

Massachusetts Turnpike Toll Equity Trust

ABOUT US

The Massachusetts Turnpike Toll Equity Trust was founded by four drivers who decided it was time to change the unfair and illegal tolling system in Massachusetts.

Sandra Murphy, Robert Ackley, Joel Feingold and Douglas Barth banded together to end the obvious inequity of only certain drivers west and along the North Shore of Boston paying for the Big Dig boondoggle and advocate for repaying those who, for 11 years, have shouldered the burden for roads meant to benefit all drivers of the Commonwealth.

On May 8, attorney Jan Schlichtmann filed a class action on behalf of the drivers and beneficiaries of a trust established by order of the Middlesex Probate Court that is open to all Massachusetts Turnpike Toll-payers. The suit shows that the diversion of most toll dollars to non-tolled roads amounts to illegal taxation.

Since then, more than 2,000 beneficiaries have signed on to the suit through www.tollequity.com.

Drivers and businesses from more than 200 cities and towns and 21 states that use the Turnpike for commuting, for interstate commerce and travel have been drawn into our movement. The effort also drew respected legal and public policy advocates to lead the cause, support for our issues from *The Boston Globe*, *MetroWest Daily News* and countless legislators.

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FAQ

What is the Toll Equity Trust?

In the last three years alone, it has been estimated that more than \$442 million has been diverted from the Massachusetts Highway System (MHS) to pay for The Big Dig. According to the internal documents of the Turnpike Authority, at least 58 cents of every dollar collected is diverted to pay for the costs of these toll-free roads. As a result, a group of concerned citizens have banded together on behalf of the citizens of Massachusetts and organized a [trust](#) open to any MassPike toll payer who has paid tolls at Route 128, Allston/Brighton, Sumner/Callahan Tunnels, or the Ted Williams Tunnel.

Why should I sign up as a beneficiary?

There is power and influence in numbers. As a toll paying citizen you have the right to receive the money that has gone towards paying the debt due to the Big Dig instead of paying for the upkeep of the Turnpike.

What is the expected amount a beneficiary will receive?

The settlement is estimated at \$450 million. The more toll payers who sign up, the more power the Trust has to win a settlement on behalf of beneficiaries.

Who is involved?

Massachusetts toll pay citizens Sandra Murphy, Bob Ackley, Doug Barth, and Joel Feingold organized the trust and have obtained the services of Jan R. Schlichtmann, one of the country's most notable plaintiff's attorneys. Schlichtmann specializes in the area of complex civil litigation including consumer, environmental, product, toxic, and mass tort litigation.

Are there economic implications if a settlement is reached?

In open court, lawyers for the Turnpike Authority said the Turnpike does have sufficient assets and reserves to pay any class action judgment. All assets and liabilities of the Turnpike Authority would be carried forward to any successor agency or authority in the transportation reform law, which abolishes the Turnpike Authority with the creation of the new transportation agency for the entire Commonwealth, MassDOT.

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FINANCIAL ANALYSIS

The Trust hired respected economics Professor Mark Potter of Babson College to analyze internal Turnpike documents to determine for the first time the true scope of the toll diversion from MHS proceeds.

Potter, in an affidavit filed with the Court on June 8, estimated that in the last three years alone, more than \$442 million has been diverted from the MHS to pay for The Big Dig. The Boston Globe and Boston Herald covered the details of his analysis (INCLUDE HYPERLINKS).

The Trust has sought to attach assets of the Turnpike Authority and presented oral arguments in Middlesex Superior Court.

In open court, lawyers for the Turnpike Authority said the Turnpike does have sufficient assets and reserves to pay any class action judgment and that all the assets and liabilities of the Turnpike Authority would be carried forward to any successor agency or authority in the transportation reform law which abolishes the Turnpike Authority with the creation of the new transportation agency for the entire Commonwealth, MassDOT.



RIGHTING THE WRONG FOR THE FUTURE

The Trust is not just addressing the unconstitutional diversion of past toll dollars – it is advocating for a change for the future and we’ve already gotten results.

With the arrival of former Attorney General Scott Harshbarger and former Romney administration Chief Legal Counsel Daniel Winslow, the Trust began a process to urge sincere public policy changes to ensure toll equity (i.e. tolled dollars only pay for tolled facilities) going forward.

The Trust supported an amendment overwhelmingly approved by the House of Representatives in April which would mandate toll equity in the Commonwealth – dictating simply that all tolls collected be used strictly for the maintenance, operation and debt service of that road. A similar provision was included in the final bill passed overwhelmingly by the Legislature and signed into law by Governor Deval Patrick

Harshbarger, Winslow and Schlichtmann have acknowledged that these are difficult issues and, with the state of current finances, this is a difficult time to make challenging fiscal decisions. But, they said, just because the issues are challenging does not mean that, in the end, fairness shouldn’t win the day.

Rather than continue to wrongly kick the can down the Turnpike and leave the problem for future Legislatures and Governors to decide, the Trust has urged political leaders to stand up now for fundamental fairness by fighting for toll equity. Regardless of the funding source, there cannot be real transportation reform without toll equity as a fundamental principal.

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THE LEGAL ARGUMENT

In its lawsuit, the Massachusetts Turnpike Toll Equity Trust plaintiffs allege that the current toll system violates the 300-year-old American principal of “no taxation without representation.”

Prior to 1996, the Massachusetts Turnpike was a self-sustaining road whose revenues were used as they should be under the law – strictly for the maintenance and operation of the roadway. All drivers who opted to use the Turnpike paid a toll which was directly used to maintain and improve the road.

In 1997, the Legislature changed that by creating the Metropolitan Highway System (MHS), dividing the Turnpike into the western and eastern portions. The eastern portion was called the MHS and it included the Turnpike from Route 128 to Boston (so-called Boston Extension); the Sumner, Callahan and Ted Williams tunnels; and the then-under construction parts of the Big Dig (Central Artery, Central Artery North Area and the so-called I-90 extension from I-93 to the Ted Williams Tunnel).

Under the 1997 change, the Massachusetts Turnpike Authority (MTA) was required to undertake over \$2 billion in debt as their contribution to the Big Dig and was responsible for the operation, maintenance and capital improvement costs of the entire system, both the tolled and non-tolled. The MTA was given a yearly, \$25 million payment for its operation and maintenance costs of the Central Artery, a figure that was capped and not adjusted for inflation.

In those 11 years, the MTA has been collecting tolls on the MHS to pay for the costs of the Central Artery – almost all of which is free roadway traveled by millions of drivers each year.

Massachusetts has a distinct, bright line standard for what constitutes a toll or fee and what constitutes a tax. Under the case of *Emerson College v. City of Boston*, a toll must meet very clear standards: Being an identifiable service to identifiable users; being voluntarily undertaken; and that expenses are reasonably related to the service provided.

The suit claims that the *Emerson* standard is clearly violated by the diversion of Turnpike tolls to pay for the Big Dig roadways. According to the internal documents of the Turnpike Authority, at least 58 cents of every dollar collected is diverted to pay for the costs of these toll-free roads.

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Toll Payer Biographies

Doug Barth



Doug Barth has a long history in Massachusetts politics, beginning as an aid to the Mayor of Northampton in 1982. He was head of the state Legislative Action Task Force for Amnesty International, and worked on the campaigns of numerous reform-minded office seekers at the local, state and national level.

In 1994, he formed the Free the Pike Coalition, a group dedicated to abolishing tolls on the Mass Pike via ballot initiative. After three attempts to qualify the question, and the gathering of an aggregate of over 300,000 certified signatures, the question garnered over a million votes statewide in November 2000 but lost in 43-57%.

In 2006, he convinced his town of Sudbury to run an extended test of biodiesel in its school buses, the first in the state.

In 2007-08, he was the Sudbury town coordinator for the Obama for President Campaign.

His spends his free time cycling with his wife, taking his two children flying in small planes (he is a former professional pilot) and alienating neighbors by playing his overamplified guitar... poorly. He currently is founder and CEO of SimplyDIRECT, a 10 year-old high technology marketing firm with offices in Maynard and San Francisco.

Joel A. Feingold



The MassPike has been part of Joel's life for many years. He grew up in Auburndale and remember well when the turnpike was built. It was a couple of blocks from his house and wiped out some wetlands and a small pond.

His parents explained to him that it was going to help them get into Boston and Cambridge and that they tolls were to be eliminated after the costs of construction were paid..

Joel has always been political, and worked as a canvasser collecting signatures to put the referendum about the war in Viet Nam on the Massachusetts Ballot. Over the years he has supported a number of candidates, and served as a volunteer on several non profit boards and on the Town of Framingham's Government Study Committee and Cultural Council. One of the constants in his life has been a desire for fundamental fairness, a level playing field. The situation at the MassPike didn't meet that principle. As he continued to pay hundreds of dollars a year for tolls that shouldn't have existed, his frustration grew.

The transfer of responsibility for the Big Dig debt repayment from the State to the Mass Turnpike Authority (MTA) wasn't on his radar in 1997, but two years ago, when the toll rates began to escalate he began to pay attention. It was obvious that what the legislature had done was to move a general obligation onto the backs of a particular group of people, the toll payers. Over the next 18 months he attended and gave testimony at several MTA Board meetings, asserting that the toll increases were unfair and inappropriate, that a gas tax increase was needed and would be effective, that the use of tolls to pay the Big Dig debt was illegal under the U.S. Constitution. These arguments seemed to fall on deaf ears. This was particularly hard to take because if a private enterprise had done such a thing, the Massachusetts Attorney General would have called it illegal under the Consumer Protection Act and demanded that the consumers be compensated. Why should a governmental or public agency be able to get away with something so patently unfair, so obviously wrong?

Clearly, the MTA Board was not going to initiate an action, so Joel took action in January of 2009 and filed a lawsuit in Federal Court asserting that the use of Tolls for repayment of the Big Dig debt was without due process, in violation of the 5th and 14th Amendments. Not long thereafter his co-plaintiffs filed the Toll Equity suit in State Court and he joined. The cause is just and not long from now he believes that the toll payers will get the deserved refund.

Sandy Murphy

Sandy Murphy has been commuting from Natick to her job as a nurse in Boston for over 16 years. Watching her Fast Lane bills escalate over the past years has

infuriated her, especially since she knows the toll booths were supposed to be removed when the loans to build the Pike were paid off in 1985.

When coworkers started to rave about their improved commute on the non-tolled roads after the Big Dig tunnels and bridges were opened, Sandy was outraged that the Massachusetts government voted to raise tolls on the Pike to pay for the Big Dig. She didn't drive on any improved Big Dig sites, but she had to pay for. It made no sense! She wrote letters and spoke with local representatives and state agencies. Everyone she talked to could see the unfairness. Local officials were fighting for the cause and a single member of the Mass Pike board spoke to the inequity, but toll rates continued to rise. Sandy felt exasperated and oppressed. She was ready to give up on the issue when a friend introduced her to attorney, Jan Schlichtmann who realized that these tolls were indeed illegal. The Mass Turnpike Toll Equity Trust was formed and the suit against the Pike was filed.

Besides her work as a nurse and her fight for fair tolls, Sandy keeps busy caring for her family. She enjoys cooking, fitness, gardening and travel as well as volunteer work at church and school.

Bob Ackley



Bob and Sandy Murphy were neighbors when growing up in Northboro. Both Bob and Sandy shared a pet peeve about having to pay tolls on a road that should have been paid for years ago. When news of this diversion and inequity bestowed upon Turnpike tollpayers came to light and an opportunity to promote change was available, Bob was more than happy to get involved.

Bob has spent the last thirty years as a natural gas pipeline leak specialist for natural gas distribution companies. Bob currently consults with cities and towns to protect their urban forests from the dangers of natural gas leaks. Bob enjoys golf, hiking, fishing, cards and spending time with his family.

Biographies of Trustee and Key Players

Scott Harshbarger

Scott Harshbarger is Senior Counsel to the Firm in the Boston office of Proskauer Rose LLP, one of the nation's preeminent law firms, providing a full range of legal services to major corporations and other clients nationally and internationally. His distinguished career has included major public office, nonprofit executive management, numerous board directorships and private legal counsel.

During his two terms as Massachusetts Attorney General from 1991 to 1999, Harshbarger was the first Attorney General in the nation to engage the health care community in developing hospital and HMO benefit guidelines. In leading Massachusetts' efforts against Big Tobacco, Harshbarger was among the first AGs nationally to recover the costs of health care associated with tobacco use, resulting in payments by the tobacco companies to the Commonwealth totaling \$300 million per year over the next 25 years. As the leading law enforcement officer of Massachusetts, he led major initiatives against white collar crime, public corruption, insurance and Medicaid fraud, environmental abuses and high-tech crime. Harshbarger built the first Family and Community Crimes Bureau, a department focused on family violence issues like elder and child abuse prosecution and prevention, and his Conflict Resolution/Violence Prevention Project (SCORE) earned a Ford Foundation Excellence in Government Award.

Harshbarger served as President and CEO of Common Cause in Washington, DC, the national non-profit citizen's lobby and government watchdog group founded by John Gardner, from August, 1999 to November, 2002. His term marked a major reform and renewal for the organization and thrust Common Cause into the public interest mainstream. Common Cause led the coalition of national business and public interest advocacy groups, including grassroots organizations.

Daniel Winslow

Daniel B. Winslow is a trial lawyer and a problem solver who helps clients accomplish their goals. Winslow served as chief legal counsel to then-Massachusetts Governor Mitt Romney and was previously a presiding justice and appellate division justice in the Massachusetts District Court. Winslow has been cited by Massachusetts Lawyers Weekly newspaper as one of the 35 most influential lawyers in Massachusetts in the past 35 years. Recognized as a Super Lawyer in Massachusetts by Law & Politics magazine, Winslow also has been named one of the nation's Top 500 Trial Lawyers by Lawdragon Magazine. He practices law in Boston.

Jan R. Schlichtmann

Jan R. Schlichtmann is one of the country's most notable plaintiff's attorneys. Schlichtmann specializes in the area of complex civil litigation including consumer, environmental, product, toxic, and mass tort litigation. In 1986, Schlichtmann received national recognition for his representation of eight Woburn, Massachusetts families against W.R. Grace and Beatrice Foods for the contamination of the Woburn City water supply. Schlichtmann's career and involvement in the Woburn case was chronicled in the national bestseller, "A Civil Action" that became a major motion picture starring John Travolta as Schlichtmann. Schlichtmann has served on the faculty of the New England School of Law and Suffolk Law School's continuing legal education program, and has been on the faculty of the National Judicial College in Reno, Nevada. He has lectured at many of the nation's law schools and colleges and spoken before numerous national and regional professional and civic groups, has appeared on a number of the country's major radio and television shows, and has participated in an array of public forums on issues of law, public policy and the environment.

Donald M. Griswold

Don Griswold is a partner in the Washington, D.C. office of Reed Smith LLP, one of the 15 largest law firms in the world. A member of the firm's renowned State Tax Practice, Don has for more than 25 years worked to maintain the rights of taxpayers. A recognized authority on tax-related constitutional legal issues, Don serves on the advisory boards of several prestigious state tax organizations and is a frequent speaker on a wide variety of state tax topics at conferences around the country. Don has briefed and argued cases addressing tax-related constitutional issues before administrative agencies, state courts, and federal courts, recently including an *amicus* brief to the U.S. Supreme Court in a constitutional challenge to a state tax statute on the grounds of discrimination and unfair apportionment, and a *cert* petition to the U.S. Supreme Court in a constitutional nexus case for a major credit card lender. He has obtained for his clients tens of millions of dollars in refunds of unconstitutional taxes and has achieved reductions of tax assessments in even larger amounts. Don's advice is sought by large corporations seeking to reevaluate and improve the quality and viability of their current state tax planning. Don also provides advice and legal opinions regarding the state and local tax implications of a wide variety of transactions, including mergers and acquisitions, spin-offs, asset dispositions and restructurings.