

STATEMENT issued in Support of the NO TOLL ON I-90 position by Terry Danaher of the CITIZENS FOR ACCOUNTABILITY IN POLITICS, a Virginia political action committee in Portsmouth, Virginia, dated February 4, 2013.

Respectfully submitted to the Mercer Island City Council by Claus V. Jensen, 9325 S.E. 57th Street, Mercer Island.

1) Our lawsuit originated when a member of the Virginia House of Delegates was so incensed by the process and financial details of the private-public partnership agreement between the Virginia Dept. of Transportation and Elizabeth River Crossings that he hired an attorney and paid \$7,500 to get a lawsuit started. State Delegate Ken Alexander, who is a Democrat, hired attorney Patrick M. McSweeney, Esq., former chair of the Republican Party of Virginia. This has been and remains a totally non-partisan issue. There are 37 named plaintiffs including several transportation and maritime companies as well as small business owners and, as already mentioned, our newly elected councilman. A plaintiff group, Citizens Against Unfair Tolls, provides additional support.

2) Citizens for Accountability in Politics, a Virginia political action committee, was created by a Portsmouth resident (me) to help raise funds to support the lawsuit. A facebook site--Tidewater Against Unfair Tolls--had been created by another Portsmouth resident and attracted a good deal of support, as did local news media, leading to a rally and the start of public fundraising on March 4, 2012. Since that date, numerous fundraisers and activities have generated support to raise the \$150,000 necessary to get the lawsuit to court.

3) In addition to Ken Alexander, who is now a state senator, proponents of the lawsuit include: Delegate Johnny Joannou, who, in addition to a \$2,000 personal donation, has allowed the plaintiff group to use his law office and equipment for meetings; Vice-Mayor Whitehurst, who contributed \$2,001; Councilman Steve Heretick, an attorney, who donated \$2,000; donations from three other council members totaling \$500; and a commitment for \$40,000 from recently elected Councilman Danny Meeks, who is a plaintiff in the lawsuit (in fact, his is the first name on the caption, so the lawsuit is referred to as Danny Meeks, et al., v. Virginia Dept. of Transportation, et al.) Our mayor, Ken Wright, has also been heavily involved in lobbying Governor McDonnell and VDOT officials and has contributed financially through another political

organization. Other state officials from the region have also spoken out against the VDOT/ERC agreement.

4) In response to public outcry and the threat of the lawsuit, legislators from our region on both sides of the aisle took action: some lobbied the governor and VDOT for a "Termination for Convenience" of the agreement; and some requested additional state funding to reduce the tolls, which place an especially onerous burden on the City of Portsmouth, which has the lowest per capita income and highest property tax rate in the region. The lobbying and support for the lawsuit led to an 18-month delay in tolling at a cost to the state of over \$100,000. Tolling is now due to begin on February 1, 2014, two weeks after Governor McDonnell leaves office.

5) The lawsuit was filed on July 12, 2012, the day before the state handed over management/operation of the existing Downtown and Midtown tunnels to ERC.

Count One submits that VDOT/ERC, which under the agreement will set and collect tolls on existing tunnels to finance the new tunnel and a new road extension, lack the power to levy taxes according to the state constitution. Tolling one facility to raise revenue for the construction of another has been declared taxation by the Virginia Supreme Court in a case won by our attorney a few years ago (Marshall v. VDOT).

Count Two submits that VDOT lacks the authority to enter into an agreement that is beyond the scope of the Public Private Transportation Act or any other enactment of the General Assembly as is the case in this agreement. (In other words, VDOT went beyond the bounds of its authority with regard to some of the terms of the contract.) Our General Assembly is currently in session and many of our legislators have introduced bills that would further curtail use of the PPTA in direct response to the VDOT/ERC agreement and the lawsuit.

Counts Three through Six deal with the unauthorized exemptions from certain taxes granted by VDOT to ERC and other payments and transfers of money that are not authorized by the constitution. These counts support the claim that VDOT has exceeded its authority with regard to the financial arrangements of the contract which will result in the citizens of the region paying \$22 billion directly for a project that will cost less than \$2.1 billion.

6) Terry McAuliffe, who is running for governor this year, has expressed support in a visit to our group.

7) The case will be heard in Portsmouth, after being remanded from federal court where the Virginia Attorney General and VDOT/ERC felt they had a stronger chance of winning.

Articles...

about mayor, city council and other city leaders reaction to toll agreement (includes a video clip):

<http://hamptonroads.com/2011/12/plans-tunnels-advanced-portsmouth-sought-changes>

about state legislators questioning our secretary of transportation about the project:

<http://hamptonroads.com/2012/01/transportation-chief-gets-earful-over-tunnel-tolls>

about postponement of tolls until 2014 (18 months after originally planned):

<http://hamptonroads.com/2012/04/mcdonnell-supports-postponing-tolls-until-2014>