

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

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

v. :

C.A. No.: 1:18-cv-00378-WES-PAS

PETER ALVITI, JR., in his official :
capacity as Director of the Rhode Island :
Department of Transportation; Rhode :
Island Turnpike and Bridge Authority :
Defendants. :

DEFENDANTS’ PROPOSED STATEMENT OF FACTS AND CONCLUSIONS OF LAW

Defendants Peter Alviti, Jr. in his official capacity as Director of the Rhode Island Department of Transportation (“RIDOT”) and Rhode Island Turnpike and Bridge Authority (“RIBTA”) submit their proposed Statement of Facts and Conclusions of Law as follows:

STATEMENT OF FACTS

I. The RhodeWorks Act

1. Pursuant to the congressional authority provided in 23 U.S.C. § 129, Rhode Island enacted the Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act of 2016, R.I. Gen. Laws § 42-13.1-1, et seq., colloquially known as the RhodeWorks Act, in February 2016.

2. Rhode Island Department of Transportation (“RIDOT”), “funds the reconstruction, replacement, and maintenance of all bridges in Rhode Island, except the Newport Bridge, the Mount Hope Bridge, the Jamestown-Verrazano Bridge, and the Sakonnet River Bridge.” R.I. Gen. Laws § 42-13.1-2(1).

3. “According to the Federal Highway Administration (FHWA) 2015 National Bridge Inventory (NBI) data, there are seven hundred sixty-four (764) bridges in Rhode Island greater than twenty feet (20') in length. Of these NBI bridges, one hundred seventy-seven (177) bridges, or twenty-three percent (23%), are classified as structurally deficient.” R.I. Gen. Laws § 42-13.1-2(2).

4. “For the past several decades, Rhode Island has depended on three (3) primary sources for funding all transportation infrastructure construction, maintenance, and operations: federal funds, state bond funds, and motor fuel tax revenue. Of these sources, two (2), federal funds and motor fuel tax revenue, are mutable.” R.I. Gen. Laws § 42-13.1-2(3).

5. “The 2008 governor’s blue ribbon panel on transportation funding, the 2011 senate special commission on sustainable transportation funding, and the 2013 special legislative commission to study the funding for East Bay bridges determined that there is insufficient revenue available from all existing sources to fund the maintenance and improvement of Rhode Island transportation infrastructure.” R.I. Gen. Laws § 42-13.1-2(4).

6. “In 2011, the general assembly adopted a component of the recommended systemic change to transportation funding by dedicating increased resources from the Rhode Island capital plan fund and creating the Rhode Island highway maintenance account, to be funded by an increase in license and registration fees, beginning in FY2014.” R.I. Gen. Laws § 42-13.1-2(5).

7. “In 2014, the general assembly adopted changes to the Rhode Island highway maintenance account to provide additional state revenue for transportation infrastructure in future years.” R.I. Gen. Laws § 42-13.1-2(6).

8. “Although the state is shifting from long-term borrowing to reliance upon annual revenues to fund transportation infrastructure on a pay-as-you go basis, and although a recurring

state source of capital funds has been established, there is still a funding gap between the revenue needed to maintain all bridges in structurally sound and good condition and the annual amounts generated by current dedicated revenue sources.” R.I. Gen. Laws § 42-13.1-2(7).

9. “According to the U.S. General Accounting Office, just one, fully-loaded five-axle (5) tractor trailer has the same impact on the interstate as nine thousand six hundred (9,600) automobiles. The department estimates that tractor trailers cause in excess of seventy percent (70%) of the damage to the state's transportation infrastructure, including Rhode Island bridges, on an annual basis. However, revenue contributions attributable to tractor trailers account for less than twenty percent (20%) of the state's total annual revenues to fund transportation infrastructure.” R.I. Gen. Laws § 42-13.1-2(8).

10. “The United States Congress, consistent with its power to regulate interstate commerce and pursuant to 23 U.S.C. § 129, has authorized states to implement reconstruction or replacement of a toll-free bridge and conversion of the bridge to a toll facility, provided that the state:

(i) Has in effect a law that permits tolling on a bridge prior to commencing any such activity; and

(ii) Otherwise complies with the requirements of 23 U.S.C. § 129.

R.I. Gen. Laws § 42-13.1-2(9).

11. Each of the statements made in Paragraphs 3 – 10 above are findings that the Rhode Island General Assembly made when enacting the RhodeWorks Act. R.I. Gen. Laws § 42-13.1-2.

12. The RhodeWorks Act authorizes the Rhode Island Department of Transportation (“RIDOT”) to “fix, revise, charge, and collect tolls 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).

13. The RhodeWorks Act authorizes RIDOT to charge tolls solely on “a tractor or truck tractor as defined in 23 C.F.R. 658.5, pulling a trailer or trailers.” *Id.* Under the regulatory definition, a tractor or truck tractor generally is “[t]he noncargo carrying power unit that operates in combination with a semitrailer or trailer.” 23 C.F.R. 658.5.

14. Under Rhode Island 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). For purposes of this statute, a “large commercial truck” is one categorized “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 multi-trailer trucks, as such classification may be revised from time to time by the FHWA.” R.I. Gen. Laws § 42-13.1-3(3).

15. The legislation authorizing RhodeWorks specifically prohibits the imposition of tolls “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.

16. The law further provides 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).

17. The RhodeWorks Act established the Rhode Island Bridge Replacement, Reconstruction and Maintenance Fund, a special account in the intermodal surface transportation fund, as established in § 31-36-20. R.I. Gen. Laws § 42-13.1-6 (the “Fund”).

18. By statute, “the Fund shall consist of all those monies received by RIDOT pursuant to the RhodeWorks Act, including:

- (1) The monies received through the collection of tolls on bridges in Rhode Island;
- (2) Any fees, fines, or penalties collected pursuant to this chapter; and
- (3) Investment earnings on amounts credited to the fund.”

R.I. Gen. Laws § 42-13.1-6.

19. By statute, unexpended balances and any earnings thereon shall not revert to the general fund but shall remain in the Fund. R.I. Gen. Laws § 42-13.1-6.

20. The RhodeWorks Act authorizes the Director of RIDOT to “designate any Rhode Island bridge on the National Highway System as a toll bridge in order to facilitate the financing of replacement, reconstruction, and maintenance of Rhode Island’s system of bridges.” R.I. Gen. Laws § 42-13.1-7.

21. The RhodeWorks Act provides that 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, including costs associated with acquisition, construction, operation, and maintenance of the toll facilities and administrative costs in connection therewith.” R.I. Gen. Laws § 42-13.1-8.

II. Memoranda of Understanding by and between FHWA and RIDOT

22. In preparation for tolling pursuant to the RhodeWorks Act, RIDOT sought agreement from the FHWA Rhode Island Division that each of the toll projects meets the toll eligibility requirements of 23 U.S.C. § 129(a)(1).

23. On September 21, 2016, RIDOT and the FHWA Rhode Island Division entered into 13 separate Memoranda of Understanding related to the following proposed toll projects:
- a. Huntington Avenue Viaduct Bridge #050401 in Providence, RI;
 - b. Centerville Road Bridge #068401 which carries Interstate 95 over Centerville Road in Warwick, RI and to reconstruct Tollgate Road Bridge #068301 which carries Interstate 95 over Tollgate Road, Warwick, RI;
 - c. Louisquisset Pike Bridge #027601 which carries Route 146 (Eddie Dowling Highway) over Route 116 (the George Washington Highway) in Lincoln, RI;
 - d. Teft Hill Bridge northbound and southbound #059201/21 which carries Interstate 95 over Teft Hill Trail in Exeter, RI and is reconstructing Baker Pikes Bridge #059301 which carries Interstate 95 over Route 3 in Richmond, RI;
 - e. Wood River Bridge #040401 which carries Interstate 95 over Wood River and Mechanic Street in the Towns of Hopkinton and Richmond;
 - f. Ramp Bridge #073601/21 which carries Interstate 295 over an abandoned future ramp in Johnston, RI and reconstruct, US 6 North and South Bridge #073701/21 which carries Interstate 295 over US Route 6, in Johnston, RI, Hartford Pike Bridge #075701/21 which carries Interstate 295 over the Hartford Pike (US Route 6A), in Johnston, RI; and Greenville Avenue Bridge #074001/21 which carries Interstate 295 over Greenville Avenue (RI Route 5), in Johnston, RI;
 - g. East Street Bridge #056101/21 which carries Interstate 95 over East Street in Pawtucket, RI and reconstruct Roosevelt Avenue Bridge #056201/21 which carries Interstate 95 over Roosevelt Avenue, in Pawtucket, RI;

- h. Oxford Street Bridge #065301 which carries Interstate 95 over Oxford Street in Providence, RI;
- i. Woonasquatucket River Bridge #060401 which carries Route 6 over the Woonasquatucket River, in Providence, RI;
- j. Aqueduct Bridge northbound and southbound #073001/21, which carries I-295 over the water supply aqueduct in the City of Cranston, RI; and the Plainfield Pike Bridge #073201/21, which carries I-295 over the Plainfield Pike in the City of Cranston, RI;
- k. Farnum Pike Bridge #044101/21 which carries Route 146 (Eddie Dowling Highway) over Route 104 (Farnum Pike) in North Smithfield, RI;
- l. Scott Road Bridge #075201/21 and the Leigh Road Bridge 075301/21, which carry I-295 over Scott Road and Leigh Road, in the Town of Cumberland, RI; and
- m. Washington Bridge South #020001 which carries Eastbound Interstate 195 over the Seekonk River, Water Street, Gano Street and Valley Street in East Providence and Providence, RI and the Washington Bridge North Bridge #070001 which carries Westbound Interstate 195 over the Seekonk River, Water Street, Gano Street and Valley Street, in East Providence and Providence, RI.

24. On November 6, 2019, RIDOT and the FHWA Rhode Island Division entered into an additional Memoranda of Understanding related to a proposed toll project to replace the Providence Viaduct Northbound Bridge and its associated ramps and structures which carry

Interstate 95 over Routes 6 & 10, the Woonasquatucket River, AMTRAK Railroad, Providence & Worcester Railroad, Promenade Street, and West Exchange in Providence, RI.

25. Through each of the Memoranda of Understanding referenced in paragraphs 23 - 24 above, RIDOT informed FHWA Rhode Island Division that it “desires to implement tolls on large commercial vehicles or ‘tractor trailers’ using an open road tolling structure using one or more gantries to collect tolls” at a specified toll facility.

26. Through each of the Memoranda of Understanding referenced in paragraphs 23 - 24 above, RIDOT and FHWA Rhode Island Division agreed that: (1) the toll project meets the toll eligibility requirements of 23 U.S.C. § 129(a)(1) and (2) RIDOT shall comply with all requirements of 23 U.S.C. § 129(a), as amended, with respect to the toll project and the operation of the toll facility.

III. RhodeWorks Toll Rates

27. In accordance with its statutory authority to fix the amount of tolls, RIDOT has set toll rates for each of the RhodeWorks Act toll locations.

28. The RhodeWorks toll rates will vary from site to site, ranging from \$2.25 to \$9.50 per transit through the toll site. Rhode Island Department of Transportation, *The RhodeWorks Tolling Program*, <http://www.dot.ri.gov/tolling/> (June 2020).

29. On January 2, 2018, RIDOT gave public notice of its setting of toll rates for toll locations 1 and 2. RIDOT invited written comments from all interested parties by February 1, 2018. See http://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf

30. On January 2, 2019, RIDOT gave public notice of its setting of toll rate for toll locations 3, 4, 6 – 13. RIDOT invited written comments from all interested parties by February 1, 2019. See http://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates_3-4_6-13.pdf

31. On July 10, 2019, RIDOT gave public notice of its revision of the toll rate for toll location 13. RIDOT invited written comments from all interested parties by August 10, 2019. *See* http://www.dot.ri.gov/tolling/docs/Toll_Rate_Change_for_Toll_Location_13.pdf

32. On February 1, 2020, RIDOT gave public notice of its revision of the toll rate for toll location 4. RIDOT invited written comments from all interested parties by March 1, 2020. *See* http://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates_Location_4_Amended.pdf.

33. In-state and out-of-state vehicles subject to tolls are tolled at the same rates at all toll locations.

IV. RhodeWorks Toll Discounts

34. The RhodeWorks Act also requires RIDOT to offer discounts to large commercial trucks that utilize a radio frequency identification transponder (“RFID”).

35. In-state and out-of-state vehicles are both eligible to participate in the discount program and receive the same discounts regardless of their state of registration.

36. The RhodeWorks Act defines a “[r]adio frequency identification transponder” or ‘RFID’ [as] a toll collections system approved by the department that may consist of a toll tag placed inside the vehicle and an overhead antenna that reads the toll tag and collects the toll.” R.I. Gen. Laws § 42-13.1-3(6).

37. The RhodeWorks Act provides that, “[s]ubject to § 42-13.1-14, [RIDOT] will establish a program to limit the assessment of the tolls upon the same individual large commercial truck using a RFID to once per toll facility per day in each direction, or an equivalent frequency use program based upon individual large commercial truck use.” R.I. Gen. Laws § 42-13.1-4(b).

38. The RhodeWorks Act provides that “[s]ubject to § 42-13.1-14, the total amount of tolls imposed upon the same individual large commercial truck using a RFID 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).

39. The RhodeWorks Act provides that “[s]ubject to § 42-13.1-14, the daily maximum amount of the tolls collected upon the same individual, large commercial truck using a RFID shall not exceed forty dollars (\$40.00).” R.I. Gen. Laws 42-13.1-4(d). This daily maximum applies no matter how many tolls a tractor trailer using a RFID goes through. Rhode Island Department of Transportation, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (Dec. 2019).

40. RIDOT implemented the \$20.00 discount referenced in Paragraph 38 by setting toll rates at toll locations along Route 95 (locations 1, 2, 3, 4 and 6) such that the tolls at these locations in the aggregate are equal or less than the \$20.00 cap imposed by the Legislature.

41. Unlike other toll rates for locations not on Route 95, the toll rates set for Locations 1, 2, 3, 4 and 6 were each discounted below the revenue maximizing toll rate.

42. Accordingly, all tolled vehicles (regardless of their state of registration) receive a discount afforded by the \$20.00 cap imposed by the Legislature each time they are tolled at any of the toll locations on Route 95.

V. RhodeWorks Toll Collection

43. Tolls were first collected under the RhodeWorks Act in June 2018.

44. Tolls have been implemented at 12 locations in Rhode Island. *See* RIDOT, *The RhodeWorks Tolling Program*, <http://www.dot.ri.gov/tolling/index.php> (June 2020).

45. RhodeWorks Location 1 is on I-95 between Hopkinton and Richmond, Rhode Island. The toll at this location is \$3.25. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

46. Tolls were first collected at RhodeWorks Location 1 on June 11, 2018. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

47. RhodeWorks Location 2 is on I-95 at Exeter, Rhode Island. The toll at this location is \$3.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

48. Tolls were first collected at RhodeWorks Location 2 on June 11, 2018. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

49. RhodeWorks Location 3 is on I-95 near Warwick, Rhode Island. The toll at this location is \$6.25. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

50. Tolls were first collected at RhodeWorks Location 3 on January 24, 2020. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

51. RhodeWorks Location 4 is along I-95 at the Oxford Street Bridge near Providence, Rhode Island. The toll at this location is \$4.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

52. Tolls were first collected at RhodeWorks Location 4 on March 29, 2020. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

53. RhodeWorks Location 6 is on I-95 near Pawtucket, Rhode Island. The toll at this location is \$2.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

54. Tolls were first collected at RhodeWorks Location 6 on March 21, 2020. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

55. RhodeWorks Location 7 is on I-295 southwest of Providence, Rhode Island. The toll at this location is \$6.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

56. Tolls were first collected at RhodeWorks Location 7 on April 11, 2020. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

57. RhodeWorks Location 8 is on I-295 near Johnston, Rhode Island. The toll rate at this location is \$8.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

58. Tolls were first collected at RhodeWorks Location 8 on June 30, 2020. *See* http://dot.ri.gov/tolling/docs/Tolling_Data.pdf.

59. RhodeWorks Location 9 is on I-295 at Cumberland, Rhode Island. The toll at this location is \$7.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

60. Tolls were first collected at RhodeWorks Location 9 on December 16, 2019. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf.

61. RhodeWorks Location 10 is located on I-195 near East Providence, Rhode Island. The toll rate at this location is \$9.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

62. Tolls were first collected at RhodeWorks Location 10 on September 20, 2021. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf.

63. RhodeWorks Location 11 on Route 116 at Lincoln, Rhode Island. The toll rate at this location is \$3.50. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

64. Tolls were first collected at RhodeWorks Location 11 on October 1, 2019. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf.

65. RhodeWorks Location 12 is located on Route 146 near North Smithfield, Rhode Island. The toll rate at this location is \$6.75. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

66. Tolls were first collected at RhodeWorks Location 12 on July 29, 2020. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf.

67. RhodeWorks Location 13 is located on Route 6 at Providence, Rhode Island. The toll rate at this location is \$5.00. RIDOT, *The RhodeWorks Tolling Program*, <http://www.ridot.net/tolling/> (June 2020); *see also* https://www.dot.ri.gov/tolling/docs/RIDOT_Setting_Toll_Rates.pdf.

68. Tolls were first collected at RhodeWorks Location 13 on August 13, 2019. *See* http://www.dot.ri.gov/tolling/docs/Tolling_Data.pdf

VI. RIDOT Budget Including RhodeWorks Toll Revenue

69. RIDOT's budget for FFY 2022 is \$875,070,000. Of these amounts, \$415,320,000 relate to Bridge Program Expenditures.

70. Tolls under the RhodeWorks Program are estimated for FFY 2022 to be \$42,260,000 representing approximately 4.8% of RIDOT's budget and approximately 10.2% of RIDOT Bridge Program budget.

71. When all toll locations are fully active RIDOT estimates that annual toll revenue will be approximately \$45,000,000.

VII. The Tolled Bridges

72. Based on the National Bridge Inventory Database 2019, there are 779 bridges in Rhode Island on the National Bridge Inventory.

73. As of 2019 data, of these NBI bridges 22.3% are classified as structurally deficient.

74. Based on the 2020 Bridge Profile by American Road and Transportation Builders Association, Rhode Island has the lowest rate for the condition of bridges.

75. Each of the RhodeWorks toll locations is associated with a bridge or group of bridges that meet the criteria for tolling pursuant to the federal regulation governing Title 129.

VIII. RhodeWorks Toll Revenue

76. The RhodeWorks Act provides that 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, including costs associated with the acquisition, construction, operation, and maintenance of the toll facilities and administrative costs in connection therewith.'" R.I. Gen. Laws 42-13.1-8.

77. In accordance with the RhodeWorks Act, RIDOT has established the Rhode Island Bridge Replacement, Reconstruction and Maintenance Fund (the "Fund") as a special fund within its accounting system.

78. All monies received by RIDOT through the collection of tolls on bridges in Rhode Island together with any fees, fines or penalties collected pursuant to the RhodeWorks Act and all investment earned on those amounts are deposited into the Fund.

79. The monies received by RIDOT through the collection of tolls on Rhode Island bridges, together with any fees, fines or penalties, pursuant to the RhodeWorks Act, and all investment earned on amounts credited to the Fund, is first allocated to the replacement, reconstruction, maintenance, and operation of the toll facilities, pursuant to the federal requirements of 23 U.S.C. § 129.¹ If any monies remain after projects related to these toll facilities are funded, the RhodeWorks Act provides that the funds may be used for projects related to Rhode Island bridges on the National Highway System or for any use permitted by 23 U.S.C. § 129.

80. To date, RhodeWorks toll revenue has not been used for any bridge project other than that associated with the toll facilities themselves.

IX. Funding Sources for the Replacement, Reconstruction, Maintenance and Operation of Rhode Island’s Bridges on the National Highway System

81. Each fiscal year, RIDOT funds the replacement, reconstruction, maintenance, and operation of Rhode Island bridges on the National Highway System. Annual expenditures related to the replacement, reconstruction, maintenance, and operation of Rhode Island bridges on the National Highway System have annually significantly exceeded RhodeWorks toll program revenues.

82. RIDOT uses the following revenue sources to annually fund the costs of replacement, reconstruction, maintenance and operation of Rhode Island bridges on the National Highway System: (1) RhodeWorks toll revenue; (2) Rhode Island Capital Plan (“RICAP”) funds; (3) various funding sources associated with the Rhode Island Department of Motor Vehicles (“RI DMV”); (4) motor fuel tax revenue transferred from the Rhode Island Division of Taxation; (5)

¹ “Toll facility” is defined under 23 U.S.C. § 129(a)(10)(E) as a “a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel constructed under this subsection. Under 23 U.S.C. § 129, RIDOT must first certify that tolled facilities are adequately maintained before allocating funds for any other purpose permitted by § 129.

funds from the Federal Highway Trust Fund; (6) federal stimulus funds; (7) GARVEE funds; and (8) various funds from other third-party sources.

83. In FY 2018 and FY 2019, RIDOT received the following funds from those sources:
- a. In FY 2018, the fiscal year in which tolling was commenced under the RhodeWorks Act, RIDOT collected \$443,804 through tolls implemented pursuant to the RhodeWorks Act. In FY 2019, RIDOT collected \$7,238,820 through tolls implemented pursuant to the RhodeWorks Act.
 - b. In FY 2018, RIDOT received \$41,234,445 in RICAP funds. In FY 2019, RIDOT received \$40,097,414 in RICAP funds.
 - c. In FY 2018, RIDOT received \$73,751,814.00 from RI DMV and/or its contractor (\$60,746,290 of which were funds directly from RI DMV and \$13,005,524 of which were funds from in vehicle inspection fees from a RI DMV contractor). In addition, RIDOT received \$3,367,546.86 in DMV-related rental surcharge fees; and \$498,035 in DMV-related funds from the Rhode Island Judiciary. In FY 2019, RIDOT received \$96,819,862.00 from DMV and/or its contractor (\$83,739,638 of which were directly from DMV and \$13,080,224 of which were funds from vehicle inspection fees from a DMV contractor). RIDOT additionally received \$4,058,201.33 in rental surcharge fees, and \$532,194 in DMV-related funds from the Rhode Island Judiciary.
 - d. A portion of state motor fuel tax revenues are annually transferred from the Rhode Island Division of Taxation to RIDOT. In FY 2018, RIDOT received \$77,652,850.60 in state motor fuel tax revenues. In FY 2019, RIDOT received \$84,419,704.59 in state motor fuel tax revenues.

- e. In FY 2018, RIDOT received \$227,584,640 from the Federal Highway Trust Fund. In FY 2019, RIDOT received \$271,992,693 from the Federal Highway Trust Fund.
- f. In FY 2018, RIDOT received \$2,752,887 in federal stimulus funds. In FY 2019, RIDOT did not receive any federal stimulus funds.
- g. GARVEE (“Grant Anticipation Revenue Vehicle”) funds are short-term debt instruments secured by the promise of future federal aid grants. In FY 2018, RIDOT received \$32,839,884 in GARVEE funds. In FY 2019, RIDOT received \$92,489,223 in GARVEE funds.
- h. Third-party funds primarily include reimbursements from towns for various construction projects completed by RIDOT. In FY 2018, RIDOT received \$824,460 in third-party funds. In FY 2019, RIDOT received \$3,538,217 in third-party funds.

X. Revenue Collected by the RI DMV and Transferred to RIDOT

84. By statute, the RI DMV is obligated to collect a RIDOT Surcharge, as well as license, registration, title, and inspection fees described more fully herein.

85. Each fiscal year (“FY”), the RI DMV transfers, depending on the fee type, all or a portion of the revenue it has received from the RIDOT Surcharge, license, registration, title, and inspection fees to the RIDOT.

86. In FY 2018, the RI DMV transferred a total of \$73,751,814.00 to the RIDOT. In FY 2019, the RI DMV transferred a total of \$96,819,862.00 to the RIDOT. Those totals are broken down as follows:

A. RIDOT Surcharge

87. The RIDOT Surcharge was created by the Transportation Investment and Debt Reduction Act of 2011, R.I. Gen. Laws § 39-18.1-1 *et seq.*, pursuant to which the RI DMV must collect a surcharge on each license to operate a motor vehicle and vehicle registration. The RI DMV then transfers the RIDOT Surcharge to the Rhode Island Highway Maintenance Account, which is administered by the RIDOT. In FY 2018, the RI DMV collected and transferred a total of \$19,177,462.00 in RIDOT Surcharges. In FY 2019, the RI DMV collected and transferred a total of \$19,696,973.00 in RIDOT Surcharges.

B. License and Registration Fees

88. In accordance with R.I. Gen. Laws § 39-18.1-4, the RI DMV transfers license fees assessed on operators', chauffeurs' and motorcycle licenses ("license fees") and registration fees to the RIDOT.

89. Motor vehicle operators who are residents of other states are not eligible for Rhode Island operators', chauffeurs' and motorcycle licenses, therefore, those non-residents do not pay Rhode Island license fees.

90. Registration fees are assessed on motor vehicles, trailers, semi-trailers, and school busses based on gross weight or a flat fee in accordance with R.I. Gen. Laws § 31-6-1.

91. Motor vehicles, trailers, semi-trailers, and school busses that are owned by non-Rhode Island residents are not subject to registration in Rhode Island, R.I. Gen. Laws § 31-3-2, and do not pay registration fees in accordance with R.I. Gen. Laws § 31-6-1.

92. As of 2015, Rhode Island's truck registration fees were the lowest in New England.

93. Rhode Island is a member jurisdiction of the International Registration Plan ("IRP"), a reciprocal agreement by which all registration fees related to vehicles registered for

interstate operation with apportioned plates are apportioned among member jurisdictions by the distance driven in each member jurisdiction in accordance with the terms of the IRP. For purposes of this statement of facts, IRP registration fees are those fees associated with such apportioned IRP registration fees; non-IRP registration fees are those assessed on all vehicles that are not subject to the IRP.

94. In FY 2018, the RI DMV collected a total of \$5,963,236.00 in license fees, \$3,981,159.00 in net IRP registration fees, and \$42,393,821.00 in non-IRP registration fees. RI DMV issued refunds of \$532,331.00 and transferred the net amount of such fees, \$31,083,531.00, to the RIDOT in FY 2018 (by statute, the RI DMV was required to transfer 60% of total applicable license fees and registration receipts to the RIDOT in FY 2018).

95. In FY 2019, the RI DMV collected a total of \$5,500,132.00.00 in license fees, \$4,614,000.00 in net IRP registration fees, and \$43,504,254.00 in non-IRP registration fees. RI DMV issued refunds of \$462,763.00 and transferred the net amount of such fees, \$53,155,623.00, to the RIDOT in FY 2019 (as of FY 2019 and thereafter, the RI DMV is required to transfer 100% of applicable license fees and registration receipts to the RIDOT).

C. Title Fees

96. Pursuant to R.I. Gen. Laws § 31-3.1-6, the RI DMV annually transfers the entirety of title fee revenue to the RIDOT. Title fees are assessed to obtain an original or duplicate certificate of title, to conduct title and lien searches, and to perfect security interests on all vehicles model year 2001 and newer located in Rhode Island.

97. Title fees are not assessed for out-of-state vehicles.

98. In FY 2018, the RI DMV collected and transferred \$10,485,297.00 in title fees to the RIDOT.

99. In FY 2019, the RI DMV collected and transferred \$10,887,042.00 in title fees to the RIDOT.

D. Inspection Fees

100. Pursuant to R.I. Gen. Laws §§ 31-38-7, 31-47.1-11 and 39-18.1-4, inspection fees charged for the inspection of vehicles with a gross weight of not more than 8,500 pounds (“light-duty inspection fees”) are to be remitted to the RIDOT.²

101. Inspection fees are not collected from out-of-state vehicles because they are not inspected in Rhode Island.

102. In FY 2018, the RI DMV’s vendor collected a total of \$13,005,524.00 in light-duty inspection fees. In FY 2019, the RI DMV’s vendor collected a total of \$13,080,224.00 in light-duty inspection fees.

103. Motor fuel receipts are collected by the Division of Taxation through a tax applied to both gasoline and diesel fuels. As of July 1, 2019, Rhode Island’s motor fuel tax rate is 34 cents per gallon for gasoline and 34 cents per gallon for diesel. From July 1, 2017 to July 1, 2019, Rhode Island’s motor fuel tax rate was 33 cents per gallon for gasoline and 33 cents per gallon for diesel. The motor fuel tax rate is codified in Rhode Island Gen. Laws § 31-36-7, which sets forth an inflation formula by which the motor fuel tax rate may increase every other year.

104. The Division of Taxation records all motor fuel sales in Rhode Island. Each month, Rhode Island’s motor fuel distributors report to the Division of Taxation their sales of motor fuels, specifically, gasoline and special fuels, including diesel and alternative fuels. The Division of Taxation collects taxes on the vast majority of these sales at the tax rates noted above. The

² Opus Inspection, Inc., the RI DMV’s vendor who provides specialized services related to the State of Rhode Island’s motor vehicle emissions and safety testing program, collects light-duty inspection fees on behalf of the RI DMV and transfers such fees directly to the RIDOT.

Division of Taxation does not, however, collect taxes on the entirety of motor fuel sales. For example, biodiesel is exempt from Rhode Island's motor fuel tax. *See* R.I. Gen. Laws § 31-36-1. Various other exemptions are listed in Rhode Island Gen. Laws § 31-36-15.

105. In FYE 2018, distributors in Rhode Island reported sales of 387,460,435 gallons of gasoline, 61,234,519 gallons of diesel, and 12,117,480 gallons of alternative fuels.

106. In FYE 2019, distributors in Rhode Island reported sales of 389,756,277 gallons of gasoline, 56,687,544 gallons of diesel, and 14,983,868 gallons of alternative fuels.

107. Because Rhode Island's motor fuel tax rate is the same for both diesel fuel and gasoline, and Rhode Island distributors annually report significantly higher sales of gasoline than diesel and alternative fuel combined, the Division of Taxation annually collects the majority (approximately 80%) of motor fuel tax revenue from gasoline sales.

108. Each Fiscal Year (FY), the Division of Taxation transfers motor fuel tax revenue to various state agencies, including the RIDOT, pursuant to R.I. Gen. Law § 31-36-20, totaling as Fiscal Year End (FYE) amounts.

109. Revenue figures for motor fuel revenues, and Rental Vehicle Surcharges collected pursuant to R.I. Gen. Law § 31-34.1-2, are fiscal year end totals, but these revenues are actively transferred throughout the year and not just at fiscal year end. In FYE 2018, the Division of Taxation transferred \$77,652,850.60 in motor fuel tax revenue, and \$3,367,546.86 in Rental Vehicle Surcharge revenue to DOT. In FYE 2019, the Division of Taxation transferred \$84,419,704.59 in motor fuel tax revenue, and \$4,058,201.33 in Rental Surcharge revenue to DOT.

XI. Statements by Plaintiffs Regarding the RhodeWorks Act

110. “[T]here is a clear and necessary correspondence between the amount paid by tolled trucks and the benefit they receive in the form of well-maintained bridges.” Opening Brief for Plaintiffs-Appellants at 14.³

111. “Although the RhodeWorks tolls may be used to repair or replace any Rhode Island bridge and not only the bridge where the tolls were collected, that use of the funds on any one of a related set of bridges and roads is understood to benefit all uses of the State’s integrated transportation network.” *Id.* at 29.

112. The RhodeWorks tolls “are used to provide benefits (in the form of well-maintained bridges) to the toll payers.” *Id.* at 47.

113. “Because the toll is dedicated to maintenance and improvement of the tolled facilities that truckers use, ‘there is at least a rough match between the sum paid and the (broadly defined) benefit provided, as seen from the payers’ perspective.’” *Id.* at 40-41 (quoting *Am. Counsel of Life Insurers v. D.C. Health Benefit Exch. Auth.*, 815 F.3d 17, 19 (D.C. Cir. 2016)).

114. RhodeWorks tolls “are ‘proportioned’ so as to pay the costs of the regulatory program, including the ‘damage resulting from’ the activity giving rise to the charge (that is, wear and tear on the State’s bridges).” *Id.* at 44; Opposition to Defendants’ Motion to Dismiss (Doc. No. 23) at 16.

115. On or about January 28, 2016, the Rhode Island Trucking Association made the following statement: “‘Although we continue to be fundamentally opposed to tolling, we recognize this bill is very different than what the governor had proposed last year. We appreciate that the speaker has continued to listen to the concerns of the trucking industry throughout this

³ Opening Brief for Plaintiffs-Appellants, *Am. Trucking Ass’ns, Inc. v. Alviti*, 14 F.4th 76 (1st Cir. 2021), No. 19-1316.

process. Upon preliminary review, this latest plan reduces the fees imposed on the trucking industry compared with previous proposals,' said Chis Maxwell, president of the Rhode Island Trucking Association. 'We continue to believe an increase to the diesel tax and truck registration fees would be a more efficient way to address this problem with far less administrative costs and risks.'"

116. On or about December 5, 2017, after the RhodeWorks Act was enacted but before RhodeWorks tolling commenced, the American Trucking Associations released a press release that included the following quote from American Trucking Associations President and CEO Chris Spear: "This extortionary truck-tolling program will hit Rhode Island trucking companies significantly harder than out-of-state carriers, contrary to RIDOT's claims when the RhodeWorks bill was approved by the legislature." American Trucking Associations, *RIDOT Publishes Inadequate Environmental Assessment of Impact of Truck Tolls*, ATA Press Release (Dec. 5, 2017), available at <https://www.trucking.org/news-insights/ridot-publishes-inadequate-environmental-assessment-impact-truck-tolls>; see also <http://www.ritrucking.org/press-release-12-6-2017-e.a.-flaws.html>

117. The same American Trucking Associations press release states: "RIDOT falsely claimed most of the toll costs would be borne by out-of-state businesses: When it was pushing the RhodeWorks toll proposal to the public and General Assembly, RIDOT claimed that most of the costs would be paid for by out-of-state businesses. However, according to the state's own figures, 94% of toll payments will be made by trucks traveling entirely within the state or picking up or delivering to a location in Rhode Island and just 6% of payments will be made by trucks crossing the state without stopping." *Id.*

CONCLUSIONS OF LAW

I. Plaintiffs’ dormant Commerce Clause Claim Fails Because the United States Supreme Court’s Recent Caselaw Suggests They are Likely to Reject It.

118. While the dormant Commerce Clause was adopted by the United States Supreme Court almost 150 years ago, because it is not tethered to any constitutional text, recent case law suggests that, if given the opportunity, the Supreme Court is likely to reject it. *See, e.g., Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542, 572 (2015) (Scalia, J., dissenting) (“The fundamental problem with our negative Commerce Clause cases is that the Constitution does not contain a negative Commerce Clause. It contains only a Commerce Clause.”); *Camps Newfound/Owatonna v. Town of Harrison*, 520 U.S. 564, 595 (1997) (Thomas, J., dissenting) (observing that “[t]he Court’s negative commerce clause jurisprudence has drifted far from its moorings”); *Tyler Pipe Indus. v. Wash. State Dep’t of Revenue*, 483 U.S. 232, 260 (1987) (Scalia, J., dissenting) (asserting that the Court’s application of the negative commerce clause makes “no sense” and attributing that failing to the “lack of any clear theoretical underpinning for judicial ‘enforcement’ of the Commerce Clause”). It is premised on the transformation of an enumerated grant of legislative authority to Congress in Article I, Section 8, into an unexpressed limitation on state sovereignty. Such an extra-textual transformation is at odds with the textual approach that the Supreme Court has largely used for the past few decades. *See, e.g., Ziglar v. Abbasi*, 137 S. Ct. 1843, 1854-58 (2017); *Loughrin v. United States*, 573 U.S. 351, 355-57 (2014); *Gonzaga Univ. v. Doe*, 536 U.S. 273, 286 (2002).

II. Plaintiffs’ dormant Commerce Clause Claim Fails Since Congress has Authorized States to Covert Existing Toll Free Bridges on Federal Highways to Toll Facilities.

119. As part of the Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”), Congress specifically and unmistakably authorized states to convert existing toll-free

bridges on federal highways to toll facilities. *See* 23 U.S.C. § 129(a)(1)(E) (authorizing “reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility”).

120. To come within the protection and authority of Section 129, Congress authorized states to pass legislation permitting tolling on bridges. *See* 23 U.S.C. § 129(a)(8) (“[B]efore commencing any activity authorized under this section, the State shall have in effect a law that permits tolling on a highway, bridge, or tunnel.”).

121. Further, Congress authorized states that have implemented and erected toll facilities to collect tolls for use of those bridges and use the revenue generated for specified toll road and non-toll road projects. 23 U.S.C. § 129(a)(3)(A)(i)-(iv).

122. Pursuant to the congressional authority provided in 23 U.S.C. § 129, Rhode Island enacted the Rhode Island Bridge Replacement, Reconstruction, and Maintenance Fund Act of 2016, R.I. Gen. Laws § 42-13.1-1, et seq., colloquially known as the RhodeWorks Act, in February 2016.

123. Plaintiffs’ claim that the RhodeWorks Act violates the dormant Commerce Clause fails as a matter of law because Congress has specifically and unmistakably authorized the activity at issue here—the unrestricted ability of a state to toll bridges pursuant to a state law permitting such tolling and to use the toll revenues for certain specified toll road and non-toll road projects. That authorization insulates the RhodeWorks Act from a dormant Commerce Clause challenge, regardless of whether it is alleged to be discriminatory. *See White v. Mass. Council of Constr. Emp’rs*, 460 U.S. 204, 213 (1983) (“Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce.”).

III. The RhodeWorks Act is Presumed Constitutional.

124. If the Court finds that the Congressional authorization set forth in 23 U.S.C. § 129 does not preclude the Plaintiffs’ dormant Commerce Clause challenge to the RhodeWorks Act, then the analysis of that challenge must start with the heavy presumption that the RhodeWorks Act is constitutional. State statutes are cloaked with a heavy presumption of constitutionality. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973); *see also Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944) (“State statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared.”).

125. This heavy presumption of constitutionality exists because “[a] state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution.” *Lehnhausen*, 410 U.S. at 364 (quoting *Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495, 510 (1937)). Thus, one seeking to challenge a state statute carries the burden “to negative every conceivable basis which might support it.” *Id.* (quoting *Madden v. Kentucky*, 309 U.S. 83, 88 (1940)).

126. “One who attacks a statute on constitutional grounds, defended as that statute is by a strong presumption of constitutionality, should bring up his heavy artillery or forego the attack entirely.” *Morrissey v. W. Va. AFL-CIO*, 804 S.E.2d 883, 888 (W. Va. 2017) (quoting *S. Valley Grain Dealers Ass’n v. Bd. of Cty. Comm’rs of Richland Cty.*, 257 N.W.2d 425, 434 (N.D. 1977)). Thus, “[c]hallenges to the constitutionality of a law cannot be made lightly and without concerted, focused effort.” *Id.*

IV. Plaintiffs Must Prove Beyond a Reasonable Doubt that the RhodeWorks Act is Unconstitutional.

127. Plaintiffs bear the burden of proof in this case and can only meet that burden if they demonstrate *beyond a reasonable doubt* that the RhodeWorks Act is unconstitutional. *See*

Devaney v. Kilmartin, 88 F. Supp. 3d 34, 44-45 (D.R.I. 2015) (statutes and ordinances are presumed constitutional and the party challenging the constitutionality “bears ‘the burden of proving beyond a reasonable doubt that the challenged enactment is unconstitutional’” (quoting *State ex rel. City of Providence v. Auger*, 44 A.3d 1218, 1226 (R.I. 2012))) *report and recommendation adopted* 88 F. Supp. 3d 34 (D.R.I. 2015); *Donahue v. City of Boston*, 264 F. Supp. 2d 74, 82-83 (D. Mass. 2003) (court “must grant all rational presumptions in favor of [the statute’s] constitutionality. . . . In fact, ‘the party challenging the statute’s constitutionality must demonstrate beyond a reasonable doubt that there are no conceivable grounds which could support its validity.’” (quoting *Kienzler v. Dalkon Shield Claimants Trust*, 686 N.E.2d 445, 450 (Mass. 1997))). Plaintiffs have the burden of proof as to each prong of the dormant Commerce Clause analysis. *Industria y Distribucion de Alimentos v. Trailer Bridge*, 797 F.3d 141, 146 (1st Cir. 2015) (“Those challenging the government action carry the burden of persuasion”).

V. The Court Must Give Great Deference to The Legislative Findings Contained in the RhodeWorks Act.

128. In considering whether the Plaintiffs have met their burden to overcome, beyond a reasonable doubt, the heavy presumption that the RhodeWorks Act is constitutional, the Court must give great deference to the legislative findings set forth in the RhodeWorks Act. The words of the statute itself are the most persuasive source of legislative purpose and “[l]egislative findings as to the purpose of legislation are ‘entitled to great deference by the judiciary.’” *Cranston Police Retirees Action Comm. v. City of Cranston*, 208 A.3d 557, 583 n.13 (R.I. 2019) (quoting *In re Advisory Op. to Governor*, 324 A.2d 641, 646 (R.I. 1974)); *see also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981) (“[T]his Court will assume that the objectives articulated by the legislature are actual purposes of the statute, unless an examination of the

circumstances forces us to conclude that they ‘could not have been a goal of the legislation.’” (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648, n. 16 (1975)).

129. Courts afford considerable deference to legislative judgments when statutes that do not discriminate against interstate commerce are alleged to violate the dormant Commerce Clause. *All. of Auto. Mfrs. v. Gwadosky*, 430 F.3d 30, 38 (1st Cir. 2005) (citing *Kassel v. Consol. Freightways Corp.*, 450 U.S. 662, 675-76 (1981) (plurality opinion)); accord *Cohen v. R.I. Tpk. & Bridge Auth.*, 775 F. Supp. 2d 439, 445 n.6, 450 (D.R.I. 2011) (recognizing that non-discriminatory regulations are subject to “deferential review”). In those circumstances, courts apply rational basis scrutiny, and refuse to second-guess the judgment of the legislature.

130. In explaining the deference afforded to legislative findings supporting laws that distinguish among classes of highway vehicles, the United States Supreme Court has recognized that “[t]he classification of the traffic for the purposes of regulation and fixing fees is a legislative, not a judicial function. Its merits are not to be weighed in the judicial balance and the classification rejected merely because the weight of the evidence in court appears to favor a different standard.” *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 594 (1939) (internal citation omitted).

131. “The determination of the legislature is presumed to be supported by facts known to it, unless facts judicially known or proved preclude that possibility.” *Id.* at 594 (internal citations omitted).

132. Thus, “it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. Its function is only to determine whether it is possible to say that the legislative decision is without rational basis. This is equally the case where the classification, which is one which the legislature was competent to

make, is applied to vehicles using the state highways in interstate commerce.” *Id.* (internal citation omitted).

133. Because the court applies a rational basis standard, even when a party challenging a legislature’s finding shows that “it is at least a debatable question whether [a vehicle class causes] special wear and tear of the highways . . . [that] decision is for the legislature and not the courts.” *Id.* (internal citations omitted).

134. While a party challenging a legislature’s findings on the issue of fair approximation may present evidence in an effort to demonstrate that the legislature’s decision lacked a rational basis, courts do not permit parties to unearth the facts and data relied on by the legislature in arriving at its finding. Rather, “[t]he legislature must be assumed to have acted on information available to courts.” *Id.*

135. “[T]hose challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.” *UFO Chuting of Haw., Inc. v. Young*, 380 F. Supp. 2d 1160, 1162 (D. Haw. 2005) (quoting *Minnesota v. Clover Leaf Creamery, Co.*, 449 U.S. 456, 464 (1981)).

136. Conversely, those defending the legislative judgment need not “submit expert testimony or provide bullet-proof empirical backing for every legislative judgment.” *Colon Health Ctrs. of Am., LLC v. Hazel*, 813 F.3d 145, 159 (4th Cir. 2016); accord *Just Puppies, Inc. v. Frosh*, No. CV ELH-19-2439, 2021 WL 4594630, at *38 (D. Md. Oct. 6, 2021) (a statute “need only advance a ‘putative’ benefit; hard evidence is not required”). As courts have recognized, because most legislation relies on assumptions that can be empirically challenged, if courts were “to engage

in an exhaustive empirical battle” in every dormant Commerce Clause case, “there would be no end to judicial interference with legislation.” *Colon Health Ctrs. of Am., LLC*, 813 F.3d at 159.

VI. The *Pike* Balancing Test Applies Plaintiffs’ Dormant Commerce Clause Claim Because the RhodeWorks Act Regulates In-State and Out-of-State Interests Even Handedly and, at Most, Places Only Incidental Burdens on Interstate Commerce.

137. The RhodeWorks Act regulates evenhandedly on its face since there is no different treatment under the Act of in-state and out-of-state tolled vehicles. All vehicles subject to tolling are treated identically regardless of their state of registration.

138. The RhodeWorks Act also regulates evenhandedly in its effect since the tolls implemented by RIDOT do not vary based upon the tolled vehicles state of registration and all discounts available under the RhodeWorks Act are available to all toll vehicles regardless of their state of registration.

139. Accordingly, the proper test with respect to any challenge that the RhodeWorks Act violated the dormant Commerce Clause is the *Pike* balancing test. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

140. *Pike* balancing applies where other legislative objectives (other than economic protectionism) are advanced and “there is no patent discrimination against interstate trade.” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 623-24 (1978).

141. Pursuant to the *Pike* balancing test, the RhodeWorks Act does not violate the dormant Commerce Clause so long as any incidental burdens on interstate commerce created by the Act are not clearly excessive in relation to its putative local benefits. *See Industria y Distribucion de Alimentos v. Trailer Bridge*, 797 F.3d 141, 146 (1st Cir. 2015) (the *Pike* analysis provides that the challenged law “will be upheld unless the burden imposed on [interstate]

commerce is clearly excessive in relation to the putative local benefits.” (quoting *Pike*, 397 U.S. at 142)).

VII. Plaintiffs Have Waived Any Argument the RhodeWorks Act Violates the Dormant Commerce Clause Under *Pike*.

142. When a party bases its challenges exclusively on an assertion that strict scrutiny applies, it is not entitled to have the regulation subject to the less-searching *Pike* standard. *All. of Auto Mfrs.*, 430 F.3d at 35. By failing to challenge RhodeWorks under *Pike*, Plaintiffs have waived the right to argue the RhodeWorks Act violates the dormant Commerce Clause under the *Pike* balancing test.

VIII. If The *Pike* Balancing Test is Applied, Any Incidental Burdens on an Interstate Commerce are not Clearly Excessive Relative to the Punitive Local Benefits Offered by the RhodeWorks Act.

143. The First Circuit interprets a challenged law’s “putative local benefits” to mean benefits serving a legitimate purpose that the legislature hoped to achieve when enacting the law. *See Pharmaceutical Care Mgmt. Ass’n v. Rowe*, 429 F.3d 294, 312-13 (1st Cir. 2005). For purposes of the *Pike* analysis, the First Circuit does not consider to what extent – if any – the challenged law will achieve the hoped-for benefit(s). *Id.*

144. In determining whether a statute has a legitimate local purpose and putative local benefits, courts afford considerable deference to the legislative findings of state legislatures. *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 92 (1987); *see also Yamaha Motor Corp. v. Jim’s Motorcycle, Inc.*, 401 F.3d 560, 569 (4th Cir. 2005); *UFO Chuting of Haw., Inc.*, 380 F. Supp. 2d at 1162.

145. As a general matter, courts are “not inclined ‘to second-guess the empirical judgments of lawmakers.’” *CTS Corp.*, 481 U.S. at 92 (quoting *Kassel*, 450 U.S. at 679 (Brennan, J., concurring)); *accord Pac. Nw. Venison Producers v. Smitch*, 20 F.3d 1008, 1017 (9th Cir. 1994)

(“Even in the context of dormant commerce clause analysis, the Supreme Court has frequently admonished that courts should not second-guess the empirical judgments of lawmakers concerning the utility of legislation.”) (internal citation and quotation marks omitted).

146. Thus, courts consider whether the legislature had a rational basis for believing there was a legitimate purpose that would be advanced by the statute. *CTS Corp.*, 481 U.S. at 92; *Yamaha Motor Corp.*, 401 F.3d at 569. Courts likewise apply a deferential standard in identifying a statute’s putative benefits. *CTS Corp.*, 481 U.S. at 92-93; *Yamaha Motor Corp.*, 401 F.3d at 569.

147. The legislative findings state that 23% of Rhode Island’s bridges are structurally deficient and funds from RhodeWorks toll collections are contributed to the reconstruction, replacement and maintenance of these bridges in order to create safe and efficient travel options for the users of those bridges (and other roads and bridges in Rhode Island).

148. The RhodeWorks Act also creates a more equitable sharing of the costs to fund bridge reconstruction, replacement and maintenance by attempting to remedy, in at least small part, the disparity between the impact caused by the tolled vehicles on Rhode Island’s bridges and their contributions to the State’s infrastructure as referenced in the legislative findings.

149. Any alleged incidental burden to interstate commerce under the RhodeWorks Act is not clearly excessive in relation to these important putative local benefits. *Pike*, 397 U.S. at 137.

IX. The RhodeWorks Act Similarly Does Not Violate The Dormant Commerce Clause Under the *Evansville* Test.

150. Even if the Court were to apply the *Evansville* test instead of *Pike* balancing, the RhodeWorks Act does not violate the dormant Commerce Clause under that test. *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707 (1972).

151. Under the *Evansville* test, “[a] user fee is constitutional if it: ‘(1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred,

and (3) does not discriminate against interstate commerce.” *Industria y Distribucion de Alimentos*, 797 F.3d at 145 (quoting *Nw. Airlines, Inc. v. Cty. of Kent*, 510 U.S. 355, 368-69 (1994)); *see also Cohen v. Rhode Island Tpk. & Bridge Auth.*, 775 F. Supp. 2d 439, 447 (D.R.I. 2011) (Smith, J.)

A. The Excessiveness and Fair Approximation Prongs of *Evansville* were Eliminated by ISTE A

152. This Court has ruled (and Plaintiffs have conceded) that the Congressional authorization in ISTE A eliminated at least one element of the *Evansville* test—the excessiveness prong. *Am. Trucking Ass’ns v. Alviti*, No. 18-378-WES, 2020 U.S. Dist. Lexis 129068 at *5 (D.R.I. July 20, 2020); *see also Owner Operator Indep. Drivers Ass’n v. Pa. Tpk. Comm’n*, 934 F.3d 283, 293-94 (3d Cir. 2019); *Am. Trucking Ass’ns, Inc. v. N.Y. State Thruway Auth.*, 886 F.3d 238, 247 (2d Cir. 2018).

153. Similarly, the fair approximation prong of *Evansville* has been eliminated by virtue of the Congressional authorization contained in ISTE A.⁴ Congress has allowed states to use tolls under 23 U.S.C. § 129 for purposes other than those related to the tolled facility. *See* 23 U.S.C. § 129 (a) (3) (v) (“[I]f the public authority certifies annually that the tolled facility is being adequately maintained, [toll revenue may be used for] any other purpose for which Federal funds may be obligated by a State under [title 23].”). By allowing states to use toll revenue for any and all purposes permitted under 23 U.S.C. § 129, Congress necessarily eliminated any requirement that the tolls be a fair approximation of the toll payers’ use of the toll facilities.

⁴ For a detailed analysis, *see* Defendants’ Motion in *Limine* No. 2: Congressional Authorization, which is incorporated herein by reference.

B. The RhodeWorks Act Does Not Discriminate Against Interstate Commerce.

154. “The Commerce Clause regulates effects, not motives.” *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 561 n.4 (2015).

155. A statute that is not discriminatory on its face or in effect cannot not violate the dormant Commerce Clause on the basis that it was enacted with an alleged discriminatory purpose. *See id.*; *see also Wal-Mart Stores, Inc. v. Turlock*, 483 F. Supp. 2d 987, 1013-14 (E.D. Cal. 2006) (court “rejected” plaintiff’s “argument that the Ordinance can be invalidated because of the Council’s alleged discriminatory motives” and observed that “[i]n no Commerce Clause case cited or disclosed by research has a statute or regulation been invalidated solely because of the legislators’ alleged discriminatory motives”); *Gov’t Suppliers Consolidating Servs. v. Bayh*, 133 F.R.D. 531, 532-33, 535-37, 539 (S.D. Ind. 1990) (ruling that “the discriminatory motives of Indiana’s lawmakers is irrelevant to the plaintiffs’ commerce clause claim”); *Apel v. Murphy*, 70 F.R.D. 651, 654-55 (D.R.I. 1976) (evidence of statements of Governor and other state officials concerning a challenged statute were not relevant to the plaintiffs’ dormant Commerce Clause claim).

156. The First Circuit has recognized in this case that “it is difficult to conceive of a case in which a toll that does not discriminate in effect could be struck down based on discriminatory purpose.” *Am. Trucking Ass’ns, Inc. v. Alviti*, 14 F.4th 76, 89 (1st Cir. 2021); *see also All. of Auto. Mfgs.*, 430 F3d at 36 n.3 (“[T]here is some reason to question whether a showing of discriminatory purpose alone will invariably suffice to support a finding of constitutional invalidity under the dormant Commerce Clause.”).

157. After *Wynne* was decided, courts have repeatedly rejected the notion that evidence of discriminatory intent could be relevant in a dormant Commerce Clause case. *See, e.g.*,

Schoenefeld v. Schneiderman, 821 F.3d 273, 280-81 (2d Cir. 2016) (“[I]t is protectionist purpose, and not disparate effects alone, that identifies the sort of discrimination prohibited by the Privileges and Immunities Clause, by contrast, for example, to the Commerce Clause.”); *Just Puppies, Inc. v. Frosh*, C.A. No. CV-ELH-19-2439, 2021 WL 4594630, at *36 (D. Md. Oct. 6, 2021) (“[T]here is good reason to doubt that discriminatory purpose alone suffices to invalidate a statute,” because that would violate the “fundamental principle that the Commerce Clause ‘regulates effects, not motives.’”) (quoting *Wynne*, 575 U.S. at 561 n.4); *Portland Pipe Line Corp. v. City of South Portland*, 332 F. Supp. 3d 264, 303 (D. Me. 2018) (“‘There is some reason to question whether a showing of discriminatory purpose alone will invariably suffice to support a finding of constitutional invalidity under the dormant Commerce Clause’ because of the analytical difficulty that arises if a law was motivated by protectionist intent but fails to produce discriminatory effects.”) (quoting *Gwadowsky*, 430 F.3d at 36 n.3); *Puppies ‘N Love v. City of Phx.*, 116 F. Supp. 3d 971, 993 (D. Ariz. 2015) (court found “it incongruous to say that a law violates the dormant Commerce Clause merely by having a discriminatory purpose.”), *judgment vacated on other grounds* by 283 F. Supp. 3d 815 (D. Ariz. 2017); *see also Wynne v. Comptroller of Md.*, 228 A.3d 1129, 1142 n.28 (Md. Ct. App. 2020) (noting that although some courts contemplated whether discriminatory intent alone could establish a Commerce Clause violation, the Supreme Court discounted this idea by “stat[ing] that the ‘Commerce Clause regulates effects, not motives’”) (quoting *Wynne*, 575 U.S. at 561 n.4).

158. Even if discriminatory intent were relevant in this case, in analyzing whether a statute was enacted with a discriminatory intent, motive or purpose, “it is the motivation of the entire legislature, not the motivation of a handful of voluble members, that is relevant.” *South Carolina Educ. Ass’n v. Campbell*, 883 F.2d 1251, 1262 (4th Cir. 1989), *cert. denied*, 493 U.S.

1077 (1990). Moreover, projections, predictions, prognostications, speculation, and surmise are not evidence of discriminatory effect. *Cherry Hill Vineyard, LLC v. Baldacci*, 505 F.3d 28, 36 (1st Cir. 2007).

159. The RhodeWorks Act does not discriminate against interstate commerce on its face as all tolled vehicles are tolled at the same rate under the Act regardless of their state of registration.

160. Nor does the RhodeWorks Act discriminate in its effect as the tolls implemented by RIDOT do not vary based on state of registration—all vehicles subject to tolls are tolled at the same rate.

161. Similarly, the frequency-based transponder discounts provided for in the RhodeWorks Act do not discriminate against interstate commerce. These discounts are available to all commercial trucks using a transponder regardless of whether the commercial trucks are registered in Rhode Island or some other state. The frequency-based transponder discounts are no different than the frequency-based tolling programs that federal courts, including this Court and the First Circuit, have upheld as constitutional in dormant Commerce Clause challenges. *See, e.g., Doran v. Mass. Tpk. Auth.*, 348 F.3d 315 (1st Cir. 2003), *cert. denied*, 541 U.S. 1031 (2004); *Cohen v. R.I. Tpk. & Bridge Auth.*, 775 F. Supp. 2d 439 (D.R.I. 2011); *see also Yerger v. Mass. Tpk Auth.*, 395 Fed. App'x. 878 (3d Cir. 2010); *Angus Partners LLC v. Walder*, 52 F. Supp. 3d 546 (S.D.N.Y. 2014); *Saunders v. Port Auth. of New York*, No. 02 Civ. 9768RLC, 2004 U.S. Dist. LEXIS 8482 (S.D.N.Y. May 13, 2004).

C. The RhodeWorks Tolls are a Fair Approximation of the Toll Payers Use of the Toll Facility.

162. Even if the fair approximation test is applicable to the case, Plaintiffs would need to show, beyond a reasonable doubt, the tolls at issue are not “based on some fair approximation of use of the facilities.” *Nw. Airlines*, 510 U.S. at 369. It is not necessary that the toll “exactly

equals the costs of maintenance or the benefits conferred; all that is required is that the tolls reflect a ‘fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed.’” *Cohen*, 775 F. Supp. 2d at 449-50 (quoting *Evansville*, 405 U.S. at 717).

163. A toll need only reflect “some fair approximation of use” and will pass constitutional muster “even though some other formula might reflect more exactly the relative use of the state facilities by individual users.” *Nw. Airlines, Inc. v. Cty. of Kent, Michigan*, 510 U.S. 355, 362-63 (1994) (quoting *Evansville*, 405 U.S. at 716-17).

164. The fair approximation prong of the *Evansville* test measures fair approximation of “use” not fair approximation of “costs.” *Jorling v. U.S. Dep’t of Energy*, 218 F.3d 96, 101-03 (2d Cir. 2000) (“nowhere evident” in Supreme Court jurisprudence was a requirement that a court “engage in a detailed cost accounting analysis that endeavors to determine the cost, properly allocated to each payer, of every person, product, and facility involved in providing the service”).⁵

165. Under the dormant Commerce Clause, it is reasonable, and consistent with the requirement of fair approximation of usage, to enact a different toll policy where doing so alleviates the burdens on frequent users. *Janes v. Taborough Bridge & Tunnel Auth.*, 977 F. Supp. 2d 320, 340 (S.D.N.Y. 2013) (charging those who use a bridge more less based on frequent use discount did not violate dormant Commerce Clause).

166. The requirement of fair approximation seeks only reasonableness and broad proportionality. It does not require “precise tailoring, or a pre-enactment administrative record, for toll amounts to be justified.” *Id.*

⁵ For a detailed analysis, see Defendants’ Motion in *Limine* No. 1: Motion to Exclude Evidence and Expert Testimony That is Not Relevant or Reliable on the Issue of Fair Approximation, which is incorporated herein by reference.

167. Tolls on bridges situated on Rhode Island’s interstate highways advance a constitutionally permissible objective of having large commercial vehicles bear a fair share of the costs to Rhode Island of roads and bridges constructed and maintained for the purpose of aiding interstate travel. *See Evansville*, 405 U.S. at 722.

168. Tolls designed to make the users of Rhode Island’s bridges pay a reasonable fee to defray the costs of their construction and maintenance may be constitutionally imposed on interstate and domestic users alike. *See id.* at 714 (“We therefore regard it as settled that a charge designed only to make the user of state-provided facilities pay a reasonable fee to help defray the costs of their construction and maintenance may constitutionally be imposed on interstate and domestic users alike.”)

169. In analyzing whether the tolls constitute a fair approximation of the toll payers’ use of the tolled facilities, the Court must consider not only the use of the bridges associated with individual toll gantries but also the other roads and bridges in Rhode Island that bear some functional relationship to those bridges. *Cohen*, 775 F. Supp. 2d at 449.

170. In conducting its analysis of whether other roads and bridges in Rhode Island are functionally related to the bridges associated with the toll gantries, the Court must consider the “spillover effect” *i.e.* would the closing of other roads and bridges in Rhode Island increase congestion on the bridges associated with the toll gantries. *Id.*

171. Plaintiffs need to do far more than show a difference in the percentage of tolls paid (or discounts received) by tolled vehicles registered in Rhode Island in comparison to those registered in another state to meet their burden to prove, beyond a reasonable doubt, that the tolls discriminate against interstate commerce. At a minimum, they also need to prove that Rhode Island registered vehicles travel “typically intrastate and seldom venture beyond [Rhode Island]

borders.” *Nw. Airlines*, 510 U.S. at 372-73 (evidence that commercial airlines paid 100% of their use while general aviation users paid only 20% was not sufficient to support a claim for discrimination against interstate commerce absent proof that the general aviation population “seldom ventures beyond Michigan’s borders”).

172. A plaintiff arguing that tolls discriminate in their effect has the burden to “proffer substantial evidence of discrimination.” Simply showing some de minimis impact is not sufficient. *Cherry Hill Vineyard*, 505 F.3d at 38.

173. The RhodeWorks tolls do not violate the dormant Commerce Clause even if the majority of the toll payers are registered in states other than Rhode Island as both in-state and out-of-state registered vehicles pay the same tolls. *Evansville*, 405 U.S. at 717 (airport fees did not discriminate against interstate commerce even though vast majority of users were traveling interstate since both interstate and intrastate flights were subject to the same charge).

174. Rational distinctions between those that pay a toll and those that do not do not violate the dormant Commerce Clause. *Id.* at 718-19 (distinctions on charges based upon aircraft weight did not render charges wholly irrational as a measure of the relative use of the facilities for use benefit they are levied).

175. The RhodeWorks tolls do not violate the dormant Commerce Clause even if the vast majority of users of Rhode Island’s roads and bridges do not pay tolls where these other users contribute financially to Rhode Island’s roads and bridges in other ways. *See id.* at 717-18 (fact that majority of users of the airport did not pay fee at issue was not unreasonable where users contributed financially in other ways).

176. In considering whether the RhodeWorks tolls violate the dormant Commerce Clause, the Court must consider the contributions by other means of those not tolled to the

maintenance and repair of Rhode Island's roads and bridges. *Id.*; see also *Nw. Airlines*, 510 U.S. at 369 (Court considered rent payments by airport concessions operators who did not pay user fee at issue in determining user fee did not violate dormant Commerce Clause).

177. Even assuming (1) the Supreme Court would recognize the existence of a dormant Commerce Clause; (2) there is no congressional authorization precluding a dormant Commerce Clause challenge to the RhodeWorks Act; and (3) the evenhanded regulation of the RhodeWorks Act (on its face and in its effect) does not trigger analysis of under *Pike* balancing, Plaintiffs can still not overcome the strong presumption that the RhodeWorks Act is constitutional and the substantial deference afforded the legislative findings set forth in the Act. Plaintiffs cannot prove, beyond a reasonable doubt, that the tolls do not reflect some fair, if imperfect, approximation of use (while considering other contributions to Rhode Island's roads and bridges by vehicles not subject to tolls) or, through substantial evidence and beyond a reasonable doubt, that the tolls which are the same for in-state and out-of-state trucks, discriminate against interstate commerce rather than reflect some rational distinction between those who pay a toll and those who do not.

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

PETER F. NERONHA
ATTORNEY GENERAL

/s/ Michael W. Field
Michael W. Field (#5809)
Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400, Extension 2380
Fax: (401) 222-3016
mfield@riag.ri.gov

RHODE ISLAND TURNPIKE
AND BRIDGE AUTHORITY
By its attorneys,

/s/ R. Bart Totten
John A. Tarantino (#2586)
jtarantino@apslaw.com
Patricia K. Rocha (#2793)
procha@apslaw.com
R. Bart Totten (#5095)
btotten@apslaw.com
Nicole J. Benjamin (#7540)
nbenjamin@apslaw.com
ADLER POLLOCK & SHEEHAN PC
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
(401) 274-7200
Fax (401) 351-4607

CERTIFICATION

I, the undersigned, hereby certify that I filed the within document via the ECF filing system and that a copy is available for viewing and downloading. I have also caused a copy to be sent via the ECF System to counsel of record on this 5th day of May, 2022.

/s/ R. Bart Totten