/public\\_private\\_partnership.html](http://www.pocahontas895.com/about_pocahontas_895/public_private_partnership.html) (last visited July 17, 2013); Pocahontas 895, [http://www.pocahontas895.com/using\\_pocohontas\\_895/toll\\_prices.html](http://www.pocahontas895.com/using_pocohontas_895/toll_prices.html) (last visited July 17, 2013).

<sup>46</sup> *Id.*

mitigate traffic congestion in Fairfax and Stafford counties.<sup>47</sup> An integral component of these projects is “dynamic” tolling, in which toll rates change in real time based on traffic conditions.<sup>48</sup> The partnership agreements between Transurban and VDOT provide that Transurban is “assuming the full risk of whether the toll road project succeeds commercially and will not be compensated by the Commonwealth of Virginia if it does not.”<sup>49</sup>

If this Court affirms the trial court’s ruling, transportation facilities that pre-date the Act may also be at risk if they use toll revenues to fund a “bundled,” interrelated transportation network. For example, the Richmond Metropolitan Authority (“RMA”) has operated a system of tolled roadways in the Richmond area since it was created by the General Assembly in 1966.<sup>50</sup> Toll rates at RMA facilities are “certified [annually] by the RMA’s traffic and revenue consultants after determining the amount needed to pay for operating costs, repair and contingency fund deposits, and expressway

---

<sup>47</sup> See 495 Express Lanes, <http://www.495expresslanes.com/project-background> (last visited July 17, 2013). See also 95 Express Lanes, <http://www.95expresslanes.com/partnership> (last visited July 17, 2013).

<sup>48</sup> 495 Express Lanes, <http://www.495expresslanes.com/pricing> (last visited July 17, 2013).

<sup>49</sup> 95 Express Lanes, *Learn More About the Express Lanes: Special Update for Overlook Residents*, available at [http://www.95expresslanes.com/uploads/1000/27-Final\\_Update\\_to\\_Overlook\\_Residents.pdf](http://www.95expresslanes.com/uploads/1000/27-Final_Update_to_Overlook_Residents.pdf) (last visited July 17, 2013).

<sup>50</sup> See Richmond Metropolitan Authority, <http://www.rmaonline.org/faq.html> (last visited July 17, 2013).



debt service” for the system as a whole, without seeking approval from the General Assembly each year.<sup>51</sup> The RMA system generated \$35.4 million in toll revenue in 2011.<sup>52</sup> Longstanding tolling arrangements like the RMA’s could be found unconstitutional under the trial court’s rationale.

Finally, Virginia’s status as a national leader in public-private partnerships is one of the reasons why the Amici—both national organizations—consider this case to be so important. A failure to reverse the trial court’s judgment could create an obstacle for legislatures in other states that might seek to pursue public-private partnerships as a potentially valuable tool to meet a pressing public need.

An affirmance could also undermine public-private partnership statutes in other states, which—like the Act—are valid, effective, and constitutional. More than half of the states have enacted authorizing statutes that allow them to enter into public-private partnerships for new or existing transportation facilities. *See, e.g.*, Md. Code Ann., Public-Private Partnership Agreements, § 10A-401 (West 2013) (outlining requirements for public-private partnership agreements); 630 Ill. Comp. Stat. 5/5 (2011) (authorizing transportation agencies to enter into public-private

---

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

partnerships); La. Rev. Stat. Ann. § 48:2072 (2006) (authorizing the Louisiana Transportation Authority to enter into public-private partnerships).

Many of these statutes encourage transportation agencies to work with private entities to set and adjust tolls on project facilities without direct legislative approval or oversight. See, e.g., Md. Code Ann., Public-Private Partnership Agreements, § 10A-401(a)(2) (West 2013) (requiring public-private partnership agreements to include “the methods and terms for setting and adjusting tolls.”); La. Rev. Stat. Ann. § 48:2072(C) (2006) (authorizing the Louisiana Transportation Authority “to pursue public-private partnerships to supplement public revenue sources and to pursue alternative and innovative funding sources, including user fees”). Elizabeth River has included a chart summarizing these statutes as Attachment 3 to its Opening Brief.

Statutes like these have rarely been challenged. When they have been tested, courts have held that such tolling authority does not violate constitutional provisions regarding taxation. See, e.g., *Murphy v. Mass. Turnpike Auth.*, 462 Mass. 701, 710, 971 N.E.2d 231, 239 (2012) (“[W]e see no impropriety in the legislative delegation to the [transportation] authority...to ‘fix and revise tolls’ for travel in the MHS.”); *State ex rel. Peninsula Neighborhood Ass’n v. Wash. State Dep’t of Transp.*, 142 Wash.

2d 328, 333-37, 12 P.3d 134, 138-39 (2000) (holding that Washington’s public-private transportation initiatives act, which delegated authority to the state department of transportation to set toll rates, was not an unconstitutional delegation of legislative authority; reversing on other grounds); *see also Corr v. Metro. Wash. Airports Auth.*, 800 F. Supp. 2d 743, 754-60 (E.D. Va. 2011) (holding that “the legislative delegation to MWAA was lawful because Congress clearly set intelligible boundaries on MWAA’s exercise of its power to set tolls”).

Here, the Act sets similarly intelligible – and constitutional – boundaries under which VDOT may set toll rates when contracting with private entities. As Elizabeth River’s Attachment 3 shows, the Act’s limitations on setting tolls are similar to the limitations imposed by coordinate statutes across the country.

If the Act’s tolling provisions are in fact an unconstitutional delegation of legislative authority, as the trial court held, then the analogous statutes in many other states could be similarly flawed. It is no answer to say that the Act is subject to the Constitution of Virginia, while these other statutes are not, because the trial court found that the Act’s tolling provision violates one of the most basic principles of constitutional government: That the legislative power shall be vested in a legislature. Other states likewise

observe a separation of powers. The Act's delegation of tolling authority, like the delegations in these other statutes, is routine and constitutional.

### Conclusion

The stakes of this case are enormous and the trial court's reasoning is flawed. The Court should reverse the trial court's judgment and enter final judgment in favor of VDOT and Elizabeth River.

Dated: July 19, 2013

Respectfully submitted,

National Conference of State Legislatures,  
and

American Road & Transportation Builders  
Association

By: \_\_\_\_\_

Of Counsel

James J. O'Keeffe, IV (VSB No. 48620)  
Abigail E. Murchison (VSB No. 80728)  
GENTRY LOCKE RAKES & MOORE  
SunTrust Plaza  
10 Franklin Road S.E., Suite 800  
Roanoke, Virginia 24011  
Telephone: (540) 983-9300  
Facsimile: (540) 983-9400  
[okeeffe@gentrylocke.com](mailto:okeeffe@gentrylocke.com)  
[murchison@gentrylocke.com](mailto:murchison@gentrylocke.com)

## **Certificate**

The undersigned hereby certifies that the foregoing complies with Rules 5:26, 5:27, and 5:30. The undersigned further certifies that, on this 19th day of July, 2013, one electronic version, in Adobe Acrobat Portable Document Format (PDF) format, was filed by hand with the Clerk of this Court and served on counsel of record by electronic mail. In addition, fifteen printed copies were filed with the Clerk of this Court by hand and three copies were served on the following counsel of record by United States Mail, first class postage prepaid:

Stuart A. Raphael  
Hunton & Williams LLP  
1751 Pinnacle Dr., Ste. 1700  
McLean, VA 22102

Robert M. Tata  
Hunton & Williams LLP  
500 East Main Street, Suite 1000  
Norfolk, VA 23510

Dane H. Butswinkas  
Kannon K. Shanmugam (pro hac vice)  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005

Marina J. Liacouras  
General Counsel  
Elizabeth River Crossings Opco, LLC  
152 Tunnel Facility Drive  
Portsmouth, VA 23707

*Counsel for Appellant  
Elizabeth River Crossings OpCo, LLC*

E. Duncan Getchell, Jr.  
Solicitor General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

Michael H. Brady  
Assistant Solicitor General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

Richard F. Neel  
Deputy Attorney General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

J. Kennerly Davis, Jr.  
Deputy Attorney General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

Jeffrey R. Allen  
Senior Assistant Attorney General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

Ellen M. Porter  
Assistant Attorney General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

Norman A. Thomas  
Senior Appellate Counsel  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219

George A. Somerville  
Timothy J. St. George  
Troutman Sanders LLP  
Post Office Box 1122  
Richmond, Virginia 23218-1122

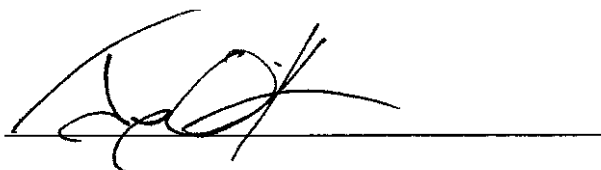
*Counsel for Appellant  
Virginia Department of Transportation*

Patrick M. McSweeney  
3358 John Tree Hill Road  
Powhatan, VA 23139

Robert J. Cynkar  
CUNEO, GILBERT & LADUCA, LLP  
106-A South Columbus Street  
Alexandria, VA 22314

Christopher I. Kachouroff  
DOMINION LAW CENTER, P.C.  
13649 Office Place, Suite 101  
Woodbridge, VA 22192

*Counsel for Appellees  
Danny Meeks et al.*

A handwritten signature in black ink, appearing to be 'DM', is written over a solid horizontal line.

## Highways Needing Resurfacing or Reconstruction, and Deficient Bridges

State	Miles of Highway Needing Resurfacing or Reconstruction /1					Total number of bridges in the state	Structurally deficient bridges	Functionally obsolete bridges	Structurally deficient or functionally obsolete	Percent deficient or obsolete
	Interstates and express-ways	Other major roads	Total miles needing resurfacing or reconstr.	Total Federal-aid highway miles	Percent needing resurfacing or reconstr.					
Alabama	116	2,612	2,728	20,531	13.3%	16,091	1,435	2,064	3,499	21.7%
Alaska	293	475	768	4,392	17.5%	1,173	120	120	240	20.5%
Arizona	237	1,014	1,251	13,015	9.6%	7,865	246	651	897	11.4%
Arkansas	236	4,974	5,210	21,918	23.8%	12,599	874	1,847	2,721	21.4%
California	3,951	15,716	19,667	55,440	35.5%	24,812	2,866	4,023	6,889	27.8%
Colorado	497	1,534	2,031	17,508	11.6%	8,629	561	817	1,378	16.0%
Connecticut	230	710	940	6,151	15.3%	4,208	402	1,017	1,419	33.7%
Delaware	26	197	223	1,532	14.5%	862	53	112	165	19.1%
Dist. of Columbia	118	319	437	455	96.1%	242	30	131	161	66.5%
Florida	282	1,020	1,302	26,093	5.0%	11,993	255	1,584	1,839	15.3%
Georgia	22	2,202	2,224	30,961	7.2%	14,740	872	1,767	2,639	17.9%
Hawaii	95	499	594	1,553	38.2%	1,164	143	354	497	42.7%
Idaho	89	2,403	2,492	11,203	22.2%	4,214	390	406	796	18.9%
Illinois	899	3,865	4,764	35,348	13.5%	26,514	2,281	1,707	3,988	15.0%
Indiana	457	2,741	3,198	23,058	13.9%	18,793	2,005	1,909	3,914	20.8%
Iowa	596	3,273	3,869	25,928	14.9%	24,494	5,145	1,148	6,293	25.7%
Kansas	224	7,704	7,928	34,905	22.7%	25,179	2,645	1,831	4,476	17.8%
Kentucky	70	256	326	13,896	2.3%	14,036	1,231	3,009	4,240	30.2%
Louisiana	552	2,808	3,360	13,351	25.2%	13,301	1,767	1,852	3,619	27.2%
Maine	109	1,493	1,602	6,314	25.4%	2,408	336	369	705	29.3%
Maryland	380	1,994	2,374	7,850	30.2%	5,300	365	956	1,321	24.9%
Massachusetts	855	665	1,520	11,102	13.7%	5,141	488	1,995	2,483	48.3%
Michigan	999	5,395	6,394	36,353	17.6%	11,000	1,256	1,352	2,608	23.7%
Minnesota	400	2,089	2,489	32,909	7.6%	13,121	1,187	381	1,568	12.0%
Mississippi	333	3,411	3,744	21,530	17.4%	17,063	2,374	1,300	3,674	21.5%
Missouri	175	7,630	7,805	30,560	25.5%	24,356	3,495	2,873	6,368	26.1%
Montana	72	723	795	14,614	5.4%	5,120	379	470	849	16.6%
Nebraska	316	1,152	1,468	20,583	7.1%	15,393	2,749	1,020	3,769	24.5%
Nevada	32	433	465	6,444	7.2%	1,842	40	181	221	12.0%
New Hampshire	35	659	694	3,416	20.3%	3,845	350	380	730	19.0%
New Jersey	855	3,860	4,715	10,319	45.7%	6,559	638	1,584	2,222	33.9%
New Mexico	125	3,066	3,191	11,501	27.7%	3,924	306	311	617	15.7%
New York	1,440	5,219	6,659	27,504	24.2%	17,492	2,140	4,265	6,405	36.6%
North Carolina	304	1,501	1,805	22,022	8.2%	18,280	2,184	2,869	5,053	27.6%
North Dakota	126	1,003	1,129	18,304	6.2%	4,458	733	232	965	21.6%
Ohio	543	1,116	1,659	29,154	5.7%	27,055	2,432	3,665	6,097	22.5%
Oklahoma	623	8,813	9,436	34,363	27.5%	23,781	5,269	1,499	6,768	28.5%
Oregon	189	1,311	1,500	18,091	8.3%	7,634	428	1,214	1,642	21.5%
Pennsylvania	537	6,576	7,113	28,189	25.2%	22,671	5,360	3,749	9,109	40.2%
Rhode Island	200	255	455	1,759	25.8%	757	154	225	379	50.1%
South Carolina	131	2,645	2,776	21,016	13.2%	9,271	1,123	793	1,916	20.7%
South Dakota	177	2,468	2,645	19,826	13.3%	5,870	1,204	215	1,419	24.2%
Tennessee	197	1,112	1,309	17,681	7.4%	20,320	1,183	2,557	3,740	18.4%
Texas	579	8,142	8,721	82,894	10.5%	52,367	1,332	7,594	8,926	17.0%
Utah	66	589	655	8,860	7.4%	2,947	123	282	405	13.7%
Vermont	62	1,278	1,340	3,870	34.6%	2,730	269	553	822	30.1%
Virginia	286	1,311	1,597	21,488	7.4%	13,770	1,247	2,209	3,456	25.1%
Washington	583	2,293	2,876	19,689	14.6%	7,817	356	1,594	1,950	24.9%
West Virginia	99	2,824	2,923	10,433	28.0%	7,095	947	1,483	2,430	34.2%
Wisconsin	515	4,226	4,741	28,295	16.8%	14,098	1,147	696	1,843	13.1%
Wyoming	89	590	679	7,944	8.5%	3,101	407	268	675	21.8%
<b>U.S. Total</b>	<b>20,421</b>	<b>140,167</b>	<b>160,588</b>	<b>992,115</b>	<b>16.2%</b>	<b>607,595</b>	<b>65,322</b>	<b>75,483</b>	<b>140,805</b>	<b>23.2%</b>

Sources: Highway - Federal Highway Administration, Highway Statistics 2009, Tables HM63 and HM64. Latest year condition data is available.

Bridge - Federal Highway Administration, National Bridge Inventory, September 2012 data

1/ Roads with "Unacceptable" ride quality (IRI over 170) or in "Poor" or "Mediocre" condition (PSR under 2.5)



Updated February 28, 2013



**Rule 5:30(b)(2) Written Consent of the Parties**

*Elizabeth River Crossings OPCO, LLC, and Virginia Department of  
Transportation v. Danny Meeks et al.,*  
Supreme Court of Virginia  
Record Nos. 130954 & 130955

Under Rule 5:30(b)(2) of the Rules of the Supreme Court of Virginia, the parties, by counsel, consent to the filing of a joint brief amici curiae in support of the Appellants by the National Conference of State Legislatures and the American Road & Transportation Builders Association.

Elizabeth River Crossings OpCo, LLC

By: \_\_\_\_\_



Stuart A. Raphael (VSB 30380)  
Hunton & Williams LLP  
1751 Pinnacle Dr., Ste. 1700  
McLean, VA 22102  
(703) 714-7463 (phone)  
(703) 918-4015 (fax)  
sraphael@hunton.com

Robert M. Tata (VSB 30101)  
Hunton & Williams LLP  
500 East Main Street, Suite 1000  
Norfolk, VA 23510  
(757) 640-5328 (phone)  
(757) 625-7720 (fax)  
btata@hunton.com

Dane H. Butswinkas (VSB 30562)  
Kannon K. Shanmugam (pro hac vice)  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
(202) 434-5110 (phone)  
(202) 434-5029 (fax)  
dbutswinkas@wc.com  
kshanmugam@wc.com

and

Marina J. Liacouras (VSB 39944)  
General Counsel  
Elizabeth River Crossings Opco, LLC  
152 Tunnel Facility Drive  
Portsmouth, VA 23707  
(757) 932-4432 (phone)  
(757) 932-4446 (fax)  
mliacouras@ercopco.com

*Counsel for Appellant  
Elizabeth River Crossings OpCo, LLC*

Virginia Department of Transportation

By: 

E. Duncan Getchell, Jr. (VSB 14156)  
Solicitor General  
(804) 786-7240 (phone)  
dgetchell@oag.state.va.us

Michael H. Brady (VSB 78309)  
Assistant Solicitor General  
mbrady@oag.state.va.us

Richard F. Neel (VSB 26775)  
Deputy Attorney General  
(804) 786-6053 (phone)  
rneel@oag.state.va.us

J. Kennerly Davis, Jr. (VSB 18179)  
Deputy Attorney General  
(804) 788-8200 (phone)  
kdavis@oag.state.va.us

Jeffrey R. Allen (VSB 17710)  
Senior Assistant Attorney General  
(804) 786-3748 (phone)  
jrallen@oag.state.va.us

Ellen M. Porter (VSB 71373)  
Assistant Attorney General  
(804) 786-9138 (phone)  
eporter@oag.state.va.us

Norman A. Thomas (VSB 20632)  
Senior Appellate Counsel  
(804) 371-7763  
nthomas@oag.state.va.us

Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
(804) 786-3748 (phone)  
(804) 692-1647 (fax)

and

George A. Somerville (VSB 22419)  
George.Somerville@troutmansanders.com  
Timothy J. St. George (VSB 77349)  
Tim.stgeorge@troutmansanders.com  
Troutman Sanders LLP  
Post Office Box 1122  
Richmond, Virginia 23218-1122  
(804) 697-1291 (phone)  
(804) 698-5149 (fax)

*Counsel for Appellant  
Virginia Department of Transportation*

Danny Meeks, Christopher Anuswith,  
Donna Bradshaw, William Bradshaw, Michael  
J. Buxton, Todd Cairns, Diana Chappel-Lewis,  
June Childs, Roger Cornett, Glenna Cornett,  
Jamie Cosumano, Theresa L. Danaher,  
Regina R. Davis, Tyler Deatley, Helen  
Drummond, Leon Drummond, Nettie S.  
Fischer, Charles Greenhood, James Jackson,  
Kathy Knack, Douglas Knack, John McGlynn,  
Jacquelyn Menefee, Marc Poulasse, Thomas  
E. Price, David Ratcliff, Stephanie Revell,  
Cathleen A. Sweeney, Clyde W. Tysor,  
Betty F. Tysor, William Watts, Accurate  
Marine Environmental, Inc., a Virginia  
corporation, Aggregate Transportation Corp.  
dba ATCO Hauling, a Virginia corporation,  
Audax Transportation, Inc., a Virginia  
corporation, Gilco, Inc., a Virginia corporation,  
Givens Group, Inc., a Virginia corporation,  
Givens Transportation, Inc., a Virginia  
corporation, GTL Transport Co., a Virginia  
corporation, Citizens Against Unfair Tolls, a  
Virginia corporation

By: 

Patrick M. McSweeney (VSB 5669)  
3358 John Tree Hill Road  
Powhatan, VA 23139  
(804) 937-0895 (phone)  
(877) 598-4668 (fax)  
pmcsweeney.esq@gmail.com

Robert J. Cynkar (VSB 23349)  
CUNEO, GILBERT & LADUCA, LLP  
106-A South Columbus Street  
Alexandria, VA 22314  
(703) 350-4052 (phone)

(202) 789-1813 (fax)  
rcynkar@cuneolaw.com

Christopher I. Kachouroff (VSB 44216)  
DOMINION LAW CENTER, P.C.  
13649 Office Place, Suite 101  
Woodbridge, VA 22192  
(703) 365-9900 (phone)  
(703) 365-9593 (fax)  
ckl@trialjustice.net

*Counsel for Appellees  
Danny Meeks et al.*