

Massachusetts Turnpike Toll Equity Trust

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Toll Equity Trust Files Petition to Force Turnpike to Stop Illegal Big Dig Toll Diversion

Allege Superior Court Ruling Based Upon "Clear Errors" of Constitutional Law

BOSTON – Attorneys for more than 2,500 members of the Massachusetts Turnpike Toll Equity Trust today petitioned a single justice of the state Appeals Court to overturn a Middlesex Superior Court ruling that allows the Turnpike Authority to continue diverting toll revenues to pay for Big Dig debt and the cost to maintain the Central Artery Tunnel that millions use free of charge.

The petition cites "clear errors" of Constitutional law in the ruling issued last week in Middlesex Superior Court denying Toll Payers request for an injunction blocking the Turnpike from continuing to divert tolls to pay for the Big Dig roads.

"This petition is based on a simple ugly truth: The Turnpike Authority makes tollpayers pay for Big Dig debt and the costs to maintain the Central Artery that millions use free of charge," said lead attorney Jan Schlichtmann.

Everyday, 288,000 toll payers from the North Shore and the MetroWest are forced to pay for the entire costs of the so-called Metropolitan Highway System and its Big Dig roads so that 344,000 others can use them for free, Schlichtmann noted. "This is more than a rip-off that has cost tollpayers more than half a billion dollars over the last three years alone. It is a daily assault on our Constitution and our fundamental right to be free from oppressive fees and illegal taxes."

Judge Herman Smith issued the ruling last week, citing claims from the Turnpike Authority that forcing it to comply with the Constitution and stop its unfair tolling scheme would "wreak havoc on the roads" and lead to the closure of the Central Artery. Schlichtmann called the turnpike claims "more Big Dig baloney".

"They were just given \$100 million tax dollars to repay Big Dig debt on the solemn oath that they would comply with the new Toll Equity law that goes into effect November 1, 2009," Schlichtmann pointed out. "The only real nightmare is that despite all the new taxes, promises of reform, and statutory mandates to comply with Toll Equity, this authority and its successor will continue the same old cynical abuse of power that has oppressed toll payers for the past 12 years."

The Toll Payers Petition is based on three errors in the ruling:

- The Superior Court erroneously ruled that it was “not relevant” that tollpayers who are the minority of MHS users are forced to pay for the use of the MHS by the majority who are not charged. The tollpayers argue that this fact is not only relevant but determinative that the tolling scheme fails the Constitutional test laid out by the SJC in the *Emerson* case. That test requires that fees, to be legitimate, must be for services to the group being charged that are not available to “*other members of society*” who are not charged. The Petition argues that the Superior Court was clearly wrong ***not*** to consider the 344,000 non-paying daily users of the MHS to be “*members of society*.”
- The Superior Court was clearly wrong not to consider at all tollpayers’ claims that the tolls violate protections in the state and federal Constitution against “unreasonable,” “disproportional,” and “excessive” fees that do not “fairly approximate” the cost of use.
- The Superior Court was clearly wrong not to consider that the imposition of an unconstitutional fee causes “irreparable harm.” The Petition notes that preventing the exercise of governmental authority and the unrestrained power to fee and tax, was the chief purpose of the Constitution.

In its Petition and 15-page memorandum of law, the tollpayers request the single justice of the Appeals Court to vacate the Superior Court order and order that the Constitutional issues be addressed.

The tollpayers leading the suit said they are disappointed the Turnpike continues to refuse to obey the Constitution and said the clear mandate of the Legislature in the new Transportation Reform law that the authority comply with Toll Equity.

“We’re disappointed that, despite all the promises of reform and the new taxes that were supposed to fix it, nothing has changed,” said one of the lead plaintiffs, Robert Ackley of Southborough. “Why are Governor Patrick and Secretary Aloisi allowed to continue to get away with it? Once again, it’s up to the people to make their leaders obey the law and the Constitution.”

The class action suit filed by Ackley, Sandra Murphy, Joel Feingold and Doug Barth continues in Middlesex Superior Court. The Turnpike Authority has filed a motion to dismiss the case, which will be heard in the coming weeks by Judge Smith.

Since the suit was filed in May, more than 2,500 people have signed on as beneficiaries from more than 200 cities and towns and 21 states. Any driver who has paid tolls on the Turnpike, Sumner or Williams Tunnel is eligible and can sign on easily through our website, www.tollequity.com.