April 6, 2018

Dear Mr. President:

We appreciate your efforts to prioritize one of the core functions of government - building and maintaining America’s highways and bridges. As a statewide grassroots coalition that has played an integral role in supporting the strong efforts of Governor Greg Abbott and Lt. Governor Dan Patrick to protect taxpayers from further toll taxes and transportation debt, we feel compelled to share our grave concerns about elements of your infrastructure proposal that threaten the protections Texans have put in place against such policies. Indeed, there are elements of your proposal that will threaten the private property rights, freedom, and budgets of American households and small businesses all across this nation.

Our first concern is the possibility of lifting the ban on tolling existing federally-funded highways. Texas State Senators Bob Hall, Lois Kolkhorst, Don Huffines and other legislators worked hard to pass a state law that protects Texans from having tolls slapped on lanes for which we have already paid. We cannot support a federal plan that will come in and pull the rug out from under Texans who demanded and worked hard for this protection. In fact, our former U.S. Senator Kay Bailey Hutchison was a key leader in putting a 2007 federal protection in place for Texans. Imposing tolls on roads that are paid for is a double taxation scheme that will be abused by Big Government special interests and will raise taxes on working families and small businesses!

We, however, favor the part of your proposal that allows states to pay back federal funds on certain projects (p. 23) so that restrictive federal regulations can be removed and the repaid federal funding swapped out for a new project. For example, this would mean HOV lanes could be opened up to all traffic. [Note: Collin County officials have been working to
take this action on US-75 in Texas.] An even better approach would be repealing as many federal bureaucratic regulations on transportation projects as possible!

We strongly oppose the part of your infrastructure plan that would allow toll revenues from one project to be raided to pay for another (on p. 21) on certain projects where revenues are currently restricted to the maintenance and expansion of that project only (a true user fee). Multi-leveraged system financing is at the heart of the Texas toll abuses we have fought for many years. By tying independent toll projects together into one financial ‘system,’ it becomes nearly impossible to extricate a single project in order to remove the toll once the debt is retired.

One of our key pro-taxpayer initiatives is the prevention of perpetual taxation – a principle rooted in the Texas Constitution (Art. I, Sec. 26), which prohibits perpetuities and monopolies. The call to remove tolls from roads that are paid for continues to grow louder. In fact, last session, the Texas legislature began doing just that with passage of SB 312, removing tolls from two Texas highways. Encouraging multi-leveraging schemes and system financing through the institutionalization of these anti-taxpayer methods will only make taking the tolls off the roads more difficult – if not impossible. We urge you to strike multi-leveraging/system financing from your plan.

Corporate Welfare, Big Government P3s: Anti-taxpayer, Anti-free market, Anti-liberty

Mr. President, much of the Trump Infrastructure proposal is every crony capitalist’s dream with its push for tolling and public private partnerships (P3s). Expanding P3s to transit and increasing the federal subsidy from 25% to 50% for airports, ports, and other infrastructure (p. 24-26), reads like a special interest wish list and pronounces open season on taxpayers’ wallets and liberty!

Expanding federal credit assistance (TIFIA loans) and tax exempt bonds (Private Activity Bonds) for private ‘partners’ – at the expense of federal taxpayers – means we, not the private sector participants, take on greater risk. These sweetheart deals are often designed to extract exorbitantly high toll and fee rates, guaranteeing profits for the private partners, while using taxpayers to socialize the losses. This does not put the American people first, nor will it make America great again! In fact, we guarantee this will grow the DC Swamp and enrich its special interest cartel bosses.

Your proposal would also expand federal credit assistance for State Infrastructure Banks (p. 21-22) and expand other tax-exempt bonds for the private sector (p. 10-16). It advocates expanding federal credit assistance on water projects under WIFIA, too, which U.S. Senator Ted Cruz opposes. We strongly support Senator Cruz in his opposition.
By limiting the expansion of free roads and, in effect, guaranteeing congestion on free routes through non-compete agreements, your plan would allow the private partners to increase the period of their monopolies from 5 years to 50 years! Debt and tolls will swallow up future generations with unsustainable debt. This plan doesn’t make the Federal Highway Trust Fund solvent. **It makes the problem worse.**

Mr. President, there is a vast difference between replacing slow, costly, dull-witted bureaucratic processes with smart, entrepreneurial, time- and cost-efficient strategies and P3s, which are government-sanctioned monopolies. P3 “winners” represent a privileged few who are granted special government-bestowed favors – tax breaks, free use of eminent domain, non-compete clauses in government contracts, and guarantees of return on investments. As partners with government, P3 privateers can fix prices – charging more than the market demands – and can use their special relationships with government to put their competitors out of business. P3s DO NOT represent the free market, nor government controlled by “we the people.” There is strong opposition in Texas to the government picking private sector winners and losers and giving private companies the power to take land in the name of ‘public use,’ while turning it into a private purpose for private gain.

**Finally, Mr. President, how will you guarantee the American people that there will be diligent, sustained, thorough oversight of these public private projects to ensure taxpayers are protected from waste, fraud, and abuse?** The federal government that gave us the financial sinkhole specimens of Amtrak and the US Postal Service cannot be relied upon to oversee these projects. Accountability is not a recognized hallmark of the federal government.

**Pay-to-Play in Environmental Process: No Good Can Come from This!**

Your proposal also allows pay-to-play to enter into the environmental review process (p. 41, 48-50). While we don’t want to see unnecessary environmental red tape halt or hamper needed road projects, we do want to keep the public’s ability to seek judicial review and relief for projects where problems exist and where the agencies failed to follow the law or heed the public feedback on preferred alternatives.

The National Environmental Policy Act (NEPA) currently is **one of the only triggers for public comment and a public hearing requirement.** In proposing alternative delivery methods (p. 48-50), it is vitally important to require a public hearing process and a mechanism for meaningful public feedback, regardless of the delivery method.

Allowing states to pay for expedited review (p. 41) opens the door for potential conflicts. Paying for a special rush review means approval is more likely because the states are paying extra for that review. This poses a
potential conflict of interest and a significant opportunity for private property rights to be trampled. Paying to bypass the traditional NEPA environmental mitigation requirements, by simply paying into a mitigation fund (p. 48-50), signals more bureaucracy with no accountability or requirement that those mitigation funds will even be used on that specific project. It also opens the door to more pay-to-play schemes, which bureaucrats, corrupt politicians and their cronies love.

The new Incentive Grant Program (p. 3-4) and the Transformative Projects Program (p. 8-9) change the federal leveraging requirements from 80% federal and 20% state or local to the reverse — 80% state or local and 20% federal. The vast majority of states will look to new toll taxes to come up with 80% of a project’s cost in order to access these new federal programs. In Texas, our legislature passed, and voters approved Proposition 1 and Proposition 7 that gave a nearly $5 billion a year boost for non-toll highways. **These new federal programs would tie up a disproportionate amount of Prop 1/Prop 7 funds.** States like Texas that don’t choose to toll should not be punished by new federal funding formulas in order to get our federal transportation dollars back.

While we agree that states should have more flexibility in how they choose to spend federal gasoline tax revenue, we are concerned that your proposal would allow states and their private partners to totally bypass any federal review if the federal role (subsidy) is small (p. 21-22). States should have that flexibility, but not private partners who are involved in P3s. While we all want more decision-making at the state level versus the federal, taxpayers need protections! Otherwise, this becomes a “run on the bank” with tolls popping up everywhere without any true public notice, input, or ability to challenge.

**What We Want:**

**A net tax cut and state control over federal gasoline taxes!**

Taxpayers deserve a true net tax cut. The federal tax cuts you worked so hard to secure will be erased by punitive toll taxes under the current Trump infrastructure proposal. **A different approach is needed. New taxes will NOT be well received.**

The State of Texas should be able to get our federal gasoline tax revenue back from DC in a block grant without federal strings attached! This type of flexibility isn’t found in the current Trump proposal. **We are much more confident that Texas – under the leadership of Gov. Greg Abbott and Lt. Gov. Dan Patrick – will make much sounder transportation decisions** than the far-flung bureaucracy in Washington, which makes no actual progress in stopping wasteful practices, eliminating unconstitutional programs, or balancing the federal budget.
The Bottom Line: Crony P3s & Perpetual Tolls
Won’t Make America Great Again!

Mr. President, incentivizing P3s contradicts your promise to put America and American workers first. You promised to drain the DC Swamp, but P3s open the door wide to special interest crony deals, which put out a welcome mat for special interests to restrict the travel of ordinary Americans by charging them a premium to get to work. The plan as proposed hurts the very middle class and working families that delivered the election to Donald J. Trump.

Congestion tolling has already run amok with tolls exceeding $1/mile in Texas and over $4/mile in D.C. This is unsustainable taxation! Tolls and restricted lanes impedes travel, impede the free flow of commerce, and increase the cost of everything we buy (because shipping/transportation companies pass toll costs to the consumer).

Just as you have encountered rogue local governments in your fight against lawless sanctuary cities, in Texas we have rogue local governments that use the term “local control” to cover their anti-taxpayer schemes. In order to impose their social engineering agenda on the people, these rogue local governments oppose the efforts of our Governor and Lt. Governor to stop the proliferation of toll roads and transportation debt. These do-gooders want to “weaponize” tolls in order to tax us off our public highways and into some form of mass transit boondoggle, which is a parallel to the Big Fail called Amtrak. Mr. President, please do not give these Big Government types an incentive and more “weapons” to defeat all the progress we’ve made in Texas.

Having to shell out $30-$40/day to take privatized toll lanes (the current cost in the DFW Metroplex to use two privatized toll projects during peak hours) will hurt middle class and working families the most. Perpetually tolled roadways hurt the budgets of working families and small business owners and harm the ability of workers to get to their jobs. **We know that could not be your intent!**

Mr. President, Americans want a reliable and reasonable commute time and cost. We need you to step up to protect taxpayers from bureaucrats, cronyism, and waste in the entire transportation infrastructure process. There is no question that our aging infrastructure needs improvement, but asking Americans to pay more in toll taxes governed by unelected, unaccountable bureaucrats is not the way to do it, and pouring billions more into a corrupt, waste-riddled system won’t ensure a good outcome for the American People. **You will Make American Great Again by dismantling the federal transportation bureaucracy first, making it leaner, more efficient, effective, accountable and transparent. We can get behind that!**
Thank you for serving our great nation, Mr. President. Our prayers are with you.

Sincerely,

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CC:
Members of the US Senate Environment & Public Works Committee
Members of the US House Subcommittee on Transportation

* Organizations are listed for identification purposes only.
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