

# CHARLES M. GREENHOOD

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November 20, 2013

Dear Members of the Virginia General Assembly,

I and the Citizens of Hampton Roads are angered and outraged at the conduct of Virginia Supreme Court Justice William Mims. Justice Mims refusal to recuse himself in the case of the Downtown Tunnel-Midtown Tunnel-MLK Freeway Extension project being built by Elizabeth River Crossings is without question absolutely inexcusable. His actions undermine public confidence in the fairness and integrity of the Virginia Supreme Court. We are adamant that appropriate action be taken immediately to deal with this amazing lack of judgment on the part of Justice Mims.

Justice Mims had not one, but several serious conflicts in this case. Any one of them should have forced him to recuse himself as did two other Justices in this case. I discovered many troubling issues. Justice Mims voted FOR the Public Private Transportation Act in 1995 as a member of the House of Delegates. That very legislation was the subject of and the central issue of the litigation before the Supreme Court in the Elizabeth River Crossings case. Justice Mims was also the chief patron on a joint resolution in the 2000 session of the General Assembly advocating the establishment of an Office of Public Private Partnerships in the Virginia Department of Transportation. Justice Mims wrote opinion letters to state legislators in 2007 declaring the constitutionality of the major transportation legislation at that session that was later declared unconstitutional by the Supreme Court in the Marshall case. That very legislation contained language that VDOT and ERC relied on in their appeal decided by the Virginia Supreme Court on October 31<sup>st</sup> of this year. Justice Mims also participated in preparing legal arguments in support of that legislation in the Marshall v. Northern Virginia Transportation Authority . The Supreme Court struck down the delegation of taxing power to the unelected authority which was a case relied on by the users of the Elizabeth River Tunnels in our challenge.

In 2009, Bob McDonnell, who was campaigning for Governor at the time, told a Northern Virginia newspaper that the Supreme Court was wrong when it ruled unconstitutional the 2007 transportation legislation that he and Justice Mims had a prominent role in drafting and defending. It is fair and justified and begs the question to ask whether Justice Mims shared the same view.

Even more amazing was that immediately before Justice Mims took his seat on the Court, he was a member ~~the~~ law firm that represented Elizabeth River Crossings then and that same firm continued to represent ERC before the Supreme Court in its recent appeal. Wow...how blatantly wrong is this? It is NOT a justification for refusing to recuse himself that Justice Mims was not directly involved in that representation. Justice Mims might as well have sat with the ERC and VDOT legal team.

It would be difficult if not absolutely impossible to point to a situation that would present a stronger case for a Justice to recuse himself that the very situation Justice Mims was in when he decided not to do so in the Elizabeth River Crossings case. The inconsistency in the decisions of the Justices concerning whether to recuse themselves in that case raises serious questions about how those decisions are made that demand answers.

Finally, with the serious multiple conflicts that Justice Mims had in this case we are thunderstruck and outraged that he demonstrated such an aggressive approach in asking questions during the hearing on appeal by the ERC and VDOT. It was more than obvious that Justice Mims made absolutely no effort to even appear objective and unbiased when this case was heard in early September of this year.

I and the Citizens of Hampton Roads will continue to demand that this blatant travesty be addressed. We all hope you will take whatever immediate action is necessary to cure on our request.

Respectfully,

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