

US appellate court affirms dismissal of lawsuit against Pennsylvania Turnpike Commission and state, a credit positive

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On 13 August, the US Court of Appeals for the Third Circuit affirmed the 4 April order by the US District Court for the Middle District of Pennsylvania that dismissed the lawsuit against the [Pennsylvania Turnpike Commission](#) (PTC, A1 senior and A3 subordinate stable) and the [Commonwealth of Pennsylvania](#) (Aa3 stable) brought by the Owner Operator Independent Drivers Association, Inc. (OOIDA) and other plaintiffs.

The Third Circuit's affirmation of the district court's [dismissal of the lawsuit is credit positive for PTC](#) and the state because it clarifies the legality of their funding laws that use PTC tolls for non-system needs, including other transportation and transit needs in the state.

The plaintiffs could file for an "en banc" review of the appeal by all of the judges of the Third Circuit owing to the high profile nature of the case. However, these are only granted in rare cases and owing to the lack of case law controversy, we believe the Third Circuit is likely to refuse this request. Regardless, the plaintiffs reserve the right to appeal to the Supreme Court of the US. However, since the Third Circuit's ruling is in line with the majority of case law to date (see exhibit), we do not expect the Supreme Court of the US to hear the case on appeal.

While credit positive, the affirmation of the lawsuit's dismissal [does not solve the long-term transit capital funding debate in the state](#). The existing statute required the annual PTC transfer to the state to decline to \$50 million from \$450 million starting in fiscal 2023. In Act 89, the state identified the Motor Vehicle Sales and Use Tax as the replacement source of revenue to fill the funding gap that will materialize when the transfers decline.

The appellate decision could embolden the state to continue requiring the annual \$450 million transfers from PTC beyond fiscal 2022, though this would require an amendment to state statute. If the transfers do not decline to \$50 million as planned, it would be credit negative for PTC because the commission's leverage would likely continue to rise.

After the US District Court's 4 April ruling, the state did not extend its waiver that allowed PTC to defer its quarterly transfers to the state since 31 July 2018 (totaling \$450 million a year). Thus, [PTC issued \\$712 million of subordinate bonds](#) in June 2019 to pay the state its deferred fiscal 2019 Act 44 payments and the upcoming fiscal 2020 payments. These transfers fund certain Pennsylvania Department of Transportation (PennDOT) initiatives and are primarily used to finance capital grants to the state's transit enterprises, the largest of which are the [Southeastern Pennsylvania Transportation Authority](#) (SEPTA, A1 stable) in Philadelphia and the [Port Authority of Allegheny County](#) (PAAC, A1 stable) in Pittsburgh.

The plaintiffs alleged the PTC and state (and others) violated the dormant Commerce Clause and the constitutional right to travel by charging higher tolls on the turnpike system to fund other state transportation needs, like capital needs of the state's transit enterprises. Both the appellate and district court judges agreed with PTC and the state that the plaintiff's factual allegations did not support their claims. The judge's decision is in line with our base case expectation because it follows past legal precedent in other similar cases throughout the US over the years.

In affirming the district court's dismissal of the lawsuit, the appellate judge reasoned that since Congress expressly authorized the use of tolls for non-tolled purposes under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the dormant Commerce Clause does not apply and thus there was no need to resolve whether the Pike or Evansville test applied in determining if the dormant Commerce Clause was violated.

The appellate judge also upheld the dismissal of the claim that the plaintiff's "constitutional right to travel" was violated because not all entry and exit points into and out of the state are "tolled" and thus there are methods to travel across the state that are free, though they may be less convenient. In sum, "the right to travel" does not mean "the most efficient and direct route."

Federal precedent case law to date supports the position of the PTC and the state more than the OOIDA's position

| Case | Initial Lawsuit Filing Date | Final Lawsuit Decision Date | Complaint | Basis of the Argument | Initial Outcome | Final Outcome | Who Won | Court Level |
|---|-----------------------------|-----------------------------|---|-------------------------------|--|--|---------|-------------|
| New York State Thruway Authority vs. Selevan | Mar-06 | Mar-13 | Challenged the constitutionality of a toll discount over the Grand Island Bridge | Interstate Commerce violation | Ruled in favor of NYSTA stating that the plaintiffs have not suffered a burden on interstate commerce | In favor of NYSTA; The 2nd Circuit supported the lower court ruling; The toll policy was a minor restriction on travel that constituted a reasonable user fee | NYSTA | Federal |
| Metropolitan Washington Airports Authority vs. John B. Corr and John W. Grigsby | Apr-11 | Jan-14 | Argued against the use of toll road revenues to pay for rail projects alleging that since more than half of the project's cost is paid by toll road users, this qualifies as a tax | Tolls are taxes | Ruled in favor of MWAA stating that the tolls were not the same as taxes and that MWAA has the legal authority to set the tolls and use them for expansion projects | In favor of MWAA; 4th US Circuit Court of Appeals upheld the lower court ruling citing that toll road charges were user fees and not taxes under Virginia law | MWAA | Federal |
| Ohio Turnpike and Infrastructure Commission v Ullmo | Apr-15 | Aug-15 | Alleged that a toll increase used to fund projects that are unrelated to the maintenance and operation of the Turnpike is unlawful | Commerce Clause violation | Ruled in favor of OTIC stating that the funding spent on non-turnpike projects benefited turnpike users. The outstanding claim that the increased tolls were an unlawful tax or user fee was remanded to state court where it was dismissed in 2017 | Same as initial outcome. No appeal. | OTIC | Federal |
| Port Authority of New York and New Jersey vs. AAA Northeast | Sep-11 | Nov-16 | AAA sued the Authority arguing that tolls were not allowed to go to real estate projects, like the World Trade Center and Pulaski Skyway, since they were not sufficiently related to the Interstate Transportation Network | Interstate Commerce violation | Ruled in favor of the Port Authority holding that the PANYNJ did not violate the dormant Commerce Clause as plaintiffs could not prove that tolls were being diverted outside the interstate transportation network | Same as initial outcome. No appeal. | PANYNJ | Federal |
| New York State Thruway Authority vs. American Trucking Associations | Nov-13 | Mar-18 | ATA argued that the Thruway did not have the right to use toll revenue collected from commercial truckers to support the state's canal system | Interstate Commerce violation | Ruled in favor of the NY Thruway and was dismissed due to procedure; The judge deemed that the state of New York was an indispensable party and must be part of the suit, but the 11th Amendment of the Constitution prevents parties from suing states in federal court | In favor of the Thruway; 2nd US Circuit Court of Appeals upheld the lower court ruling; Concluded that Congress authorized the Thruway Authority to allocate highway tolls to canal uses | NYSTA | Federal |
| Metropolitan Washington Airports Authority vs. Kerpen | Jul-16 | Oct-18 | Challenged the use of toll road dollars to fund the Silver Line rail project | Tolls are taxes | Ruled in favor of MWAA stating that tolls are a "fee-for-service", not a tax, and can be used how MWAA sees fit | In favor of MWAA; 4th US Circuit Court of Appeals upheld the lower court ruling | MWAA | Federal |
| Rhode Island vs. American Trucking Associations | Jul-18 | Mar-19 | Argued that the tolls violated the Constitution's Commerce Clause by discriminating against out-of-state trucking companies and that the tolls were designed in a way that does not fairly approximate use | Interstate Commerce violation | Ruled in favor of Rhode Island due to the fact federal courts do not have jurisdiction over state taxes | ATA appealed the dismissal to the US Appeals Court of the First Circuit. Decision outstanding | TBD | Federal |

Sources: *Justia US Law and Leagle*