

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF RHODE ISLAND**

AMERICAN TRUCKING
ASSOCIATIONS, INC.; CUMBERLAND
FARMS, INC.; M&M TRANSPORT
SERVICES, INC.; and NEW ENGLAND
MOTOR FREIGHT, INC.

Plaintiffs,

v.

PETER ALVITI, JR., in his official capacity
as Director of the Rhode Island Department
of Transportation,

Defendant.

Civil Action No. _____

**PLAINTIFFS AMERICAN TRUCKING ASSOCIATIONS, INC.; CUMBERLAND
FARMS, INC.; M&M TRANSPORT SERVICES, INC.; AND NEW ENGLAND MOTOR
FREIGHT, INC.’S COMPLAINT FOR RELIEF**

PRELIMINARY STATEMENT

1. Plaintiffs bring this action to challenge the constitutionality of a system of tolls imposed by the State of Rhode Island on specified categories of large trucks traveling on bridges and highways in the State. Plaintiffs seek both a declaration that the truck-toll system employed by Defendants violates the Commerce Clause of the U.S. Constitution and an injunction against enforcement of that system in the future.

2. The tolls authorized by Rhode Island as part of its “RhodeWorks” program fall exclusively on the largest trucks using the State’s interstate roads and will be used for bridge maintenance and repair. Tolls are now being imposed on such trucks at two locations on I-95 and have been authorized by the State at 10 additional locations on I-95 and other Rhode Island

bridges and highways. Automobiles, smaller trucks, buses, and other vehicles are not subject to tolls on these roads.

3. This toll regime was designed to, and does in fact, impose discriminatory and disproportionate burdens on out-of-state operators and on truckers who are operating in interstate commerce. By design, the tolls fall exclusively on the types of trucks that are most likely to be engaged in the interstate transport of cargo, while exempting automobiles and the smaller vehicles that are relatively more likely to be engaged in intrastate travel. The toll program also limits the tolls collected from trucks that make multiple trips within Rhode Island in a single day, a feature that was expressly intended to, and does in fact, provide disproportionate benefits to Rhode Island operators and those engaged in intrastate commerce.

4. This tolling regime violates the Commerce Clause for three separate reasons.

5. *First*, the Commerce Clause makes it impermissible for States to impose charges with the *intent* to discriminate in favor of domestic, and against out-of-state or interstate, entities. But that is just what Rhode Island expressly did in its RhodeWorks tolling program. Rhode Island's governor, whose administration designed and advanced the plan, candidly explained that she favored the program "because the majority of the burden is on out-of-state truckers and out-of-state companies." Patrick Anderson & Katherine Gregg, *Raimondo: Plan shifts burden off R.I.*, PROVIDENCE JOURNAL (Oct. 29, 2015). Similarly, other state officials promoted the plan by promising that it would insulate most Rhode Island residents from tolling, while falling disproportionately on out-of-state and interstate truckers. Such an enactment is a quintessential departure from Commerce Clause principles.

6. *Second*, the Rhode Island tolling program discriminates against trucks traveling in interstate commerce in its practical effect. The Commerce Clause bars States from imposing

burdens that, in their actual operation, necessarily fall more heavily on interstate than on intrastate entities. But that, too, is just what Rhode Island has done in the RhodeWorks toll system. Its tolls fall exclusively on the type of vehicle most likely to be engaged in the interstate transport of goods, while sparing vehicles more likely to be operated by Rhode Island residents or to be engaged in intrastate travel. And its toll caps necessarily operate to limit the burden on local and intrastate travelers, with the inevitable consequence that the tolls fall disproportionately on interstate truckers.

7. *Third*, the Commerce Clause requires that States calibrate user fees (like highway tolls) that are imposed on persons and entities engaged in interstate commerce so that the fees reflect a fair approximation of the payer's use of the tolled facility and are not excessive in relation to the benefits conferred. But Rhode Island failed to take account of this constitutional requirement in its truck-toll program. There is no doubt that automobiles, exempt trucks, and other vehicles that escape tolling entirely cause a significant degree of wear and tear on, and benefit from the use of, Rhode Island's bridges and highways. Therefore, necessarily, a toll that is used to maintain those facilities and that falls exclusively on large trucks does not reflect a fair approximation of interstate truckers' use of the tolled facilities.

8. By imposing discriminatory tolls on truckers, Rhode Island violates truckers' constitutional rights under the Commerce Clause of the U.S. Constitution. That Clause prohibits States from discriminating against interstate commercial actors and out-of-state residents, and requires that truck-toll rates be based on a fair approximation of the truckers' use of the tolled facilities.

9. The unconstitutionally discriminatory truck tolls charged by Rhode Island have real and substantial effects on interstate commerce. Discriminatory tolls increase the cost of

transporting goods, thus directly affecting truckers by reducing their revenue; compelling them to find different, cheaper routes through other States; and causing them to lose business to other modes of transport. Such tolls also increase businesses' costs for sending goods to other States, making it less profitable and less desirable for companies to enter, or to participate in, the national market. And in the end, discriminatory tolls harm consumers both in and outside of Rhode Island by raising the prices and reducing the variety of the goods that are available for purchase. Rhode Island's toll regime therefore does not simply impose unwarranted expense on truckers; it interferes with the efficient operation of the national economy and encourages economic Balkanization. The resulting evils are the very ones that the Framers sought to prevent when they included the Commerce Clause in the Constitution.

10. Accordingly, Plaintiffs ask this Court to hold that Rhode Island's truck-toll regime violates the Commerce Clause by discriminating against interstate commerce and out-of-state truckers, and by unduly burdening interstate commerce through the imposition of tolls that are not a fair approximation of truckers' use of the tolled facilities and are excessive in light of the benefits received. Plaintiffs seek declaratory and injunctive relief barring Defendants from continuing to collect unconstitutionally discriminatory truck tolls, as well as costs, attorneys' fees, and any other relief that the Court deems proper.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the parties and subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1343 because Plaintiffs are seeking redress under 42 U.S.C. § 1983 for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

PARTIES

13. This action is brought by several commercial trucking companies that have been negatively and directly affected by Rhode Island's unconstitutional toll regime, and by the trade association that protects the interests of commercial truckers who travel Rhode Island's and the Nation's roads.

14. Plaintiff American Trucking Associations, Inc. ("ATA") is the largest national trade association for the trucking industry. Through a federation of other trucking groups, industry-related conferences, and 50 affiliated state trucking associations, ATA represents more than 30,000 members covering every type of motor carrier in the United States, including many that regularly carry freight to, from, and through the State of Rhode Island. ATA's principal place of business is in Arlington, Virginia.

15. The interests that ATA seeks to protect in this action are germane to the purposes of the association. Neither the claims nor the forms of relief sought in this action require participation by the association's individual members. One or more members of the association have standing to bring this action in their own right.

16. Plaintiff Cumberland Farms, Inc., is a family-owned convenience store chain that operates more than 500 retail locations throughout each of the New England States, New York, and Florida, and operates its own fleet of more than 90 tractors and 120 trailers. It is a member of the Rhode Island Trucking Association, which is part of ATA's federation, and is treated by ATA as an indirect member whose interests are represented by ATA. Cumberland Farms' principal place of business is in Westborough, Massachusetts. Cumberland Farms uses the bridges subject to tolling under the RhodeWorks program in the course of conducting its business carrying freight to, from, and through the State of Rhode Island.

17. Plaintiff M&M Transport Services, Inc., is a family-owned provider of transportation services that moves cargo nationwide on a fleet of more than 435 tractors and 1500 trailers. It is a member of the Trucking Association of Massachusetts, which is part of ATA's federation, and is treated by ATA as an indirect member whose interests are represented by ATA. M&M's principal place of business is in Quincy, Massachusetts. M&M uses the bridges subject to tolling under the RhodeWorks program in the course of conducting its business carrying freight to, from, and through the State of Rhode Island.

18. Plaintiff New England Motor Freight, Inc. (NEMF) is a family-owned carrier that operates a substantial number of Class 8 tractors subject to tolling under the RhodeWorks program. It is a member of ATA. NEMF's principal place of business is in Elizabeth, New Jersey. NEMF uses the bridges subject to tolling under the RhodeWorks program in the course of conducting its business carrying freight to, from, and through the State of Rhode Island.

19. Defendant Peter Alviti, Jr., is Director of the Rhode Island Department of Transportation (RIDOT). RIDOT designs, constructs, and maintains Rhode Island's surface transportation system, including its roads and bridges. It is responsible for implementing the RhodeWorks program, including the truck toll regime. Defendant Alviti, who is sued in his official capacity, has offices in Providence, Rhode Island.

BACKGROUND AND FACTUAL ALLEGATIONS

A. The Bridges And Highways That Are Tolled Under The RhodeWorks Program Are Significant Instrumentalities Or Channels Of Interstate Commerce.

20. The bridges subject to tolls under the RhodeWorks program, as well as the highways to which they connect, are significant instrumentalities or channels of interstate commerce.

21. RhodeWorks tolls currently are being collected at two locations on I-95. Tolls ultimately will be collected along five major highway corridors at 12 locations throughout Rhode Island. See Rhode Island Department of Transportation, *The RhodeWorks Tolling Program* (May 2018), <http://www.ridot.net/tolling/>.

22. The tolls will be located on Routes I-95, I-195, I-295, U.S. Route 6, and Rhode Island Route 146. *Id.*

23. Each location is associated with a bridge or bridge group.

24. These bridges and highways constitute vital commercial links to and from New England's largest cities and to the entire Northeast region of the United States.

25. I-95, I-195, and I-295 are the three highways in Rhode Island that are parts of the Interstate Highway system. Rhode Island Department of Administration Division of Planning, *FREIGHT FORWARD: STATE OF RHODE ISLAND FREIGHT AND GOODS MOVEMENT PLAN 36-37* (Sept. 2016).

26. I-95 is the major north-south highway on the East Coast and runs for almost 2,000 miles between Florida and Maine. It is a designated High Priority Corridor of the National Highway System. *Id.*

27. I-95 connects the major metropolitan areas on the eastern seaboard, including Boston, Providence, New Haven, New York, Philadelphia, Baltimore, and Washington, D.C. It directly links Rhode Island with Massachusetts and Connecticut.

28. I-195 provides a direct highway route from New York City to Cape Cod, Massachusetts, passing through Providence, Rhode Island, as well as a route for traffic entering Rhode Island from Connecticut and western Massachusetts. It runs from Providence to Wareham, Massachusetts.

29. I-295 is a western bypass highway that connects to I-95 south of Providence, as well as north of Providence in Massachusetts. It forms a beltway around Providence, bypassing I-95 as that highway passes through the city.

30. U.S. Route 6 is a major east-west highway that traverses Rhode Island, connecting Hartford, Connecticut, with Providence, and continuing on to Provincetown, Massachusetts.

31. Rhode Island Route 146 is a major north-south highway running to the Massachusetts state line and linking Providence with Worcester, Massachusetts.

32. In light of Rhode Island's location between the large metropolitan areas of New York and Boston, these routes are vital to the transportation of goods into and through Rhode Island and all along the East Coast.

33. Trucks use each of these roads to move goods in interstate commerce.

34. Among these vehicles are commercial trucks carrying goods within Rhode Island, between Rhode Island and other States, and from one State outside Rhode Island to another by way of Rhode Island.

35. Commercial trucking firms using the bridges and highways subject to RhodeWorks tolls include firms based within the State of Rhode Island and firms based outside Rhode Island.

36. I-95 is the principal roadway used by Rhode Island's through, inbound, and outbound truck traffic. *Id.* at 36.

37. The U.S. Department of Transportation estimates that in 2010 trucks moved between five and ten million tons of freight between Rhode Island and Massachusetts, and between one and five million tons of freight between both Rhode Island and New York and

Rhode Island and Connecticut. U.S. Department of Transportation, *Major Truck Flows To, From, and Within Rhode Island: 2010* (2012), https://ops.fhwa.dot.gov/freight/freight_analysis/state_info/rhode_island/images/hi_res_pdf/ri_truckflow_2010.pdf.

38. Large trucks are vital to the interstate commerce that occurs along these routes. Such trucks help fund maintenance of the interstate highways on which they travel through payment of apportioned state fuel taxes and registration fees, as well as through federal highway aid funded by federal fuel and excise taxes.

39. Trucks move an estimated 70% of total freight tonnage in the United States, transporting an estimated 10.5 billion tons of freight in 2016. American Trucking Association, *Reports, Trends & Statistics* http://www.trucking.org/News_and_Information_Reports_Truck_Tonnage.aspx.

40. In Rhode Island each day, trucks move “approximately 88 percent of all freight value on the State’s 6,528 miles of roadways.” Rhode Island Department of Administration Division of Planning, *FREIGHT FORWARD: STATE OF RHODE ISLAND FREIGHT AND GOODS MOVEMENT PLAN 36* (Sept. 2016).

41. Inbound, outbound, and through traffic each make up approximately 30 percent of truck traffic on Rhode Island’s roadways by tonnage. *Id.* at 127.

42. Rhode Island estimates that local traffic accounts for 11.4% of Rhode Island truck flows, while through traffic accounts for an estimated 31%, outbound traffic accounts for 29%, and inbound traffic accounts for an estimated 28.5% of truck flows in the State. *Id.*

43. Inbound freight entering Rhode Island comes from geographically diverse locations and originates at points across the Nation. *Id.* at 126-28.

B. The Large Trucks Subject To The RhodeWorks Tolls Constitute A Very Small Percentage Of The Vehicles Using The Tolled Facilities.

44. Traffic at the RhodeWorks toll locations includes cars, single unit trucks, single tractor trailers, and tandem tractor trailers. Louis Berger Group, Inc., *Rhode Island Department of Transportation Investment-Grade Tolling Study Final Report* at 10 (Nov. 3, 2017).

45. The vast majority of vehicles on the roads affected by the RhodeWorks program are automobiles, rather than the trucks that are subject to the Rhode Island tolls.

46. Studies at Rhode Island's proposed toll locations estimate that cars comprise 94.4% of weekday traffic and 98.0% of weekend traffic through the proposed toll sites. *Id.* at 39-40.

47. On an average weekday, RIDOT estimates that 1,765,467 vehicles pass through the existing and proposed RhodeWorks toll locations. *Id.* at 39.

48. Of these, RIDOT estimates that approximately 1,666,071 are automobiles, 55,185 are single unit trucks, and 44,211 are tractor trailers. *Id.*

49. Accordingly, by RIDOT's own estimates, tractor trailers subject to Rhode Island's tolls comprise only an estimated 2.5% of weekday traffic and 0.8% of weekend traffic through the proposed toll sites. *Id.*

C. The RhodeWorks Tolling Program.

50. Rhode Island enacted its tolling legislation in February 2016. *See* R.I. Gen. Laws 42-13.1-4.

51. RhodeWorks authorizes RIDOT to charge a toll solely on "a tractor or truck tractor as defined in 23 C.F.R. 658.5, pulling a trailer or trailers." Under the regulatory definition, a tractor or truck tractor is "[t]he noncargo carrying power unit that operates in combination with a semitrailer or trailer."

52. Under Rhode Island's law, the RhodeWorks tolls "shall be collected on large commercial trucks only and shall not be collected on any other vehicle." R.I. Gen. Laws 42-13.1-4(a). "Large commercial truck[s]" are defined by Rhode Island's law "pursuant to the Federal Highway Administration (FHWA) vehicle classification schedule as any vehicle within Class 8—single trailer, three (3) or four (4) axles up to and including Class 13—seven (7) or more axle multitrailer trucks, as such classification may be revised from time to time by the FHWA." R.I. Gen. Laws 42-13.1-3(4). These are the largest trucks in use, and are the ones customarily used to transport large volumes of freight over long distances.

53. Class 8 trucks are defined by the Federal Highway Administration as heavy-duty trucks that have a gross vehicle weight rating—the maximum operating weight of the vehicle—exceeding 33,000 pounds. In 2016, 3.68 million Class 8 trucks (including tractors and straight trucks) were in operation in the United States. American Trucking Association, *Reports, Trends & Statistics*, http://www.trucking.org/News_and_Information_Reports_Truck_Tonnage.aspx.

54. The legislation authorizing the RhodeWorks tolling specifically prohibits the imposition of tolls on automobiles, buses, smaller trucks, and other vehicles, providing that RIDOT "is expressly prohibited from collecting tolls hereunder on other vehicles [than large commercial trucks], herein defined to include motorcycles, passenger cars, and all other vehicles classed one through seven (7) pursuant to the Federal Highway Administration (FHWA) vehicle classification schedule." R.I. Gen. Laws 42-13.1-5.

55. The law then further insulates automobiles from tolling, providing that "[n]o act authorizing tolls on passenger vehicles pursuant to this chapter shall take effect until it has been approved by the majority of those electors voting in a statewide referendum." R.I. Gen. Laws 42-13.1-4(a).

56. The RhodeWorks toll rates will vary from site to site, ranging from \$2.00 to \$9.50 per transit through the toll site. Rhode Island Department of Transportation, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/>.

57. The median toll charge will be \$3.50. *Id.*

58. The RhodeWorks program “limit[s] the assessment of tolls upon the same individual large commercial truck ... to once per toll facility per day in each direction.” R.I. Gen. Laws 42-13.1-4.5(b).

59. The program also provides that “the total amount of tolls imposed upon the same individual large commercial truck ... for making a border-to-border through trip on Route 95 Connecticut to Route 95 Massachusetts, or the reverse, shall not exceed twenty dollars (\$20.00).” R.I. Gen. Laws 42-13.1-4(c).

60. In addition, the RhodeWorks legislation limits the daily amount of tolls that may be collected from any one truck to \$40: “the daily maximum amount of the tolls collected upon the same individual, large commercial truck ... shall not exceed forty dollars (\$40.00).” R.I. Gen. Laws 42-13.1-4(d). This is so “no matter how many tolls a tractor trailer goes through.” Rhode Island Department of Transportation, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/>.

61. The resulting Rhodeworks program became active with the collection of tolls in June 2018.

62. Currently, tolls have been implemented at two locations in southwestern Rhode Island on Route I-95. Rhode Island Department of Transportation, *Bridge Tolling Project: Toll Locations 1 and 2* (Sept. 2017).

63. RhodeWorks Location One is on I-95 between Hopkinton and Richmond, Rhode Island. The toll at this location is \$3.25. Rhode Island Department of Transportation, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/>.

64. RhodeWorks Location Two is on I-95 at Exeter, Rhode Island. The toll at this location is \$3.50. *Id.*

65. Ten additional tolling locations are being designed; implementation of tolls at these locations is pending an Environmental Assessment study. Rhode Island Department of Transportation, *Bridge Tolling Project: Toll Locations 3, 4, & 6 Through 13* (May 2018).

66. RhodeWorks tolls are imposed “for the privilege of traveling on Rhode Island bridges to provide for replacement, reconstruction, maintenance, and operation of Rhode Island bridges.” R.I. Gen. Laws 42-13.1-4(a). RIDOT’s “authority to fix and adjust the amount of tolls shall be determined by the costs of replacement, reconstruction, maintenance, and operation of Rhode Island’s system of bridges and/or any portion or portions thereof.” R.I. Gen. Laws 42-13.1-8. The State estimates that the plan will raise \$45 million annually. *See* Patrick Anderson, *R.I. House passes Raimondo’s truck-toll plan*, THE PROVIDENCE JOURNAL (Feb. 11, 2016)

67. RIDOT states that it will use these tolls to “[f]ix more than 150 structurally deficient bridges in Rhode Island, and make repairs to another 500 bridges to prevent them from becoming deficient.” Rhode Island Department of Transportation, *Accelerating the Comeback: Investing in Infrastructure*, <http://www.dot.ri.gov/rhodeworks/>.

68. But RIDOT acknowledges that its bridge-tolling program “is a unique approach to repairing bridges by tolling only specific types of tractor trailers.” Rhode Island Department of Transportation, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/>.

69. Comparable highways in the region impose tolls both on automobiles and on trucks. For example:

- a. New York imposes tolls on the New York State Thruway on all types of vehicles at rates that vary by vehicle classification. 21 C.R.R.-NY §§101.1-101.3.
- b. Delaware imposes tolls on I-95 that are assessed on 2-axle cars and motorcycles, as well as trucks and larger vehicles, in amounts that vary by vehicle classification. Delaware Department of Transportation, *Toll Calculator I-95 Newark Toll Plaza*, <https://deldot.gov/public.ejs?command=PublicTollRateI95>.
- c. Massachusetts has instituted tolls on the Massachusetts Turnpike that also apply to trucks and smaller vehicles, again in amounts that vary by vehicle type. Massachusetts Department of Transportation, *Toll Rates for Mass Turnpike*, EZDriveMA, <https://www.ezdrivema.com/TollCalculator>; see also Mass Gen. Laws Ch. 6C § 13 (authorizing state department of transportation to impose tolls by vehicle class).
- d. Maryland imposes tolls on I-95. As with these other neighboring States, the toll amounts vary by vehicle class, but apply to automobiles and trucks alike. Maryland Transportation Authority, *Toll Rates for the John F. Kennedy Memorial Hwy (I-95)*, http://mdta.maryland.gov/Toll_Rates/jfk_rates.html.

D. Rhode Island Officials Designed And Intended The RhodeWorks Tolling Program To Discriminate Against Out-Of-State And Interstate Carriers.

70. At all times, the Rhode Island officials who designed and implemented the RhodeWorks programs intended to place the primary burden of paying for the repair and maintenance of Rhode Island's bridges on out-of-state entities, discriminating in favor of Rhode Island residents and businesses and exporting the cost of maintaining Rhode Island bridges to entities operating in interstate commerce.

71. Rhode Island Governor Gina Raimondo, whose administration developed the RhodeWorks program, and the state legislators who enacted that program, specifically intended to limit any impact on Rhode Island residents and local Rhode-Island based businesses, while passing a disproportionate share of the cost of local bridge repair and maintenance onto out-of-state entities and those engaged in interstate commerce.

72. Accordingly, Rhode Island officials structured the program to limit the impact of the plan on local taxpayers and increase the impact on out-of-state carriers.

73. In October 2015, a study commissioned by the Rhode Island Department of Revenue's Office of Revenue Analysis on behalf of RIDOT assessed the economic effects of different financing options to fund RhodeWorks' bridge-restoration goal. Christopher Judson, *The Economic Impact of RhodeWorks: An Accelerated Transportation Restoration Plan*, Regional Economics Models, Inc. (Oct. 7, 2015).

74. The 2015 study considered the economic impact of funding bridge rehabilitation partially through gasoline and diesel-fuel-tax increases, "which are borne primarily by Rhode Island businesses and consumers," rather than through a financing regime that relies on tolls for 100% of its revenue. *Id.* at 6.

75. The study found that financing the bridge-restoration project in part via fuel taxes would increase the projected liability of in-state residents and businesses.

76. In comparing financing options, the report noted: “It is important to understand that the tolling financing regime shifts a segment of the cost of the RhodeWorks project onto semi-tractor trailer trucks that pass through the state without stopping. That is, these trucks’ trips originate at an out of state location and terminate at an out of state location and simply use Rhode Island’s roads as a conduit for making the trip.” *Id.*

77. Because the largest trucks are used principally to transport freight in interstate commerce, a financing regime that derives all of its revenue from truck tolls—and none from automobiles and other small vehicles that are used more often for intrastate and local trips—will discriminate against out-of-state and interstate travelers.

78. Governor Raimondo selected the 100% truck-tolling structure to avoid a local impact and instead shift the costs of the RhodeWorks program to out-of state users of Rhode Island’s roads.

79. Governor Raimondo stated that under the truck-tolling regime, there will be “plenty” of revenue to fund RhodeWorks, “the majority of which would come from out of state.” Katherine Gregg, *Three experts split over truck toll proposal*, THE PROVIDENCE JOURNAL A10 (Nov. 8, 2015).

80. Governor Raimondo was unequivocal about the intent to export the State’s tax burden: “The reason I prefer the tolling proposal is because the majority of the burden is on out-of-state truckers and out-of-state companies who are using—and I would say abusing—our roads. ... I don’t like putting the burden squarely on the people and businesses of Rhode Island. ... If you increase the diesel tax, it’s every fisherman, every restaurant, every dry cleaner that

delivers, every florist that delivers It really hits every Rhode Island business.” Patrick Anderson & Katherine Gregg, *Raimondo: Plan shifts burden off R.I.*, PROVIDENCE JOURNAL (Oct. 29, 2015). *See also* Mary MacDonald,, *Improved business climate positions R.I. for growth*, PROVIDENCE BUSINESS NEWS (Dec. 23 2015) (quoting Rhode Island House Speaker Nicholas Mattiello: “a lot of the burden for the repair of our bridges, overpasses and infrastructure is passed on to out-of-state truckers”; “[a] lot of the cost gets shifted to out-of-state truckers”).

81. Subsequently, Governor Raimondo’s spokeswoman, Marie Aberger, reiterated this intent: “The Governor has made it very clear she does not want to put the burden on the backs of Rhode Island families A significant share of the revenue will be raised from out-of-state users.” Katherine Gregg, *Three experts split over truck toll proposal*, THE PROVIDENCE JOURNAL A10 (Nov. 8, 2015).

82. Other state officials also candidly acknowledged that the tolling scheme was designed to place its burden disproportionately on out-of-state payers.

83. For example, RIDOT Director Peter Alviti, Jr., stated that “the majority of tolls that are going to be paid here are from out of state trucks.” Jim Hummel, *Taking a Toll*, The Hummel Report (Mar. 19, 2018).

84. The Rhodeworks program further exported the toll burden to out-of-state entities by imposing tolls caps that explicitly were designed to provide relief to local carriers, thus imposing disproportionate burdens on trucks traveling interstate. Because local vehicles that travel exclusively or principally intrastate can be expected to traverse a given toll location many times in a single day, while carriers making interstate trips that pass through Rhode Island are likely to traverse given toll locations only once per day, the RhodeWorks rules that allow the

collection of only a single toll per day on a particular truck at any toll facility, and that impose daily toll caps for travel on I-95, will disproportionately benefit local carriers and disadvantage those from out-of-state or that travel in interstate commerce.

85. A study sponsored by RIDOT confirmed this reality. It found that, absent the toll caps for multiple trips in Rhode Island, trucks with Rhode Island-issued license plates would pay approximately 45% of the RhodeWorks tolls, while trucks with out-of-state license plates would pay approximately 55%. But “after adjusting for the multi-trip discounts, about 60 percent of truck tolls would be charged to out of state trucks, while about 40 percent would be [charged to] Rhode Island [trucks].” CDM Smith, TRUCK TRAFFIC COUNT SUMMARY REPORT 1-4 (Oct. 2015) (prepared for RIDOT by CDM Smith).

86. State officials repeatedly trumpeted this disproportionate, discriminatory effect as a reason to support the RhodeWorks program.

87. For example, Rhode Island House Speaker Nicholas Mattiello said: “People should know that 60 percent of the money [for tolls] is going to come from out of state.” Ian Smith, *On 52-21 Vote, RI House Approves Truck Toll Plan*, Rhode Island Public Radio (Feb. 10, 2016) (alterations in original); *see also* Patrick Anderson, *R.I. House passes Raimondo’s truck-toll plan*, THE PROVIDENCE JOURNAL (Feb. 11, 2016) (Rep. Stephen Ucci stating: “The tolling relies on 60 percent revenue from out of state trucks who would have never paid to come through this state.”).

88. Similarly, RIDOT Director Alviti, testifying before the Rhode Island House Finance Committee on June 2, 2015 about the fee caps, stated: “That’s part of the mitigation that we put in place. That local businesses[,] they benefit.” Rhode Island House Committee on

Finance, Testimony of Peter Alviti, Jr., Director of RIDOT (June 2, 2015), available at <http://ritv.devosvideo.com/show?video=rt3pd2wz&apg=aa4b5830>.

89. There is no reason to doubt that, as indicated by the RIDOT study, out-of-state carriers are disproportionately burdened by the RhodeWorks toll caps. That was the expectation and intent of Rhode Island officials, who repeatedly described that discriminatory effect of the cap as a reason to support the RhodeWorks regime.

90. As the tolling plan developed, Governor Raimondo made a series of additional changes to benefit local truck operators at the expense of out-of-state and interstate carriers.

91. Her initial proposal would have imposed tolls on smaller trucks.

92. In response to opposition by local companies, Governor Raimondo stated in April 2015: “We are willing to sit down with local companies and say, ‘Is there a way we can make this less burdensome for local Rhode Island companies?’ We’re at the table discussing it.” Jennifer Bogdan, *Raimondo Willing to Tweak Plan for Trucking Tolls*, PROVIDENCE JOURNAL, (May 30, 2015).

93. Accordingly, Governor Raimondo modified her proposal to exempt from tolls smaller commercial trucks—those more likely to be operated by local businesses and more likely to confine their operations to local or intrastate commerce—before presenting it to the Rhode Island State House. Jennifer Bogdan & Patrick Anderson, *Raimondo Tries to Mollify Truckers*, THE PROVIDENCE JOURNAL AT A1 (June 3, 2015).

94. As enacted, the RhodeWorks tolls apply only to Class 8 or larger trucks, the largest trucks in operation.

95. To protect local truckers, Governor Raimondo further proposed a financial relief package for the Rhode Island trucking industry involving \$13.5 million in tax credits, rebates,

and direct grants to Rhode Island-registered truckers and shipping companies. *See* Katherine Gregg, *Lighter road for R.I. truckers*, THE PROVIDENCE JOURNAL at A1, A13 (June 8, 2015).

96. This proposal was cut from the RhodeWorks legislation in light of “concern about the legality of favoring local businesses over out of state competitions.” Katherine Gregg, *Relief Plan Offered for R.I. in-state commercial truck owners*, THE PROVIDENCE JOURNAL, June 9, 2016; *see also* Patrick Anderson, *R.I. House passes Raimondo’s truck-toll plan*, THE PROVIDENCE JOURNAL (Feb. 17, 2016) (local subsidies “cut out of Raimondo’s earlier toll bill ... because of concerns it was unconstitutional”).

97. To side-step any legal challenges, Rhode Island legislators instead looked for more covert ways to prefer local interests.

98. The legislature accordingly made cuts in Rhode Island truck registration fees, presenting this initiative as a \$6 million relief package for in-state commercial truck owners. *See* Jennifer Bogdan & Patrick Anderson, *Raimondo tries to mollify truckers*, THE PROVIDENCE JOURNAL at A1 (June 3, 2015); Patrick Anderson, *Collection of truck registration fees lagging behind projections*, THE PROVIDENCE JOURNAL (May 9, 2017).

99. House Speaker Mattiello stated that, although he “do[es] not want to connect” the relief package to the tolling provisions, “if it’s a Rhode Island company with a Rhode Island registration they are going to benefit from this new plan which cuts their registrations in half. If they are registered out of state, they won’t receive this benefit.” Katherine Gregg, *Relief plan offered for R.I. in-state commercial truck owners*, THE PROVIDENCE JOURNAL (June 6, 2016).

100. In fact, however, the relief package was generally acknowledged as an effort to “help the Rhode Island trucking industry weather the onset of truck tolls.” Patrick Anderson,

Collection of truck registration fees lagging behind projections, THE PROVIDENCE JOURNAL (May 9, 2017).

E. The RhodeWorks Tolls Discriminate Against Out-Of-State And Interstate Carriers In Their Practical Effect.

101. The RhodeWorks tolls fall, as intended and expected, predominantly on out-of-state and interstate operators.

102. The tolls' application solely to large trucks, coupled with the flat cap features, guarantees that interstate truckers will bear the majority of the cost of maintaining Rhode Island's bridges.

103. The inevitable impact of a flat toll cap is to benefit users of Rhode Island bridges and roads that travel entirely, or largely, in the State. Under such a toll-cap regime, a truck that drives principally in Rhode Island will effectively pay a lower per mile and per use rate than will an identical truck that travels an identical number of miles but does so principally out-of-state, passing through Rhode Island as part of an interstate trip. By the same token, more local than out-of-state or interstate trucks will be able to take advantage of the RhodeWorks rule providing that only one charge may be imposed per day per truck at each tolling location.

104. The flat caps on tolls therefore disproportionately benefit the local trucks that are most likely to make multiple trips through Rhode Island during a day. Such a charge is "plainly discriminatory" against interstate commerce. *Am. Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 286 (1987).

105. As demonstrated by RIDOT's own study, that is the actual effect of the RhodeWorks tolling regime.

106. In addition, and separately, the application of the RhodeWorks tolls solely to the largest trucks places the burden of repairing and maintaining Rhode Island's bridges exclusively

on the kinds of vehicles most likely to be engaged in interstate commerce, to the exclusion of all other types of vehicles.

107. Indeed, truck tractors hauling semitrailers and other truck combinations accounted for approximately 60.8 percent of commercial truck travel in the United States in 2015. United States Department of Transportation, Bureau of Transportation Statistics, *Freight Facts & Figures 2017 – Chapter 3 The Freight Transportation System* at 3-23 (2017).

F. The RhodeWorks Tolls Are Collected In Amounts That Are Not A Fair Approximation Of The Operators’ Use Of The Tolled Facilities And That Are Excessive In Light Of The Benefits Conferred.

108. Moreover, and apart from its discriminatory characteristics, the RhodeWorks tolls by definition are not a fair approximation of truckers’ use of the tolled facilities and are excessive in light of the benefits conferred on users.

109. Exempting most users of Rhode Island’s bridges and highways (*e.g.*, autos, buses, smaller trucks, and other vehicles) from tolls, while charging large trucks, necessarily means that interstate truckers pay a disproportionate share of the costs of highway maintenance and repair. This effect is compounded by the toll caps, which result in a one-time interstate user of the tolled facility paying the same amount as an identical intrastate carrier that uses the facility numerous times in a single day. Such a charge does “not even purport to approximate fairly the cost or value of the use of” the tolled facilities. *Scheiner*, 483 U.S. at 290.

110. RIDOT attempted to justify imposing tolls solely on large trucks by asserting that “[a]lmost all vehicle-created road damage is from large commercial trucks.” Rhode Island Department of Transportation, *Accelerating the Comeback: Investing in Infrastructure*, <http://www.dot.ri.gov/rhodeworks/>.

111. Even if this assertion were correct, it could not justify capping the charges imposed on large trucks that pass tolling points in Rhode Island repeatedly in a single day. Under the State's theory, such trucks cause more damage to bridges than do trucks that pass the tolling point only once per day, but the cap results in the repeated user of the facility paying proportionately less for each use—and the one-time user paying proportionately more.

112. But in any event, the State's assertion is incorrect.

113. Although trucks may wear pavements more than cars, engineers protect against this effect by increasing pavement thickness—an adjustment that constitutes less than 3% of highway costs. Traffic does not significantly affect how quickly a bridge wears out unless the traffic grossly exceeds the weight a bridge was designed to handle. *See* ATA Foundation/Canadian Trucking Research Institute, Technical Information Series, *The "9600 to 1" Numbers Game: Bad Math, Not a Measure of Damages* (Feb. 1997), available at <http://www.trucking.org/ATA%20Docs/What%20We%20Do/Trucking%20Issues/Documents/Highway%20Infrastructure%20and%20Funding/9600-1.PDF>.

114. The assertion that large trucks in the aggregate cause more damage to bridges and roads than do other vehicles is also contrary to the U.S. Department of Transportation Federal Highway Administration's Cost Allocation study. United States Department of Transportation Federal Highway Administration, *Cost Allocation Study Final Report: Highway Cost Responsibility* (Nov. 7, 2014), <https://www.fhwa.dot.gov/policy/hcas/final/five.cfm>.

115. Regarding wear and tear on bridges, the U.S. Department of Transportation determined that "[t]wo-thirds of all bridge costs are allocated to passenger vehicles, 12 percent to single unit trucks, and 20 percent to combination trucks." *Id.*

116. Even when looking at costs specific to “major bridge rehabilitation,” the federal study found that trucks are responsible for only an estimated 31.1% of costs. *Id.*

117. Regarding Rhode Island specifically, experts agree that large trucks do not cause “all the damage [to bridges], since bridges and roads deteriorate from the elements without traffic. ... [And] if there were ... no autos, you would need smaller bridges and roadways which would require less cost to build and maintain. So, in my opinion, autos should bear a significant portion of the cost to build and maintain highways and bridges.” Katherine Gregg, *Three experts split over truck toll proposal*, THE PROVIDENCE JOURNAL A10 (Nov. 8, 2015) (quoting University of Rhode Island finance professor Henry Schwarzbach).

118. Moreover, single unit heavy trucks that are exempted from the RhodeWorks tolls, such as garbage trucks, construction vehicles, and dump trucks, often bear more weight per axle—and therefore are as or more damaging to roads—than larger trucks.

119. Thus, in the aggregate, the automobiles, small trucks, and other vehicles that are exempted from Rhode Island’s tolls likely cause far more wear and tear on Rhode Island bridges and roads than do the tolled trucks, and undoubtedly contribute a substantial portion of that wear and tear.

120. In addition, wholly apart from wear and tear caused by vehicular traffic, bridges and roads also deteriorate from exposure to the elements, particularly if not properly maintained. *Id.* To be based on a fair approximation of use, a user charge dedicated to bridge and road maintenance therefore would have to distribute the expense of addressing such weather-related maintenance among all users of the facilities—but the RhodeWorks tolls impose these charges exclusively on a small percentage of users.

121. Thus, the RhodeWorks funding scheme requires trucks engaged in interstate commerce to bear costs above and beyond the costs associated with their use of the tolled Rhode Island facilities.

122. Under the RhodeWorks regime, in-state individuals and entities—including both the operators of vehicles that are not tolled at all and the operators of trucks that benefit from the toll caps—do not bear the substantial financial burdens associated with administering and operating the tolled bridges.

123. Other means of repairing and maintaining Rhode Island's bridges could be implemented by RIDOT.

124. These other means include, for example, fuel taxes and other charges that Rhode Island officials considered but rejected so as to export the maintenance burden to out-of-state users of Rhode Island's bridges and highways.

125. Under a program that imposes fuel taxes or other equitable charges, the costs associated with maintaining bridges and highways would be borne by all Rhode Island residents and users of Rhode Island bridges and roads that benefit from those facilities—including those local residents and businesses that use the facilities most often—rather than burdening interstate commerce and out-of-state truckers.

G. The Discriminatory And Disproportionate RhodeWorks Tolls Injure Interstate Commerce.

126. The artificial inflation of the rates charged to commercial truckers using Rhode Island's bridges and highways has significant effects on interstate commerce.

127. The cost of traveling on toll roads affects the routes that trucking companies follow in transporting goods and materials, the costs that they must bear, and ultimately the prices that they must charge for transporting goods and materials.

128. Trucking companies respond to higher prices on toll roads by, among other things, decreasing their use of those roads, and when out-of-state routes are available, increasing their use of the roads in other States. *See* Katherine Gregg, *Three experts split over truck toll proposal*, THE PROVIDENCE JOURNAL A10 (Nov. 8, 2015) (expert “anticipate[s]” that, in response to RhodeWorks tolls, “many more long-haul truckers will find end-runs around Rhode Island’s tolling gantries”; “I believe there will be very substantial avoidance”) (quoting University of Rhode Island finance professor Leonard Lardaro).

129. Truckers cannot always change their routes, however, meaning that price increases may be necessary to compensate for increased tolling costs and that revenues for trucking companies may decline.

130. Rate increases can cause truckers to lose business to other modes of transport.

131. When trucking rates increase, costs from the inflated tolls are often also passed on to the businesses that are shipping the goods.

132. The excessive tolls thus increase businesses’ costs for sending goods to other States, making it less profitable and less desirable for companies to enter or participate in the national market.

133. Increased truck tolls are in part passed through to consumers throughout the country in the form of higher prices for goods, including staple goods such as food and clothing.

134. In some circumstances, increased costs from tolls may eliminate consumers’ access to certain goods entirely by deterring the interstate transport of those goods, thus reducing the variety of goods available to consumers.

CLAIMS FOR RELIEF

COUNT ONE

**RHODE ISLAND'S TRUCK TOLLS VIOLATE THE U.S. CONSTITUTION'S
COMMERCE CLAUSE AND 42 U.S.C. § 1983**

135. Paragraphs 1-134 are incorporated as if set forth fully herein.

136. The RhodeWorks tolls violate the Commerce Clause and 42 U.S.C. § 1983 for three reasons.

137. *First*, the Supreme Court has held repeatedly that “[a] finding that state legislation constitutes ‘economic protectionism’” that is invalid under the Commerce Clause “may be made on the basis of ... discriminatory purpose” and that the finding of such a purpose “is sufficient to demonstrate” that the challenged rule is unconstitutional. *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270 (1984).

138. Rhode Island adopted its truck tolls with just such an express intent to impose disproportionately heavy burdens on, and therefore to discriminate against, out-of-state and interstate users of Rhode Island bridges and roads, to the benefit of Rhode Island residents.

139. Consequently, the enactment, implementation, and enforcement of RhodeWorks truck tolls have deprived, and will continue to deprive, Plaintiffs of rights secured by the Commerce Clause of the United States Constitution and 42 U.S.C. § 1983 because the toll program was motivated by the intent to discriminate against interstate commerce.

140. *Second*, the Supreme Court also repeatedly has held that state rules are invalid under the Commerce Clause when they have “the practical effect” of discriminating against interstate commerce. *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 352-53 (1977).

141. Rhode Island’s truck tolls have just such a discriminatory effect, falling disproportionately on out-of-state truckers and on entities engaged in interstate commerce.

142. Consequently, the enactment, implementation, and enforcement of RhodeWorks truck tolls have deprived, and will continue to deprive, Plaintiffs of rights secured by the Commerce Clause of the United States Constitution and 42 U.S.C. § 1983 because the tolls discriminate against interstate commerce in their practical effect.

143. *Third*, the Supreme Court has held that a user fee falling on participants in interstate commerce, such as a highway toll, is invalid under the Commerce Clause unless, among other things, it “is based on some fair approximation of use or privilege for use” and “is not excessive in relation to the benefits conferred.” *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355, 362-63 (1994) (quoting *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707, 716-17 (1972)) (ellipses omitted). See *Scheiner*, 483 U.S. at 289-292.

144. Rhode Island’s truck tolls violate this principle. All travelers on Rhode Island’s bridges and highways benefit from the use of those facilities and contribute to wear and tear on them, but the RhodeWorks tolls impose the costs of maintaining and repairing those facilities exclusively on the operators of the large trucks that are most likely to be engaging in interstate commerce—entirely exempting from the tolls the much more numerous operators of other vehicles that are more likely to be local and engaging in intrastate commerce.

145. Rhode Island’s truck tolls therefore violate the Commerce Clause and 42 U.S.C. § 1983 because they are not based on a fair approximation of use and are excessive in relation to the benefits conferred on commercial truckers for paying those tolls.

146. Defendant Peter Alviti, Jr., acting in his official capacity as Director of the Rhode Island Department of Transportation, instituted, authorized, ratified, permitted, or acquiesced in the enactment, continuation, and enforcement of these unconstitutional truck tolls.

147. Unless the charging of discriminatory truck tolls and the charging of truck tolls in excess of the constitutionally permissible amount for a user fee is enjoined, Plaintiffs will suffer irreparable harm.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court issue:

- A. A declaratory judgment that Rhode Island's truck-toll scheme is unconstitutional;
- B. A permanent injunction enjoining Defendants from continuing to implement or enforce Rhode Island's truck tolls;
- C. Final judgment in favor of Plaintiffs;
- D. A monetary award for attorneys' fees and the costs of this action, including, where applicable, expert-witness fees, in accordance with 42 U.S.C. § 1988; and,
- E. Any other relief for the Plaintiffs that the Court deems proper.

Dated: July 10, 2018

Plaintiffs,

AMERICAN TRUCKING ASSOCIATIONS, INC.;
CUMBERLAND FARMS, INC.; M&M
TRANSPORT SERVICES, INC.; AND NEW
ENGLAND MOTOR FREIGHT, INC.

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