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July 11, 2007

The Honorable John H. Chichester
President pro tempore
Senate of Virginia
Post Office Box 396
Richmond, Virginia 23218

The Honorable William J. Howell, Speaker
Virginia House of Delegates
General Assembly Building
Post Office Box 406
Richmond, Virginia 23218

Re: Remedial Fees for Traffic Offenses / Va. Code § 46.2-206.1

Dear Senator Chichester and Mr. Howell:

Constitutional safeguards against undue, extreme and discriminatory punishments have long been a cherished right of the people of the Commonwealth of Virginia. Unfortunately, such safeguards have now been placed in jeopardy by the General Assembly as a result of its passage of legislation intended to impose exorbitant civil remedial fees upon Virginia drivers.

The Rutherford Institute, a civil liberties organization headquartered in the Commonwealth, has been contacted by numerous Virginia residents who have expressed outrage over the civil remedial fees imposed upon Virginia drivers by the transportation legislation enacted during the recent General Assembly session. We join with these residents and many others in decrying the unfairness of the fees mandated by Va. Code § 46.2-206.1 and in demanding that action be taken, either by the courts or the General Assembly, to stop the imposition of these fees. These fees are not only a misguided way of pursuing a policy of road improvement, which should be furthered by generally applicable taxes or fees, but are legally questionable in light of the magnitude of the fees and the patent discrimination against Virginia licensees.

Furthermore, these remedial fees are ripe for a legal challenge. In order to avoid such an eventuality, these fees should be eliminated because they do not bear any real relationship to the costs incurred by the Commonwealth as a result of the traffic offenses that trigger the fees. Fees such as those imposed under the new law are required, under the United States Constitution, to bear some reasonable connection to the actual costs attributable to the conduct. *Park Shuttle N Fly, Inc. v. Norfolk Airport Authority*, 2004 U.S. Dist. LEXIS 28116, at *23-*25 (E.D. Va. Feb. 6, 2004). However, the General Assembly has made plain that these remedial fees are not fines and cannot be considered taxes because they were not identified as such as required by Va. Const. Art. IV, § 11. Thus, the amount of the remedial fees must bear some relationship to the actual costs that result from the traffic offenses.

Clearly, the fees imposed are greatly disproportionate to the purported “financial burdens upon the Commonwealth” resulting from the specified traffic offenses. Incidents of reckless driving or driving under the influence, while certainly contrary to public order and safety, do not create any greater burden on the public transportation system or exacerbate what is the Commonwealth’s most pressing transportation problem—a lack of road capacity sufficient to efficiently carry the number of cars on the highway. Nor do the offenses that are the object of the remedial fees cause any significant damage or wear and tear on highways such that the fees can be attributable to the cost of road repair. Thus, there is no logical connection between the exorbitant fees imposed upon Virginia’s drivers and the real cost to the Commonwealth from the commission of the specified traffic offenses.

Moreover, the fact that only Virginia drivers are penalized with these remedial fees is patently unfair and offensive to the fundamental principle embodied in the state and federal constitutions that all persons are to be treated equally under the law. Even if a traffic offender imposes significant financial burdens on the Commonwealth, that burden is not lessened simply because the offender holds a license from Maryland, North Carolina or any other state. Yet the remedial fees provision in the recent transportation legislation specifically exempts out-of-state drivers from paying remedial fees.

The constitutional mandate of equal protection of the law requires that similarly situated individuals be treated similarly. If only one class of persons is subject to legislation, the Constitution requires that there be some rational basis for the limitation on the coverage of the law. *Rinaldi v. Yeager*, 384 U.S. 305, 308-09 (1966). The idea that only Virginia drivers should be saddled with these exorbitant fees, on top of the fines and legal fees they may incur as a result of a traffic offense, is legally indefensible. In light of the purpose of the remedial fees, the exclusion of out-of-state drivers is wholly illogical and improperly discriminatory. However, the solution should not be to amend the law so that it applies to out-of-state drivers.

The remedial fees legislation is a misguided and legally questionable attempt to cure the Commonwealth’s road problems and should be eliminated during the next session of the General

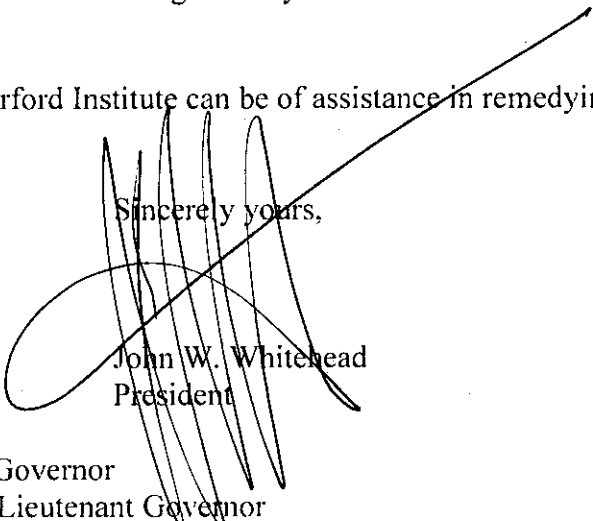
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Assembly. In light of the public outcry over the remedial fees, there is little doubt that Virginia citizens will challenge the state's authority to impose such egregious fines in a lawsuit. Raising revenue to improve transportation should be accomplished through general taxation that fairly distributes the burdens of the public undertaking. The remedial fees that courts must now impose unwisely place too much of the burden on drivers who make mistakes, some of whom will find the fees financially crippling.

Thus, I urge you to take the lead in the General Assembly and sponsor amendments eliminating these inequitable fees. If not, the State of Virginia may soon find itself embroiled in constitutional questions of great magnitude.

Feel free to contact me if The Rutherford Institute can be of assistance in remedying this situation.

Sincerely yours,



John W. Whitehead
President

cc: The Honorable Timothy M. Kaine, Governor
The Honorable William T. Bolling, Lieutenant Governor
The Honorable Walter A. Stosch, Senate of Virginia
The Honorable Richard L. Saslaw, Senate of Virginia
The Honorable Martin E. Williams, Senate of Virginia
The Honorable H. Morgan Griffith, Virginia House of Delegates
The Honorable Ward L. Armstrong, Virginia House of Delegates
The Honorable Leo C. Wardrup, Jr., Virginia House of Delegates