

Construction of an Alabama Coastal Bridge Creates Rift

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Credit: Jimmy Pigg

The Baldwin County Bridge Company (BCBC) owns and operates the Beach Express (BEX) Bridge, a toll bridge that connects the City of Foley, Alabama to Orange Beach and Gulf Shores. Currently, the BEX Bridge serves as the only alternative to the heavily traveled Highway 59. The toll bridge covers a total of 13.5 miles and connects drivers to Alabama's beautiful beaches and popular tourism destinations. BCBC claims that John Cooper, the Director of the Alabama Department of Transportation (ALDOT), is intent on bankrupting their business by building a separate, superfluous, non-toll bridge.¹ ALDOT's project, called the Intracoastal Waterway Bridge, would be located only about a mile away from the existing toll bridge.

In the last two years, tourism to Gulf Shores and Orange Beach has been at an all-time high with people coming to the beaches in record breaking numbers.² Traffic has become an issue. The construction of a new bridge might alleviate congestion, but BCBC argues that it could have saved millions of dollars of the state's dollars by simply expanding the existing toll bridge to four lanes, rather than paying for construction of an entirely new bridge only a mile away.³

Access to the popular tourism destinations on Alabama's coast has created a tug of war between the private sector and the state, with local authorities joining on either side. The mayors of Gulf Shores and Orange Beach, the two cities that will be directly impacted by this new bridge,

disagree over the necessity of the Intracoastal Waterway Bridge. Gulf Shores Mayor Robert Craft backs the construction of the ALDOT Intracoastal Waterway Bridge, stating that BCBC and Orange Beach are only focused on profit while ignoring the future of Alabama's beaches.⁴ The Mayor of Orange Beach, Tony Kennon, stands with BCBC and the toll bridge, stating that the new state bridge project will only provide a "private drive" to a future city high school.⁵ Even judges have disagreed over construction of the Intracoastal Waterway Bridge.

In May, an Alabama circuit court judge agreed with BCBC's claim that Cooper was acting in bad faith, trying to "bankrupt" the company.⁶ Alabama Montgomery Circuit Court Judge Jimmie Pool granted an injunction halting construction on the ALDOT bridge. ALDOT and Cooper argued that because of sovereign immunity, BCBC's case was moot. Sovereign immunity is a legal concept that transferred over to our courts from England – a way to shield the king, or in our case, the government from lawsuits it hasn't consented to. Judge Pool found that a bad faith exception to sovereign immunity that exists under Alabama law applied to this case and sided with BCBC. On appeal, however, the Alabama Supreme Court disagreed with Judge Pool – allowing work on the future bridge by ALDOT to continue.⁷

According to the Alabama Supreme Court, the Director of ALDOT is, in fact, protected by sovereign immunity.⁸ The Supreme Court of Alabama issued its opinion on August 25, 2023, and held that the exception cited by Judge Pool supporting the decision to grant the injunction does not apply⁹ as Cooper was sued in his official capacity as Director of the Alabama Department of Transportation. The exceptions to sovereign immunity only apply "against an individual person rather than 'the State' as such."¹⁰ Halting construction of the bridge would directly impact a contract of the State, not Cooper as an individual; therefore, according to the Alabama Constitution, "the trial court has no subject-matter to entertain" the injunction to stop construction of the ALDOT bridge.¹¹

Five days after the Supreme Court published its opinion, BCBC announced it would nearly double its toll. The website for the company blamed the increase on Cooper: "Now, as a result of the actions taken by Director Cooper, BCBC has been forced to increase the toll rates on the Beach Express Bridge."¹² The price to cross the BEX bridge increased from \$2.75 per trip to \$5.00.¹³ The toll for Orange Beach residents

did not increase, but, unfortunately, most tourism and hospitality workers whose jobs require them to be on or near the beaches live on the north side of the bridge and are not Orange Beach residents.¹⁴

As global temperatures rise, so too will the attraction of beaches. While more tourists and residents are drawn to coastal breezes, the fluctuation and uncertainty of extreme weather also threatens this way of life. Evacuation routes in the case of hurricanes will continue to be a necessity in coastal planning. The sooner either BCBC or ALDOT create an effective way to and from the island that reflects the increase of tourism and traffic, the better. 🌊

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Endnotes

1. *Baldwin Cnty. Bridge Co., LLC v. John R. Cooper, Scott Bridge Co., Inc.*, CV-2022-901306.00, Order on Def. Mot. to Dismiss (Montgomery Cir. Ct, Ala. 2023).
2. Margaret Kates, *Gulf Shores, Orange Beach Tourism Keeping UP with Record Pace, CEO Says*, AL.com (Aug. 14, 2023).
3. *Baldwin Cnty. Bridge Co., LLC v. John R. Cooper, Scott Bridge Co., Inc.*, CV-2022-901306.00, Compl. (Montgomery Cir. Ct, Ala. 2022) at 18-19.
4. John Sharp, *Orange Beach and Gulf Shores Spar Over Plans for New Bridge to the Beach*, AL.com (Jul. 22, 2023).
5. *Id.*
6. *Baldwin Cnty. Bridge Co., LLC v. John R. Cooper, Scott Bridge Co., Inc.*, CV-2022-901306.00, Order on Def. Mot. to Dismiss (Montgomery Cir. Ct, Ala. 2023).
7. *Baldwin Cnty. Bridge Co., LLC v. Cooper*, SC-2023-0056, SC-2023-0354, SC-2023-0364 (Ala. 2023).
8. *Id.* at 3.
9. *Id.* at 11.
10. *Id.*
11. *Id.* at 10.
12. John Sharp, *Orange Beach Toll Bridge Owner Nearly Doubles Rate After Supreme Court Ruling, Blames ALDOT*, (Aug. 30, 2023).
13. Brad Gunther, *Baldwin Beach Express Toll Rates Nearly Double Overnight, Workers Upset*, NBC 15 News (Aug. 30, 2023).
14. *Id.*