

March 11, 2025

Chairman Marc Korman  
Maryland House of Delegates Environment and Transportation Committee  
251 Taylor House Office Building  
6 Bladen Street  
Annapolis, MD 21401

Re: HB1088: Coal Transportation Fee and Fee and Fossil Fuel Mitigation Fund

Dear Chairman Feldman:

I submit this written testimony on behalf of my client, Core Natural Resources, Inc., regarding HB1088, the Coal Transportation Fee and Fossil Fuel Mitigation Fund (the "Transportation Fee").

The Transportation Fee is grossly unfair and flagrantly violates the U.S. Constitution. Specifically, the Transportation Fee violates the Commerce Clause and Equal Protection Clause because it impermissibly interferes with free trade, burdens interstate commerce, and singles out coal among fossil fuels. If passed, the State of Maryland will be promptly sued under 42 U.S.C. Section 1983 by numerous damaged parties, including Port, rail, and coal workers, as well as businesses small and large. The Transportation Fee will compel the closing of businesses and many Maryland workers will lose their jobs. And the burden imposed on the interstate commerce of the coal industry from the Transportation Fee is excessive in relation to the microscopic benefits to climate change mitigation.

The Transportation Fee is both an unconstitutional fee and an unconstitutional tax. *See Frey v. Comptroller of the Treasury*, 184 Md. App. 315 (2009) (exactions to support government services are taxes). Under clear U.S. Supreme Court precedent, the Constitution's Commerce Clause requires that any state revenue taxes on interstate commerce, such as the Transportation Fee, must be (1) applied to an activity with a substantial nexus with the taxing State, (2) fairly apportioned, (3) nondiscriminatory against interstate commerce, and (4) fairly related to the services provided by the state, in order to pass constitutional muster. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977); *Ctr. for Auto Safety Inc. v. Athey*, 37 F.3d 139, 142 (4th Cir. 1994). This is called the Constitution's "fair apportionment" requirement.

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The Transportation Fee obviously fails this constitutional test. It is not fairly apportioned as the bill imposes a draconian fee of \$13 per ton of coal that enters Maryland. Simply put, the Transportation Fee is not directly apportioned to the mileage traveled in Maryland as the fee does not consider the actual mileage the carrier travels in Maryland compared to other states. Only a percentage of the coal's travel is through Maryland, as it passes through as many as three other states before it travels through Maryland to the Port of Baltimore for export. Maryland can only legally tax the percentage of the coal's travel through the state.

The Transportation Fee also fails other aspects of the fair apportionment test because the Fee has no nexus to economic activity in Maryland and is a huge tax simply for moving coal through Maryland, discriminating against out-of-state coal, a classic item in interstate commerce.

Courts for many decades have struck down laws imposing taxes or fees that fail the fair apportionment requirement. *See, e.g., American Trucking Ass'ns, Inc. v. Goldstein*, 312 Md. 583 (1988) (marker fee imposed on each vehicle using Maryland roads was not fairly apportioned and therefore violated the Commerce Clause); *Am. Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266 (1987) (a marker fee and road axle tax imposed by Pennsylvania statute violated the Commerce Clause as the fee was not fairly apportioned); *BNSF Ry. Co. v. California State Bd. of Equalization*, 2016 WL 6393507, at \*4 (N.D. Cal. Oct. 28, 2016) (transportation fee for each railway transporting hazardous materials in the State violated the Commerce Clause because it was not fairly apportioned); *Chambers Medical Technologies of S.C., Inc. v. Jarrett*, 841 F. Supp. 1402 (D.S.C. 1994) (transportation fee based on the tonnage of waste transported in the State was not fairly apportioned and therefore violated the Commerce Clause).

Courts also assess the reasonableness of a tax by looking to the effect if neighboring states through which the goods were transported enacted an identical law. Here, the enormous Transportation Fee, if duplicated, would render coal transportation completely unaffordable.

The Transportation Fee is also unconstitutional because it obviously not an "user fee." The fee structure for the Transportation Fee does not represent a fair approximation of the cost for the transporters using Maryland railroads and facilities for their benefit. The Transportation Fee is not related to the workload the coal transporter might create for the State as a large amount of coal does not require additional administrative requirements. Simply put, Maryland's cost for monitoring the transport of coal does not increase with the amount of coal on the carrier. Thus, the Transportation Fee is clearly not a "user fee."

Whether deemed a fee or a tax, the Transportation Fee is also unconstitutional under *Pike* balancing test. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970); *Just Puppies, Inc. v. Brown*, 123 F.4th 652, 669-70 (4th Cir. 2024). Under the *Pike* test, a statute is unconstitutional when it places an "undue burden" on interstate commerce that is clearly excessive in relation to the putative local benefits. *Id.* at 142. Here, the burden imposed on the interstate commerce of coal is excessive in

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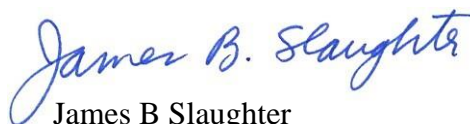
relation to the benefit of the fossil fuel mitigation fund. The stated purpose of the Transportation Fee is to support activities that reduce greenhouse gas emissions in the State and their impacts in the State, but the tax would have the opposite effect because the coal that is most likely to be burdened by the tax is cleaner, higher calorific value and lower sulfur content coal that would be replaced on the market by dirtier, lower calorific and higher sulfur coal.

The Transportation Fee also fails under the constitutional standard for a fee impacting interstate commerce. “User fees” are taxes or other fees collected by the state as reimbursement for use of state-owned or state-provided facilities or services. To qualify as a lawful “user fee” under the Commerce Clause, the fee must (1) reflect fair, if imperfect, approximation of cost of using state facilities for taxpayer's benefit, (2) not discriminate against interstate commerce, and (3) not be excessive in relation to costs incurred by the government imposing the fee. *Ctr. for Auto Safety Inc. v. Athey*, 37 F.3d 139, 142 (4th Cir. 1994).

Again, the Transportation Fee fails this test. The fee relates in no way to rail transport of coal, such as funding rail improvements or safety. Instead, the fee funds various climate change mitigation projects that bear the tiniest of relationships, if any, to the coal moving through Maryland for use overseas. Any court would agree that this huge fee on interstate coal moving through Maryland does not fund Maryland services or activities necessitated by the coal that is taxed.

Lastly, HB1088 violates federal and state equal protection guarantees under the U.S. and Maryland Constitutions. U.S. Const. amend. XIV; Md. Const. Decl. of Rts. art. 24; *Murphy v. Edmonds*, 601 A.2d 102, 107 (Md. 1992) (Article 24 of the Maryland Constitution’s Declaration of Rights embodies the same concept of equal protection as the Fourteenth Amendment). Coal is just one fossil fuel in interstate commerce moving through Maryland. Equal protection requires that similar parties be treated similarly. The Transportation Fee does nothing of the sort.

Sincerely yours,



James B Slaughter  
Principal