# Pushback against P3s:

# The Political Economy of Public-Private Partnerships

Jeong Yun Kweun, Jonathan Gifford, and Porter Wheeler

Center for Transportation Public-Private Partnership Policy

George Mason University

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# INTRODUCTION

This memo explores arguments used to oppose public-private partnerships (P3s), particularly in surface transportation. Unlike many “myths” reports that primarily communicate P3s’ infrastructure-delivery benefits, the memo’s stakeholder focus supports the “consultation and engagement” recommendation of the principles for public governance of public-private partnerships of the Organization for Economic Cooperation and Development (OECD).[[1]](#footnote-1) [[2]](#footnote-2) P3 proponents worry about public perceptions: “The points made by these groups … may sound good on first hearing—by legislators, reporters, and other influencers of public opinion.”[[3]](#footnote-3) The memo focuses on identifying the criticisms levied against P3s and does not analyze the validity of those criticisms.

# METHODOLOGY

This memo builds on two reports from 2009 and 2010 that identified common criticisms of P3s.[[4]](#footnote-4) To identify P3s’ most common opposition themes in recent years, the authors searched for three keywords—“opponent,” “opposition,” and “resistance”—in monthly *Public Works Financing* (PWF) publications between January 2014 and July 2015. Secondary research then collected details regarding any events referenced in the resulting PWF articles. Finally, a thematic analysis grouped recurring claims into five opposition themes.

# COMMON OPPOSITION THEMES

## P3s waste taxpayer money.

P3 opponents have argued that P3s waste taxpayer money. First, opponents often claim that P3s cost more than traditional delivery, as they did in the case of San Francisco’s Presidio Parkway Phase II Project.[[5]](#footnote-5)

Second, some opponents criticize private P3 concessionaires profiting from public funds. For example, a piece in *The Weekly Standard* criticized Virginia’s Transurban I-495 Express Lanes contract saying, “The arrangement is every capitalist’s dream: free land, developed with taxpayer money, for privatized profits and socialized losses.”[[6]](#footnote-6) This quotation highlights another criticism of P3s, that project gains are privatized while project losses are borne by the public sector.

A third variation objects to foreign investors profiting from P3 projects. When Macquarie and Cintra leased the Indiana Toll Road in 2006, for example, many criticized the project as a sell out to foreign companies: “At the state level, Indiana is relying on foreign companies to lease public infrastructure like toll roads. And under these arrangements, tolls—taxes people pay for driving—are being paid to foreign shareholders of foreign companies.”[[7]](#footnote-7)

Finally, a fourth argument claims that increased taxpayer spending results from failed P3 projects. For example, Trip Pollard of the Southern Environmental Law Council highlights the U.S. Route 460 project in southern Virginia:

[A] $1.8 billion new Route 460 in rural Southside [Virginia] would have been almost entirely publicly funded. The road would parallel an existing, relatively uncongested highway, and agencies repeatedly warned that the destructive project was unlikely to receive necessary environmental permits. After signing a contract, retaining all risks, and spending roughly $300 million, the state scrapped the project when further study made it clear it could not be permitted.[[8]](#footnote-8)

Virginia twice evaluated U.S. Route 460 as a potential P3, but in both cases found that the level of public subsidy was too high. The state subsequently contracted for delivery of the project as a design build, with the state taking the environmental permitting risk. Problems obtaining environmental permits led the state to cancel the contract and revise the project to reduce its environmental impacts.

## P3s lack accountability and transparency.

Critics also express concern regarding accountability and transparency in P3 procurement and contracting processes, alleging that large P3 projects are invisible to the public “until it’s too late.”[[9]](#footnote-9) Such issues were raised in the U.S. 36 project in Colorado, as well as in P3 projects in Virginia.

Along with limited transparency, critics have also labeled P3 projects as “crony capitalism.”[[10]](#footnote-10) For example, an electoral primary opponent of the Republican Speaker of the Virginia House of Delegates referred to the I-95 Express Lanes operated by Transurban as a “Solyndra-style deal,” accusing the state of “double taxing.”

## P3s reduce public control over projects.

Opponents also argue that P3s reduce public control and flexibility, both in the short (design, construction) and the long term (inspection, future project integration).[[11]](#footnote-11)

Particular concern has developed regarding P3 contract provisions that limit or condition subsequent government investments that might reduce concessionaire returns.[[12]](#footnote-12) An early P3, the State Route 91 project in California, had a “non compete” clause that prevented the state from adding adjacent un-tolled lanes. The government eventually bought out the concessionaire to remove the prohibition. More recent contracts often provide compensation to concessionaires if they are able to show that government actions such as building competing facilities have reduced returns.

## P3s are inequitable because of tolling.

Many U.S. P3 projects rely on tolls, and have elicited opposition from anti-tolling groups such as the American Highway Users Alliance and TollFreeNC.org.[[13]](#footnote-13) Colorado’s managed lane projects on U.S. 36 and Interstate 70 encountered harsh protests from activists over tolling. The Colorado Toll Freedom Plan and the Drive Sunshine Institute recommended using other sources to fund the U.S. 36 project, including revenues from marijuana excise, income and sales taxes; increased highway fuel taxes; and “normalizing” oil and gas tax rates with Wyoming.[[14]](#footnote-14)

## P3s threaten U.S. national security.

A final argument used by P3 opponents relates to foreign control and national security. Although less common in recent years, the issue resurfaced in 2014 when Gulftainer, a management company based in the United Arab Emirates, and Florida’s Port Canaveral signed a 35-year operation contract.[[15]](#footnote-15) U.S. Representative Duncan Hunter, a California Republican, requested that Treasury Secretary Jack Lew “determine whether a terminal operation agreement with Gulftainer presents any risk or impact to U.S. national security.” The representative’s father raised the same issue in the House in 2006 when Dubai Ports World, also a UAE company, tried to sign an operating contract with six major U.S. seaports.[[16]](#footnote-16)

# CONCLUSION

Opposition to public-private partnerships often draws on five common themes: that they waste taxpayer money, lack sufficient accountability and transparency, reduce public control, are inequitable, and threaten national security (see Table 1). These themes are similar to those identified by earlier studies. This paper has not sought to evaluate the merit of these claims with respect to individual projects or to P3s more generally. However, those considering the use of P3s may wish to be mindful of such criticisms and be prepared to respond with facts to correct any misrepresentations.

Table 1 Claims Opposing P3s

|  |  |
| --- | --- |
| **Reasons for opposing P3s** | **Stakeholders and Projects (examples)** |
| P3s waste taxpayer money. | * PECG: Presidio Parkway, CA * Jonathan Last from *The Weekly Standard*: I-495 Express Lanes, VA * Trip Pollard from Southern Environmental Law Council: Route 460, VA * Citizens Action Coalition, Sustainable Earth: Indiana Toll Road |
| P3s lack accountability and transparency. | * GreaterGreaterWashington (blog): VDOT P3 projects in general * Anti-tolling groups * Susan Stimson from Stafford County, VA: I-95 Express Lanes, VA |
| P3s reduce public control over projects. | * PECG: Presidio Parkway, CA, SR 91 |
| P3s are inequitable because of tolling. | * Anti-tolling groups (American Highway Users Alliance, TollFreeNC.org, Colorado Toll Freedom Plan, Drive Sunshine Institute, etc.): U.S. 36 and I-70 East Managed Lanes, CO |
| P3s threaten U.S. national security. | * Representative Duncan Hunter (R, CA): Port Canaveral, FL |

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