

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

NORTHERN VIRGINIA TRANSPORTATION
AUTHORITY,

Plaintiff,

v.

STATUTORY DEFENDANTS PURSUANT TO
VIRGINIA CODE §§ 15.2-2650, ET SEQ., TO WIT,
TAXPAYERS, PROPERTY OWNERS AND
CITIZENS OF THE COUNTIES OF ARLINGTON,
FAIRFAX, LOUDOUN, AND PRINCE WILLIAM,
AND THE CITIES OF ALEXANDRIA, FAIRFAX,
FALLS CHURCH, MANASSAS, AND MANASSAS
PARK, VIRGINIA, INCLUDING NONRESIDENTS
OWNING PROPERTY OR SUBJECT TO
TAXATION THEREIN, AND ALL OTHER
PERSONS INTERESTED IN OR AFFECTED IN
ANY WAY BY THE PROPOSED ISSUANCE BY
THE NORTHERN VIRGINIA TRANSPORTATION
AUTHORITY OF ITS NORTHERN VIRGINIA
TRANSPORTATION AUTHORITY
TRANSPORTATION IMPROVEMENT BONDS IN
AN AMOUNT NOT TO EXCEED \$130,000,000,

Defendants.

CASE No. 07-923

FINAL ORDER

On August 27, 2007, pursuant to the pertinent provisions of the Public Finance Act of 1991 (the "Public Finance Act"), Va. Code §§ 15.2-2650 *et seq.*, Plaintiff Northern Virginia Transportation Authority ("NVTA"), Plaintiff Intervenors, the Governor of Virginia, the Attorney General of Virginia, and the Speaker of the House of Delegates of Virginia, Defendant Intervenors the County of Loudoun, and Robert G. Marshall, John Berthoud, Richard H. Black, Catherine Ann Marshall, Edmund Charles Miller, Marcia Miller, Kristina Rasmussen, Phillip A. Rodokanakis, and Frank W. Smerbeck (the latter individuals collectively referred to as the

"Marshall Defendants") came to be heard upon NVTA's Complaint and the certification of the *Washington Times* dated July 23, 2007 that this Court's Order of Publication and the Complaint were printed in the *Washington Times* on two occasions as required by the Order of Publication, and the Counterclaim of the Marshall Defendants and the Court received evidence presented by the parties and considered the memoranda and the argument of counsel.

WHEREUPON, the Court FINDS that the Complaint and Order of Publication were properly advertised, and that the matter is now mature and appropriate for consideration; and

The Court further FINDS AND DECLARES that the enactment of Chapter 896, 2007 Va. Acts of Assembly ("Chapter 896"), was within the legislative power of the Virginia General Assembly set forth in Article IV of the Constitution of Virginia, and does not violate any Section of that Article, and the NVTA Act, as amended by Chapter 896, and Virginia Code §§ 46.2-755.1, 46.2-755.2, 46.2-1167.1, 58.1-605, 58.1-606, 58.1-802.1, 58.1-2402.1, 58.1-3825.1, as enacted, do not violate any provisions of the Constitution of Virginia; and

The Court further FINDS AND DECLARES that all actions of NVTA taken in connection with the proposed issuance of the Northern Virginia Transportation Authority Transportation Facilities Revenue Bonds, in an amount not to exceed \$130,000,000 (the "Bonds") to be issued by NVTA (1) pursuant to a resolution entitled "Resolution 03-08 Authorizing the Issuance of Not to Exceed \$130,000,000 Transportation Facilities Revenue Bonds" and adopted by NVTA on July 12, 2007 (the "Bond Resolution"), Exhibit 2 to the Complaint, and (2) the Indenture, Exhibit 4 to the Complaint, (as defined in the Bond Resolution) are valid and legal and meet the requirements of the Constitution of Virginia and all applicable statutes; and

The Court further FINDS AND DECLARES that all proceedings heretofore taken by NVTA in connection with the authorization or issuance of the Bonds, including the adoption of the Bond Resolution and adoption of Resolutions, Exhibit 1(a) through (g) of the Complaint, authorizing the imposition of seven regional taxes and fees, are valid and legal and meet the requirements of the Constitution of Virginia and all applicable statutes; and

The Court further FINDS AND DECLARES that all pledges of revenues and receipts and other security for the Bonds provided pursuant to the Bond Resolution and the Indenture, and the terms, covenants and provisions contained in the Bond Resolution and the Indenture, including, without limitation, the provisions for the application of revenues to pay the administrative costs of NVTA, are valid and legal and meet the requirements of the Constitution of Virginia and all applicable statutes and meet the requirements of the Constitution of Virginia and all applicable statutes; and

The Court further FINDS AND DECLARES that the proposed application of the proceeds of the issuance of the Bonds is valid and legal and meets the requirements of the Constitution of Virginia and all applicable statutes; and

The Court further FINDS AND DECLARES that the regional fees and taxes and all other means provided for payment of the Bonds are valid and legal and meet the requirements of the Constitution of Virginia and all applicable statutes; and

The Court further FINDS AND DECLARES that the Bonds, when issued, shall be payable only from the revenues and receipts of NVTA pledged for such purpose and shall not be a debt, liability or general obligation of the Commonwealth of Virginia or any political subdivision thereof other than NVTA; and

The Court further FINDS AND DECLARES that Counts 1, 2, 3, and 8 of the Marshall Defendants' Counterclaim are dismissed with prejudice as contrary to the law of the Commonwealth of Virginia (Counts 4, 5, 6, and 7 having been previously dismissed without prejudice); and

Having consolidated Counts 1-3, and 12 of the case styled *Jost v. Commonwealth*, Case No. CL7003853-00, pending before the Circuit Court of the City of Richmond, with this case by prior order of this Court dated August 15, 2007 because those Counts were identical or substantially identical to Counts 1, 2, 3 and 8 of the Counterclaim filed by the same individuals in this case, the Court further FINDS AND DECLARES that consolidated Counts 1, 2, 3, and 12 of *Jost v. Commonwealth* are dismissed with prejudice;


Accordingly, the Court ORDERS that the prayer for relief in the Complaint be and hereby is GRANTED and the findings and declarations of the Court stated above are incorporated as the Final Order of the Court, all for the reasons stated from the bench which are incorporated herein by reference.

There remaining nothing further, the Court ORDERS that the case be dismissed from the docket and the Clerk shall send a certified copy of this Order to counsel of record.

ENTERED this 31st day of August, 2007.

Circuit Judge

WE ASK FOR THIS:

✓ 

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Stewart T. Leeth (VSB # 31122)
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Transportation Authority*

SEEN AND _____:

✓ _____
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Attorney General of Virginia

Francis S. Ferguson
Deputy Attorney General

Stephanie L. Hamlett
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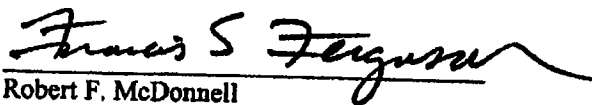
Counsel for the Commonwealth of Virginia

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*Counsel for the Northern Virginia
Transportation Authority*

SEEN AND Agreed _____:



Robert F. McDonnell
Attorney General of Virginia

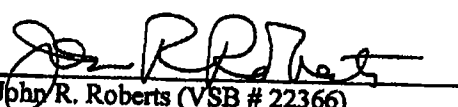
Francis S. Ferguson
Deputy Attorney General

Stephanie L. Hamlett
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Counsel for the Commonwealth of Virginia

SEEN AND OBJECTED TO ON THE BASIS THAT THE PROVISIONS OF CHAPTER 896, 2007 ACTS OF ASSEMBLY, AND VIRGINIA CODE §§ 46.2-755.1, 46.2-755.2, 46.2-1167.1, 58.1-605, 58.1-606, 58.1-802.1, 58.1-2402.1, 58.1-3825.1, AUTHORIZING THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY TO IMPOSE CERTAIN TAXES (1) ARE AN INVALID DELEGATION OF THE GENERAL ASSEMBLY'S LEGISLATIVE POWER TO IMPOSE TAXES UNDER ARTICLE IV OF THE CONSTITUTION OF VIRGINIA; (2) DO NOT CONFORM WITH THE PROVISIONS OF ARTICLE VII, SECTION 7 OF THE CONSTITUTION OF VIRGINIA REQUIRING THE IMPOSITION OF LOCAL TAXES BY AN ELECTED GOVERNING BODY; AND (3) DO NOT CONFORM WITH THE PROVISIONS OF ARTICLE VII, SECTION 2 OF THE CONSTITUTION OF VIRGINIA REQUIRING A REFERENDUM FOR THE CREATION OF A REGIONAL GOVERNMENT SUCH AS THIS NEW TAXATION AUTHORITY. THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY OBJECTS TO VALIDATION OF THESE TAXES AS IMPOSED BY THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY, THE PLEDGE OF THESE TAXES, AND THE ISSUANCE OF BONDS TO BE SUPPORTED BY THE PLEDGE OF THESE TAXES:


John R. Roberts (VSB # 22366)
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Counsel for the Board of Supervisors of Loudoun County

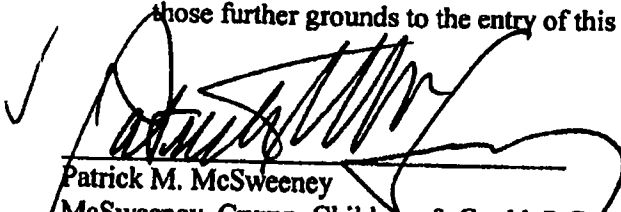
SEEN AND OBJECTED TO ON THE FOLLOWING GROUNDS:

1. The Court erred as a matter of law and abused its discretion in overruling the motion for recusal filed by the Marshall Defendants because the presiding judge will be bound as a statutory defendant by his own order entered in the matter and, by reason of the Canons of Judicial Conduct, 3(E)(1)(d)(i) (2007), the presiding judge was obligated to disqualify himself.
2. The Court erred as a matter of law in overruling the motion for summary judgment filed by the Marshall Defendants because the debt instrument that is the subject of this action will not be a negotiable instrument, as required by Va. Code § 15.2-4519(B)(1) and as defined in Va. Code § 8.3A-104, in that (a) it does not contain an unconditional promise to pay as a consequence of the contingency that the General Assembly may not continue the authorization for NVT A to impose the taxes and fees which are the exclusive source of payment of NVT A's debt instrument and (b) it does not contain a promise to pay a fixed amount as a consequence of the language of Section 6.1 of the Master Indenture


(Exhibit 4 to the Complaint); furthermore, the General Assembly lacks the authority and ability to make NVTA's debt instrument a negotiable instrument for purposes of the Uniform Commercial Code simply by declaring it to be such in Va. Code § 15.2-4519(B)(1) and without complying with the criteria established for negotiable instruments in the Uniform Commercial Code itself.

3. The Court erred as a matter of law in ruling that Chapter 896 satisfies the single object requirement of Article IV, Section 12 of the Constitution of Virginia. The phrase "relating to transportation" in the title of Chapter 896 is not a single object within the meaning of that constitutional provision because, by its very nature, it is so vague, abstract and non-specific that it encompasses virtually all human activity, thereby conflicting with the General Assembly's settled practice of deciding what is a "single object" and with the intent of the drafters of Article IV, Section 12 and the voters who ratified it; furthermore, the Court's expansive construction of the single object rule renders the first sentence of Article IV, Section 12 a nullity, which is an impermissible construction of a constitutional provision.
4. The Court erred as a matter of law in ruling that Chapter 896 complied with the single object requirement of Article IV, Section 12 of the Constitution of Virginia even though matters unrelated to transportation or having no natural and necessary relationship to transportation were included in the statute.
5. The Court erred as a matter of law in ruling that Chapter 896 complied with the requirement set forth in the second sentence of Article IV, Section 12 where the title failed to refer to Titles 2.2, 10.1, 15.2, 18.2, 28.2, 29.1, 30, 33.1, 46.2, 56, 58.1 and 62.1 of the Code of Virginia that would be affected by that statute, and failed to refer to 20 of the 23 enactment clauses of the statute, which omitted enactment clauses contain substantive matter to which legislators and the public would not be alerted by the Act's title and which, in part, are in conflict with provisions contained in and under the First Enactment Clause, as particularly shown in the argument of counsel for the Marshall Defendants and in the legal memorandum submitted on behalf of the Marshall Defendants.
6. The Court erred as a matter of law in ruling that Chapter 896 was within the legislative power of the Virginia General Assembly set forth in Article IV of the Constitution of Virginia and does not violate any section of that article where the General Assembly plainly exceeded the legislative power vested in it by delegating taxing power to NVTA, which is governed by individuals who are not elected to that position by the voters and where the intent of the voters who ratified the 1971 Virginia Constitution and who in 1998 rejected a proposed amendment to Article VII, Section 2 that would have authorized the General Assembly to establish a special governing body for an area encompassing two or more counties, cities or towns, or any combination thereof, the members of which special governing body being selected by the governing bodies of the participating localities rather than being directly elected by the voters, plainly demonstrates the voters' intent that regional bodies exercising taxing authority be governed by individuals who are directly elected by the voters.

7. The Court erred as a matter of law in ruling that all pledges of revenues and receipts and other security provided pursuant to the Bond Resolution and the Indenture are valid and legal and meet the requirements of the Constitution of Virginia and all applicable statutes where the pledges and security are expressly limited to tax and fee collections authorized by Chapter 896, and the question of contracting the NVTA debt at issue has not been submitted to the voters; where the General Assembly, which cannot directly authorize debt to be paid with tax collections and is prohibited from doing so by Article X, Section 9 of the Constitution of Virginia, is prohibited from authorizing the same kind of debt indirectly through a regional authority; and where the intent of the voters that tax-supported debt for transportation purposes not be authorized without the approval of the voters at any level of government in Virginia was plainly demonstrated by the voter rejection in 1990 of proposed constitutional amendments that would have eliminated the voter approval requirement for debt for transportation purposes supported by tax revenues.
8. The Court erred as a matter of law in ruling that all pledges of revenues and receipts and other security provided pursuant to the Bond Resolution and the Indenture are valid and legal and meet the requirements of the Constitution of Virginia and all applicable statutes where the new and additional taxes authorized by Chapter 896 in the form of an annual license fee increase (Va. Code § 46.2-755.1) and a motor vehicle registration fee increase (Va. Code § 46.2-755.2) are paid into the State Treasury and may not be paid out except by a future appropriation by the General Assembly pursuant to Article X, Section 7 of the Constitution of Virginia and where the NVTA Bond Resolution, the Indenture or any other document submitted to the Court by NVTA refers to the fact that the pledge of such tax revenues are subject to appropriation by the General Assembly.
9. As to all rulings during the course of the proceedings to which counsel noted an exception on the record, the Marshall Defendants reaffirm such exceptions and object on those further grounds to the entry of this final order.


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A COPY
TESTED BY DAVID A. BELL, CLERK
BY  DEPUTY CLERK