

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RIDERS ALLIANCE, SIERRA CLUB, and NEW
YORK CITY ENVIRONMENTAL JUSTICE
ALLIANCE,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice
Law and Rules,

- against -

KATHY HOCHUL, as Governor of the State of New
York, NEW YORK STATE DEPARTMENT OF
TRANSPORTATION, MARIE THERESE
DOMINGUEZ, as Commissioner of the New York
State Department of Transportation,
METROPOLITAN TRANSPORTATION
AUTHORITY, and TRIBOROUGH BRIDGE AND
TUNNEL AUTHORITY,

Respondents.

Index No. 156711/2024

Hon. Arthur F. Engoron

**BRIEF OF AMICI CURIAE ENVIRONMENTAL DEFENSE FUND, NATURAL
RESOURCES DEFENSE COUNCIL, NEW YORK LEAGUE OF CONSERVATION
VOTERS, TRI-STATE TRANSPORTATION CAMPAIGN, WE ACT FOR
ENVIRONMENTAL JUSTICE, STREETSPAC, TRANSPORTATION ALTERNATIVES,
REINVENT ALBANY, ENVIRONMENTAL ADVOCATES NEW YORK, SAM
SCHWARTZ, CIVITAS, OPEN PLANS, NEW YORK PUBLIC INTEREST RESEARCH
GROUP FUND, BIKE NEW YORK, ANDREW ALBERT, GERARD BRINGMANN,
RANDOLPH GLUCKSMAN, CONGRESSMAN JERRY NADLER, OPEN NEW YORK,
EVERGREEN ACTION, EFFECTIVE TRANSIT ALLIANCE, PARTNERSHIP FOR
NEW YORK CITY, MOVE NY, AND COMPTROLLER BRAD LANDER IN SUPPORT
OF PETITIONERS' VERIFIED PETITION**

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PRELIMINARY STATEMENT

New York – America’s largest and most densely populated city – has long suffered from some of the nation’s worst traffic congestion and persistent air pollution. For decades, citizens, activists, and administrators have tried to reduce congestion and air pollution through traffic management programs and were stopped at every turn until the legislature mandated congestion pricing in 2019. By pausing that mandate, Governor Hochul deprives millions of residents of public health and safety and quality of life improvements to which they were entitled and risks high paying jobs across the region. Representing a wide range of interests, *amici* ask this court to grant Petitioners’ petition to restore their rightful health, safety, and quality of life benefits from congestion pricing.

Since the 1930s, private automobiles and double-decker buses have competed with streetcars, bicycles, and pedestrians for space on Manhattan’s limited street grid. While traffic grew, the New York City streetscape did not. Traffic speeds in Midtown this past May averaged 4.5 miles per hour, slower than a brisk jog.

The problems associated with this congestion are numerous. Increased and unpredictable travel time costs businesses billions of dollars a year in delays and lost productivity, while frustrating millions of workers, residents, and tourists. Stop-and-go traffic generates additional air pollution, including fine particulates, ozone smog, and carbon dioxide emissions that contribute to climate change. And congested streets and avenues make traveling less safe for pedestrians and bicycle riders, while delaying ambulances, fire, and police vehicles responding to emergency calls.

Fortunately, New York has the benefit of the country’s most extensive public transit network. More than four out of five commuter trips into the Manhattan Central Business

District (“CBD”) are on public transportation. It is hard to imagine how New York could survive without this high-capacity, efficient, and pollution-reducing transportation system.

But New York’s public transit system has been subsisting without a stable, sufficient source of funding. Parts of the subway and commuter rail networks were built more than 100 years ago. Lack of funding in previous decades led to deferred maintenance that diminished performance and jeopardized public safety. To this day, capital investments have not been sufficient to keep the system in a state of good repair. The fare-box has covered only a portion of the costs of operating and maintaining, let alone enhancing, the public transportation network that moves the overwhelming majority of the region’s daily commuters. Federal transit assistance has not filled the gap. A permanent, robust source of capital funding has eluded the state-created MTA for decades. Until now.

Congestion pricing is the heart of the solution. As required by the 2019 Traffic Mobility Act, the Manhattan Central Business District Tolling Program (the “CBD Tolling Program” or “Program”) required a tolling system designed to reduce congestion and generate one billion dollars a year in funds that would bond more than \$15 billion for necessary transit capital investments. After five years of planning, analyses, public engagement, program revisions, and expenditures of over half a billion dollars, New York’s CBD Tolling Program infrastructure was installed, is fully operational, and was ready to be activated on June 30th of this year.

Governor Kathy Hochul’s June 5th decision to “indefinitely pause” congestion pricing implementation has, however, upended this timetable and jeopardized all of the measure’s benefits. Businesspeople, truck drivers, and first-responders who venture into the CBD continue to waste countless hours stuck in traffic. Air quality improvements are on hold.

In addition, MTA cutbacks of \$16.5 billion in capital spending are already freezing desperately needed transit investments. Deferred projects include upgrades to the subways' ancient signal system; repairs to aging tunnels and tracks; acquisition of fleets of modern electric buses; extension of the Second Avenue subway; and purchases of new rail cars for the Long Island Rail Road and Metro North.

Despite talk of possible substitute funding mechanisms, not a single viable alternative to the CBD Tolling Program has emerged in almost three months since the Governor's 11th hour announcement.

BRIEF HISTORY OF CONGESTION PRICING

For more than fifty years, New York government officials and their transportation experts have recognized the multiple benefits of the congestion pricing concept and have worked to implement the strategy here. Successive administrations have repeatedly returned to the idea of tolling motor vehicles and using the funds to assist public transit for the simple reason that this idea makes sense on so many levels.

In 1973, Mayor John Lindsay and Governor Nelson Rockefeller adopted a New York Transportation Control Plan, pursuant to the federal Clean Air Act. Among other measures, the Plan called for tolling all East and Harlem River Bridges, with the monies to be used to support mass transportation. Mayor Abraham Beame delayed tolling program implementation but the U.S. Second Circuit Court of Appeals directed the tolling strategy to proceed.¹ In 1977, Congress amended the Clean Air Act to allow for deletion of the bridge toll strategy from New York's Transportation Control Plan.

¹ See *Friends of the Earth v. Carey*, 535 F.2d 165 (2d Cir. 1976); *Friends of the Earth v. Carey*, 552 F.2d 25 (2d Cir. 1977).

Beginning in 1980, Mayor Ed Koch twice tried to promote congestion pricing, initially proposing to toll all single-occupant vehicles entering Manhattan. This was overturned in litigation.² In an effort to achieve air quality standards, Koch proposed to charge ten dollars for every vehicle entering Manhattan south of 59th Street in 1987.³ This plan stalled due to opposition by motorists and others.⁴

Michael Bloomberg's 2007 sustainability plan specifically proposed a three-year congestion pricing pilot program, which would have applied to all private autos and trucks entering Manhattan below 86th Street during business hours Monday through Friday.⁵ The New York City Council approved a scaled-down version of this plan in 2008 but the State Assembly failed to advance enabling legislation.⁶

In 2015, *amicus* Sam Schwartz brought together a broad coalition of stakeholders to build support for the Move NY Fair Plan, a comprehensive program that included vehicle tolling measures to generate revenue, secure improved travel and safer streets, boost the economy and fund transit and transportation investments.⁷ *Amicus* Partnership for New York City, the city's leading business organization, released a 2018 report that concluded: "traffic congestion will be a \$100 billion drag on the New York metro area economy over the next five years unless something is done to discourage cars and trucks from crowding the streets and

² See *Automobile Club v. Koch*, 1981 N.Y. Misc. LEXIS 3518 (Sup. Ct. N.Y. Cnty. May 28, 1981).

³ See David Dunlop, *Koch Backs \$10-a-Day Fees For Vehicles to Reduce Pollution*, N.Y. Times, Aug. 4, 1987, at B1. <https://www.nytimes.com/1987/08/04/nyregion/koch-backs-10-a-day-fees-on-vehicles-to-reduce-pollution.html> (last visited Aug. 21, 2024).

⁴ See Sam Schwartz, Gerrard Soffian, Jee Mee Kim, & Anne Weinstock, *A Comprehensive Transportation Policy for the 21st Century: A Case Study of Congestion Pricing in NYC*, 17 N.Y.U. Env't L.J. 580, 592-93 (2008).

⁵ See The City of New York, *PlaNYC: A Greener, Greater New York* 72 (2007).

⁶ See Schwartz, *supra* note 4, at 594-95.

⁷ See Move NY, *The Move NY Fair Plan* (2015).

highways of the region during the busiest times of the day” and that the cost of delay in commuting time and work-related travel was \$9.2 billion per year.⁸

A 2018 blue-ribbon advisory panel convened by Governor Andrew Cuomo concluded that New York’s traffic congestion ranked second worst among cities in the United States and that the subways were suffering from years of neglected maintenance, resulting in chronic breakdowns and delays. The panel recommended, among other things, a phased implementation of a zone-pricing system for all vehicles entering the CBD,⁹ cementing the Governor’s previous commitment to congestion pricing.¹⁰

Finally, the New York State Legislature passed the Traffic Mobility Act in 2019, directing the creation of the congestion pricing scheme at issue in this litigation. The Triborough Bridge and Tunnel Authority, pursuant to the statute, set a Program start date of June 30, 2024. After more than 50 years of stops and starts, the moment for congestion pricing had at long last arrived.

INTEREST OF *AMICI CURIAE*

Amici curiae are eighteen organizations and six individuals committed to protecting the safety and well-being of residents in and around New York City, particularly by way of environmental, transit, and civic advocacy.¹¹

The Environmental Defense Fund is a nonprofit organization headquartered in New York City that links science, economics, and the law to create innovative, equitable, and

⁸ See Partnership for New York City, *\$100 Billion Cost of Traffic Congestion in Metro New York* (2018), <https://pfnyc.org/wp-content/uploads/2020/01/2018-01-Congestion-Pricing.pdf> (last visited Aug. 21, 2024).

⁹ See *Fix NYC Advisory Panel Report* 4-6 (2018).

¹⁰ See Marc Santora, *Cuomo Calls Manhattan Traffic Plan an Idea ‘Whose Times Has Come’*, N.Y. Times, Aug. 13, 2017, at A1 (last visited Aug. 21, 2024).

¹¹ *Amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

cost-effective solutions to urgent environmental problems and has worked for decades to protect human health and the environment for people and communities in New York City.

Incorporated as a non-profit organization under the laws of New York State in 1970, Natural Resources Defense Council has more than 35,000 members in New York and has advocated for more than five decades for improved public transportation, clean air, and a sustainable economy in the nation's largest city.

The New York League of Conservation Voters is a non-partisan, statewide environmental organization in New York that fights for clean water, healthy air, renewable energy, and open space.

The Tri-State Transportation Campaign is a non-profit organization using data and policy analysis, along with strategic media outreach to promote sustainable transportation, equitable planning policies and practices, and strong communities in the New York City metro area.

Founded in 1988, WE ACT for Environmental Justice is a community-based organization in West Harlem that fights environmental racism – racial discrimination in environmental policy-making, enforcement of regulations and laws, and targeting communities of color for toxic waste disposal and siting of polluting industries.

StreetsPAC is a New York City-based political action committee dedicated to electing candidates who support pro-safe streets and pro-public transit policies, and to advancing such policies through related advocacy work.

Transportation Alternatives leads by using a combination of neighborhood-level grassroots organizing and citywide advocacy to push for changes in public policy, street design, enforcement, and resource allocation that transform New York City's streets for the better.

Reinvent Albany advocates for transparent and accountable New York government by seeking more accountable and better-governed state authorities, including the Metropolitan Transportation Authority.

Through its solid commitment to advocacy, research, and community engagement, Environmental Advocates New York works tirelessly to promote policies that safeguard our natural resources and combat climate change by fighting for policies that will restore and protect New York's environment, support healthy, vibrant communities, and secure benefits and outcomes for all within and beyond the state through education, partnerships, and advocacy.

Sam Schwartz is a transportation engineer popularly known by the nickname "Gridlock Sam" who served as New York City Traffic Commissioner from 1982 to 1986 and as the City Department of Transportation's First Deputy Commissioner and Chief Engineer from 1986 to 1990.

Founded in 1981, CIVITAS is an organization of citizens dedicated to improving neighborhood quality of life in Manhattan's Upper East Side and East Harlem by promoting environmentally conscious development, access to efficient public transit, and policies that improve the quality of urban life in New York City neighborhoods.

Open Plans is a nonprofit whose mission is to promote a people-first street culture that prioritizes community, active mobility, and connection. Open Plans uses grassroots advocacy and policy changes to help transform how people experience New York City's public spaces.

New York Public Interest Research Group Fund engages New Yorkers in public education, research, and advocacy campaigns to produce policies that strengthen democracy, enhance the rights of consumers and voters, support public mass transit, and protect the environment and public health.

Bike New York promotes cycling as a practical, sustainable, and healthy means of transportation and recreation in New York City whose density makes it ideal for expanding use of bicycles for practical travel and to reach mass transit stations and has long supported congestion pricing for its street safety benefits and potential to create additional space for bikeways and traffic calmed streets.

Andrew Albert is chair of the New York City Transit Riders Council and an MTA Board Member.

Gerard Bringmann is chair of the LIRR Commuter Council and PCAC and an MTA Board Member.

Randolph Glucksman is chair of the Metro-North Railroad Commuter Council and an MTA Board member.

The Ranking Member of the House Judiciary Committee and former Chair, Congressman Nadler's entire career in public service has been spent working to increase funding for important transportation and infrastructure projects that move both people and goods. He is a fierce advocate for urban transit, particularly New York's mass transit systems, and for improved roads and infrastructure, as well as for effective and sustainable goods movement in New York and nationwide.

Open New York is a pro-homes, grassroots, advocacy organization based in New York that organizes residents from Rochester to the Rockaways to fight for comprehensive solutions to the housing crisis, centering policy changes that address the root causes of our state's dire shortage of homes.

Evergreen is a nonprofit climate advocacy organization leading the fight to put bold climate action at the top of America's agenda, implement an all-out mobilization to defeat

climate change and create millions of good union jobs in a just and thriving clean energy economy by pairing a bold policy agenda and vision with campaign-style communications and advocacy tactics.

The Effective Transit Alliance is an organization that advocates for high-quality, accessible, and forward-looking transit through technically oriented and internationally inspired analysis in the New York metropolitan area and believes that growing transit ridership is fundamental to create a more just and fair society, to reduce the region's carbon emissions, and to secure the future of greater New York.

The Partnership for New York City is a nonprofit organization whose members are business leaders and major employers who are dedicated to maintaining New York's status as a global center of commerce, economic opportunity, and innovation.

Move NY is a region-wide grassroots campaign that seeks to build support for a master transportation plan for New York City and aims to bring faster, safer, fairer transportation to all New Yorkers.

Comptroller Brad Lander serves as New York City's chief financial officer, working to promote the financial health, integrity, and effectiveness of city government and secure a thriving and sustainable future for all New Yorkers by championing public transit, safe streets, climate action, and accessible subway stations.¹²

To achieve their respective missions, *amici* participate in filing *amicus curiae* briefs in cases, like this one, that raise issues of significant concern to the populace in the New York area. Accordingly, *amici* have a strong interest in ensuring that the Program is implemented

¹² Participation as *amicus* in this litigation by the New York City Comptroller does not constitute participation by, or otherwise bind, the City of New York as a municipal corporation or any official, agency, or office of such city other than the New York City Comptroller.

to realize the significant quality of life, public health, environmental, and economic benefits it was designed to achieve.

SUMMARY OF ARGUMENT

Amici submit this brief to support the Program carefully developed through years of extensive environmental analysis and public input that would have begun to effectively address the intractable problems of regional traffic congestion and related poor air quality if not for Governor Hochul's sudden decision to indefinitely pause its implementation. Residents of the region deserve to receive, as soon as possible, the environmental, health, transportation, equity and accessibility, environmental justice, and positive economic and financial benefits of establishing a large-scale congestion pricing program. As the imminent dangers of climate change have become all too apparent, Program implementation is urgently needed. This Court should grant the relief requested by Petitioners for the following three reasons so that the Program can be implemented without further delay.

First, implementing the Program would have improved the quality of life for millions of people in the New York/New Jersey/Connecticut region by reducing region-wide traffic congestion including within the Manhattan CBD. The Program would have also reduced region-wide air pollution, likely saving lives and preventing hospitalizations. The Program was projected to reduce particulate pollution and ozone precursors, in addition to emissions of toxic air pollutants from mobile sources, throughout the region, with the largest reductions occurring in the Manhattan CBD. Moreover, significant transit investments financed by the Program would have provided steady funding to the MTA and the transit services it operates for all riders while supporting hundreds of thousands of jobs region-wide. These benefits would have improved the quality of lives in the entire region for years to come.

Second, Governor Hochul’s decision to pause Program implementation ignored the years of extensive analysis and public comments on which the Program was based.

Third, the successful implementation of similar congestion pricing programs in other cities across the world demonstrates that the Program would have reduced congestion and improved public health benefits.

ARGUMENT

I. Implementation of the Program Blocked by Governor Hochul Would Have Improved the Lives of Millions of New Yorkers

With over 22 million residents and 10.7 million jobs, the Manhattan CBD and the surrounding 28 counties comprise the “largest and most economically significant metropolitan region in the United States.”¹³ The Manhattan CBD is the economic, cultural, and transportation hub of this dynamic area. Manhattan is connected to the rest of the region by twenty vehicular bridges and tunnels, the nation’s three largest commuter railroads, the largest subway system, and two of the five largest bus transit systems in the United States.¹⁴ As of 2019, an average of 7.7 million people entered and left the Manhattan CBD daily.¹⁵ This total is roughly equivalent

¹³ U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment (“EA”), April 2023, p. ES-2, <https://new.mta.info/project/CBDTP/environmental-assessment>.

¹⁴ *See id.*

¹⁵ *See* EA Figure ES-2 at p. ES-3.

to the combined populations of the cities of Los Angeles,¹⁶ Houston,¹⁷ and Dallas,¹⁸ commuting daily into and out of an area of about 8.5 square miles.¹⁹

Although 75% of those entering the CBD every day use mass transit,²⁰ New York City was the most congested urban area in the United States in 2020 and 2021.²¹ This congestion delays emergency vehicles, erodes worker productivity and raises the cost of deliveries and the overall cost of doing business through increased commuting and travel times. A 2018 analysis by the Partnership for New York City concluded that “traffic congestion will be a \$100 billion drag on the New York metro area economy over the next five years unless congestion is reduced.”²²

Congestion and related vehicle use in the area have also resulted in unhealthy air quality for millions of residents. Air quality in 25 of the 28 EA study area counties with a total population of over 21.4 million do not achieve the health-based 2008 National Ambient Air Quality Standards (“NAAQS”) for ozone or the stricter 2015 NAAQS for ozone. Furthermore, Manhattan did not meet the NAAQS for particulates 10 microns in diameter or smaller (PM₁₀).²³ Automobiles and trucks are the major contributors to these high ambient ozone and particulate

¹⁶ See *Los Angeles*, Data Commons, https://datacommons.org/place/geoId/0644000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Aug. 15, 2024).

¹⁷ See *Houston*, Data Commons, https://datacommons.org/place/geoId/4835000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Aug. 15, 2024).

¹⁸ See *Dallas*, Data Commons, https://datacommons.org/place/geoId/4819000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Aug. 15, 2024).

¹⁹ See Jeffrey M. Zupan et al., *An Exploration of Motor Vehicle Congestion Pricing in New York*, Regional Plan Association (Nov. 2003), <https://s3.us-east-1.amazonaws.com/rpa-org/pdfs/RPA-An-Exploration-of-Congestion-Pricing-in-New-York.pdf>, p. 18 (last visited Aug. 15, 2024).

²⁰ See EA Figure ES-2 at p. ES-3.

²¹ See EA Figure ES-3 at p. ES-5.

²² Partnership for New York City, *\$100 Billion Cost of Traffic Congestion in Metro New York* (2018), <https://pfnyc.org/wp-content/uploads/2020/01/2018-01-Congestion-Pricing.pdf> (last visited Aug. 21, 2024).

²³ See EA Table 10-2 at p. 10-4. The annual NAAQS for PM₁₀ was revoked on October 17, 2006.

levels and they also emit hazardous air pollutants that can cause cancer and other deleterious health effects.²⁴

One of the most effective methods to reduce these harmful emissions from mobile sources would be to lower the total vehicle miles traveled (“VMT”) in the metropolitan area.²⁵ The adopted Program would have done just that absent Governor Hochul’s unjustified and, as clearly stated in the Petition in this case, illegal decision to pause the program.

A. Governor Hochul’s Decision Will Result in Increased Traffic Congestion Compared to Implementation of the Program

Governor Hochul’s decision to indefinitely pause the Program will not only ensure that current levels of congestion continue but that congestion levels will worsen over time because region-wide VMT levels are projected to increase without a traffic management program. Absent the Program, project sponsors project that VMT will grow region-wide by 8.8% between 2023 and 2045. Manhattan CBD VMT will grow 4.9% during that period.²⁶ Action is urgently needed to control and reduce congestion in the Manhattan CBD and region-wide.

The Program not only would have stopped the trend of worsening congestion but also would have begun to reverse it. The Program would have reduced VMT in the Manhattan CBD by 8.9% compared to the status quo.²⁷ Such significant reductions could have materially reduced Manhattan CBD congestion, resulting in reduced traffic wait times, increased productivity, and shortened emergency vehicle response times.

²⁴ See EPA, *Learn About How Mobile Source Pollution Affects Your Health*, <https://www.epa.gov/mobile-source-pollution/learn-about-how-mobile-source-pollution-affects-your-health> (last visited Aug. 15, 2024).

²⁵ See generally EA Chapter 10.

²⁶ See EA Table 4A-2 at p. 4A-10.

²⁷ U.S. Department of Transportation, Federal Highway Administration, Central Business District Tolling (CBD) Tolling Program Reevaluation (“Reevaluation”) Table 1.1 June 2024, p. ES-7, <https://new.mta.info/project/CBDTP/reevaluation>.

Furthermore, the Program would have reduced all daily vehicle entries into the Manhattan CBD by 17%, including worker auto journeys by 6% compared to the status quo.²⁸ Significantly, the Program would have reduced daily truck trips *through* the Manhattan CBD compared to the status quo by 55%, reducing not only emissions of diesel exhaust within the Manhattan CBD but also significantly reducing congestion and traffic risk on frequently used truck routes such as Canal Street.²⁹

The Program would have increased transit ridership: increasing total morning peak boardings on the New York City Transit System Subways by 1.7%, on commuter railroads by at least 1% and on the ferries and Roosevelt Island Tram by almost 3%.³⁰

The Program would have accomplished what has long eluded civic leaders and politicians in the past: reducing congestion in the Manhattan CBD and the New York region by transitioning travelers from automobiles to transit. Governor Hochul's snap decision to indefinitely pause the Program has stopped that progress, ensuring that the region will continue to increase its nation-leading levels of congestion with no relief in sight.

B. Governor Hochul's Decision Will Likely Result in Premature Deaths and Hospitalizations That Would Not Have Occurred Had the Program Been Implemented

Region-wide reductions in VMT from the Program would have resulted in a concomitant reduction in air pollutants region-wide for years to come,³¹ with the largest reductions occurring in the Manhattan CBD and the rest of Manhattan.³²

²⁸ *See id.*

²⁹ *See id.*

³⁰ *See* Reevaluation Table 1.1 at p. ES-8.

³¹ *See* Reevaluation Table 10.2 at p. 92 and EA Table 10-7 at p. 10-22.

³² *See* Reevaluation Table 10.3 at p. 93 and EA Table 10-8 at p. 10-23.

The Program would have reduced emissions of PM₁₀ by over 11% and PM_{2.5} by over 10% in the Manhattan CBD and by slightly lower levels in all of Manhattan, significantly improving public health in the region. Particulate matter pollution poses a severe threat to public health, especially for vulnerable populations. Even short-term exposure to PM_{2.5} is associated with premature mortality, increased hospital admissions for heart or lung causes, acute and chronic bronchitis, asthma attacks, emergency room visits, respiratory symptoms, and restricted activity days.³³ The New York City Health Department estimates that each year, PM_{2.5} pollution causes more than 3,000 deaths, 2,000 hospital admissions for lung and heart conditions, and approximately 6,000 emergency room visits for asthma in children and adults citywide. The Department also estimates that citywide, “a modest reduction of 10% in current PM_{2.5} levels could prevent more than 300 premature deaths, 200 hospital admissions and 600 emergency department visits *annually*”³⁴ (emphasis added).

While the impacts of particulate pollution vary considerably across the city and are significantly correlated with neighborhood income level, short and long-term reductions of particulate emissions of the magnitudes expected from the Program would have likely prolonged lives that might otherwise be cut short by exposure to higher particulate levels, kept some children out of hospitals, and helped protect others with heart and lung conditions. Indeed, as discussed in Section III below, children in Stockholm experienced a significant reduction in asthma rates when a similar congestion pricing program was implemented there.

³³ *Inhalable Particulate Matter and Health (PM_{2.5} and PM₁₀)*, California Air Resources Board, <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health> (last visited Aug. 15, 2024).

³⁴ *Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone*, NYC Health, p. 3, <https://www.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf> (last visited Aug. 15, 2024) (“NYC Air Pollution Study”).

The Program would have also significantly reduced emissions of ozone precursor pollutants, including volatile organic compounds and nitrogen oxides. New York City Department of Health estimates that ozone pollution causes “an estimated 400 deaths from all causes, more than 800 hospital admissions and more than 4,000 emergency department visits among children and adults” in New York City per year.³⁵ Although ozone levels can be affected by many factors, including weather and long-range transport of ozone precursor emissions, the Program would have significantly reduced precursor emissions in Manhattan and the Manhattan CBD.

In addition to reducing particulate matter and ozone precursor emissions, the Program would have also reduced toxic air pollutant emissions from mobile sources, including the known human carcinogens 1,3-butadiene,³⁶ benzene,³⁷ and formaldehyde,³⁸ among others.³⁹ The Program would have reduced emissions of 1,3-butadiene and benzene by over 10% in the Manhattan CBD and by slightly lower levels in the rest of Manhattan.

Significantly, Governor Hochul’s indefinite pause of congestion pricing has also stalled the expenditure of \$155 million in environmental mitigation funds for the South Bronx; among the deferred projects are replacing diesel-spewing refrigerator units with electric-powered ones at the Hunts Point Produce Market, constructing local electric charging infrastructure for clean trucks, and establishing a new asthma case management and program center.

³⁵ See NYC Air Pollution Study at p. 4.

³⁶ See *Toxic Substances Portal*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=458&toxid=81#:~:text=and%20blood%20change%20system> (last visited Aug. 15, 2024).

³⁷ See *Public Health Statement for Benzene*, Agency for Toxic Substances and Disease Registry, [https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20\(can%20cause%20cancer](https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20(can%20cause%20cancer) (last visited Aug. 15, 2024).

³⁸ See *Formaldehyde*, National Cancer Institute, <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/formaldehyde#:~:text=Which%20cancers%20are%20associated%20with,%2C%20nasal%20cavity%2C%20and%20nasopharynx> (last visited Aug. 15, 2024).

³⁹ See Reevaluation Table 10.4 at p. 94, EA Table 10-12 at p. 10-38.

C. Governor Hochul’s Decision Deprived Millions of New Yorkers of the Benefit of Significant Transit Investments That Would Have Improved the Quality of Life State and Region-Wide for Years to Come

The Program would have improved air quality and related improvements in health and well-being for millions of people region-wide while providing a steady source of funding for transit services operated by the MTA.

Project sponsors estimated that the Program would have raised sufficient net revenue annually to fund \$15 billion of the MTA’s \$52.0 billion 2020-2024 Capital Program (“Capital Program”),⁴⁰ funding 30% of the Capital Program as its single largest source of revenue.⁴¹ It would have also funded 50% of the remaining Capital Program investments.⁴² These much needed MTA capital investments would have included important improvements to MTA services, such as new subway cars, installation of modern signaling equipment, and upgrading of communications equipment. Significantly, these investments would have benefited low-income CBD commuters, who overwhelmingly rely on public transit.⁴³

These MTA investments would have also improved system access for tens of thousands of riders through \$5.2 billion of the MTA Capital Program that was allocated exclusively to accessibility improvements,⁴⁴ including installation of new elevators at 70 stations in all boroughs, wider fare gates at all ADA stations, and replacement of escalators and elevators.

⁴⁰ See EA at p. ES-7.

⁴¹ See *MTA Capital Program 2020-2024| Rebuilding New York’s Transportation System*, MTA Capital Program October 2019, pp. 19, 31, <https://new.mta.info/document/10511> (last visited Aug. 16, 2024).

⁴² See Statement of Jamie Torres-Springer, MTA President of Construction and Development, at the December 6, 2023 MTA Board Meeting, <https://new.mta.info/transparency/board-and-committee-meetings/november-2023> (last visited Aug. 16, 2024).

⁴³ David R. Jones, La Nueva Mayoria, *The Cost of Killing Congestion Pricing* Community Service Society (June 20, 2024), <https://www.cssny.org/news/entry/the-cost-of-killing-congestion-pricing> (last visited Aug. 21, 2024).

⁴⁴ See *Station accessibility projects*, MTA (updated Dec. 6, 2023), <https://new.mta.info/project/station-accessibility-upgrades> (last visited Aug. 16, 2024).

This would create a more accessible subway system providing a viable transit alternative for some of the 30,000 New Yorkers with disabilities who currently rely on the Access-A-Ride paratransit system due to the inaccessibility of the subway system.⁴⁵

The financing impact of Governor Hochul's decision to indefinitely pause the Program exceeded the \$15 billion it would have contributed to the MTA Capital Program. The Governor's action resulted in a total loss of \$16.5 billion in Capital Program funds when including lost federal funding for the Second Avenue subway expansion and the \$500 million spent to support the Program that now cannot be recouped from Program revenues, resulting in a 60% reduction in capital funding availability. While the MTA is prioritizing the remaining capital funding to maintain a state of good repair and much needed rolling stock replacements, it has been required to postpone key system improvements and enhancements, such as expansion of the Second Avenue subway, accessibility investments in 23 subway stations and the Long Island Rail Road Hollis and Forest Hills Station, purchase of zero emissions busses and related charging stations, future generation subway cars, new compressed natural gas buses, and passenger and work locomotives for Metro North and the Long Island Rail Road. In addition, the MTA must defer upgrades to replace almost 100-year-old signals on certain subway lines that would have improved rider safety and service.⁴⁶

Governor Hochul's decision to indefinitely pause the Program not only jeopardized the Capital Program, but also gave the MTA a much lower revenue baseline when

⁴⁵ While many Access-A-Ride users are unable to use the subway due to the severity of their disabilities, a significant portion – over 30,000 – could use the system, instead of paratransit, if it were made accessible. See Press Release, *DiNapoli: Shift in MTA's Paratransit Program Generates Cost Savings* (Nov. 20, 2023), <https://www.osc.ny.gov/press/releases/2023/11/dinapoli-shift-mtas-paratransit-program-generates-cost-savings> (last visited Aug. 16, 2024).

⁴⁶ See *Impact of Congestion Pricing on the Capital Program: Presentation to the MTA Board*, MTA Construction & Development (June 26, 2024), <https://new.mta.info/document/144141> (last visited Aug. 16, 2024).

developing the 2025–2029 Capital Program. In a July 31, 2024 post on X, the Citizens Budget Commission estimated that the next five-year MTA capital need could be as high as \$79 billion and that MTA basic capital needs likely exceeded available revenue.

The loss of Program revenue negatively impacts the MTA’s operating budget in addition to its capital plan. The MTA estimates that the loss of Program revenue will result in a one-time debt-service expenditure of \$400–\$500 million in 2027 to accelerate borrowing to cover future operating deficits and to shift employees from performing capital work to operating work. In addition, it would result in recurring costs of \$242–\$510 million for increased maintenance costs due to delays in upgrading bus and commuter railroad fleets and deferral of state of good repair expenditures along with the loss of increased ridership and the faster bus speeds that would have occurred within the CBD from the Program implementation.⁴⁷

A fully funded and well-functioning MTA results in significant reductions in greenhouse gas emissions compared to a scenario without effective transit. Transportation causes 28% of national greenhouse gases emissions⁴⁸ and 43.1% of carbon dioxide, the most numerous greenhouse gas, in New York State.⁴⁹ Because of high levels of transit, New York City per capita transportation emissions of 1.9 metric tons are among the lowest in the nation and one third the national average.⁵⁰ The MTA estimates that every year its operations result in a net 17 million metric tons of annual greenhouse gas emissions avoided,⁵¹ comparable to the total

⁴⁷ See *July 2024 Financial Plan Presentation*, MTA (July 31, 2024), <https://new.mta.info/document/147291> (last visited Aug. 16, 2024).

⁴⁸ See EPA, *Fast Facts on Transportation Greenhouse Gas Emissions*, <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions> (last visited Aug. 16, 2024).

⁴⁹ See U.S. Energy Information Administration, *Environment*, <https://www.eia.gov/environment/emissions/state/> (last visited Aug. 16, 2024).

⁵⁰ See *4 Facts About New York’s Transportation Emissions*, Citizens Budget Commission, pp. 3-4 (2021), https://cbcny.org/sites/default/files/media/files/CBCREPORT_4-Facts-NYS-Emissions_11112021_0.pdf.

⁵¹ See *Climate and the MTA*, MTA, <https://new.mta.info/climate> (last visited Aug. 16, 2024); see also *Transit Avoided Carbon*, MTA (updated Nov. 21, 2019), <https://new.mta.info/sustainability/transit-avoided-carbon> (last visited Aug. 16, 2024).

annual greenhouse gas emissions of the country of Slovenia.⁵² Without guaranteed funding, the MTA cannot effectively continue to provide the avoided greenhouse gas emissions benefits enjoyed region-wide. The Governor's promises of additional funding to replace lost Program revenue have proved hollow thus far as she has found no such additional major sources of revenue.⁵³

The reduction in the MTA capital budget will not only reduce mobility in the metropolitan region and likely increase greenhouse gas emissions, it puts thousands of jobs at MTA vendor companies in the tri-state area at risk. Reinvent Albany estimates that at least 87,600 MTA vendor jobs in New York alone are at risk due to the Governor's decision to pause the Program.⁵⁴ The MTA and Partnership for New York City have published separate analyses suggesting that the \$15 billion in capital funding that would have been raised by the MTA using Program revenue would have created between 101,500 and 109,470 private and public sector jobs in New York State alone.⁵⁵ Much of the MTA's capital spending in New York takes place outside of New York City with large expenditures in Westchester and the Hudson Valley, the Capital Region, and the North Country as well as Central and Western New York.⁵⁶ The overall economic impact on people at all income levels from the estimated jobs put at risk by the Governor's decision is much greater than the impact on 2,649 low-income drivers that the MTA

⁵² See *Greenhouse Gas Emissions*, OECD.Stat, https://stats.oecd.org/Index.aspx?DataSetCode=air_ghg (last visited Aug. 16, 2024).

⁵³ See generally David Zipper, *How Subway Riders Will Pay for NYC's Congestion Pricing Halt*, Bloomberg (July 12, 2024), <https://www.bloomberg.com/news/articles/2024-07-12/nyc-subway-riders-will-pay-dearly-for-congestion-pricing-pause> (last visited Aug. 16, 2024).

⁵⁴ See *The MTA Is Big Business in the Tri-State Region, 100,000 New York Jobs at Risk from Cancellation of Congestion Pricing*, Reinvent Albany (June 26, 2024), <https://reinventalbany.org/2024/06/the-mta-is-big-business-in-the-tri-state-region/> (last visited Aug. 16, 2024).

⁵⁵ *Id.*

⁵⁶ *Id.*

estimates would be spared the obligation to pay the toll by the Governor’s decision pausing the Program.⁵⁷

II. Governor Hochul’s Decision to Block the Program Ignored Not Only the Law but Also the Years of Analysis and Tens of Thousands of Public Comments on Which the CBD Tolling Program Was Based

Beginning in 2021, the MTA and the Federal Highway Administration (“FHWA”) engaged in an extensive environmental review to implement the 2019 TMA. This included public outreach, beginning with an early outreach period from August 26, 2021 to April 27, 2022, during which the MTA received over 7,000 comments. In the fall and winter of 2021, the MTA held 19 public information webinars, with nine of the sessions specifically focused on environmental justice communities. Over 1,000 individuals participated in the webinars and nearly 400 people provided commentary. The MTA convened an Environmental Justice Stakeholder Working Group and an Environmental Justice Technical Advisory Group which met two and three times respectively. The MTA used this public input to develop the Draft Environmental Assessment (“Draft EA”).⁵⁸

Completed and made available on August 10, 2022, the Draft EA was an extensive analysis of the potential impacts of seven possible CBD Tolling scenarios on traffic, mobility, air quality and environmental justice communities, including analyses of potential social and economic impacts. During a 44-day public comment period on the Draft EA, the FHWA received 14,000 individual comment submissions, some with multiple comments resulting in over 22,000 individual comments out of 70,000 total comments. Following release of the EA, the MTA also held one additional meeting with the Environmental Justice

⁵⁷ See Final EA Appendix 4A Table 4A.1-5 Daily Drive-Along Work-Vehicle Trips by Income Entering Manhattan CBD (2023) – Adopted Toll Structure Added at p. Reevaluation Appendix 4A.1-1.

⁵⁸ See Foreword, Final EA at pp. 0-1 – 0-2.

Stakeholder Working Group and four additional meetings with the Environmental Justice Technical Advisory Group.⁵⁹

Issued in April 2023, the Final EA with appendices contained almost a thousand pages of analysis of the potential Program impacts. This was followed by three public meetings of the Traffic Mobility Review Board (“TMRB”), created by the Triborough Bridge and Tunnel Authority and made up of citizens representing a wide array of City constituencies. The TRMB produced an extensive report outlining both its recommendations for a CBD Tolling Scheme and its justifications for each recommendation. The MTA held further hearings in February 2024 to take public comment on the TMRB’s report. In a March 27, 2024, public session in which it took comment from over 30 individuals, some representing large coalitions or constituencies (including many *amici*), the MTA Board voted to adopt the Program triggering more environmental review by the FHWA to ensure that the Final EA adequately assessed Program environmental, social, and economic impacts.⁶⁰

However, in her June 5, 2024 announcement indefinitely pausing the Program, Governor Hochul referenced none of this extensive analysis and public comment, effectively ignoring the entire three-year review process, the input from over 70,000 commenters, and the thousands of pages of detailed traffic and air quality modeling in the Final EA.⁶¹ Indeed, Governor Hochul’s unjustifiable decision was based on no analysis or rigorous assessment of any kind.

⁵⁹ *Id.*

⁶⁰ See generally Reevaluation.

⁶¹ See Governor Hochul’s June 5, 2024 Announcement, <https://www.youtube.com/watch?v=zrTboCirDGM> (last visited August 16, 2024).

III. The Benefits of the Program Have Been Proven by Reduction in Congestion and Improved Public Health Through Implementation of Similar Programs in Cities Around the World

Congestion pricing has worked well in other large cities to reduce congestion and air pollution and improve public health and could work just as well in the Manhattan CBD while developing the revenue needed to maintain and improve transit.

Beginning with Singapore in 1975, five cities have introduced congestion pricing programs similar to the Program.⁶² Introduced in 2003, the London Congestion Charging Scheme (“LCCS”) initially required nonexempt drivers to pay £5 to enter an 8-mile square area of central London bounded by the London inner ring road between 7:30 a.m. and 6:30 p.m. from Monday to Friday. Like the Program, the overall plan included major investments in transit.⁶³ Since then, the charge has risen to £15 (\$18.50).⁶⁴

The LCCS has been an impressive success. As of 2020, congestion was reduced in central London by 30%, greenhouse gas emissions were reduced by 12%, and transit ridership increased by 38%. Between 2002 and 2014, car traffic entering central London fell by 39%.

The LCCS success offers a useful model for the Program. Both programs would cover areas of similar size with access points that allow for relatively easy tolling. Both areas of the respective cities subject to the program (i) are financial and transport hubs; (ii) had or have extensive traffic congestion and related air pollution; and (iii) are served by transit and have high

⁶² See Joe Peach, *5 Cities with Congestion Pricing*, Smartcities Dive, <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/five-cities-congestion-pricing/28437/> (last visited Aug. 16, 2024).

⁶³ See *Two decades in, what can other cities learn from the London congestion charge?*, ARUP, <https://www.arup.com/perspectives/two-decades-in-what-can-other-cities-learn-from-the-london-congestion-charge> (last visited Aug. 16, 2024).

⁶⁴ See *Congestion Charge*, Transport For London, <https://tfl.gov.uk/modes/driving/congestion-charge#:~:text=The%20Congestion%20Charge%20is%20a,by%20setting%20up%20Auto%20Pay> (last visited Aug. 16, 2024).

rates of transit usage that could rise even higher. In addition, both cities require significant investment to maintain transit infrastructure and service levels. That London has managed to reduce congestion and related air emissions using the LCCS indicates that the Program could have also reduced congestion and emissions in the center of the New York metropolitan area.

Following its establishment in 2007 after a seven-month trial period in 2006, the Stockholm congestion pricing program has produced impressive public health and environmental benefits reducing asthma attacks among local children by nearly 50% as air pollution levels dropped between 5% and 10%.⁶⁵ The rate of asthma symptoms among children declined immediately during the 2006 seven-month trial period and this decline became even more pronounced a few years after the scheme became permanent. Additional benefits were also felt immediately as congestion levels fell 20% to 25% during the trial period.⁶⁶

New Yorkers could have also potentially benefited from a similar reduction in levels of childhood and asthma and lowered congestion but for Governor Hochul's unjustified decision to pause the CBD Tolling Program.

⁶⁵ See Patrick Ercolano, *Study: Stockholm traffic tax helps kids in Sweden breathe easier Decreases in air pollution lead to dramatic drop in asthma attacks among young children*, John Hopkins University (Mar. 2, 2017), <https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/> (last visited Aug. 16, 2024).

⁶⁶ *Id.*

CONCLUSION

For the reasons set forth above, *amici* respectfully urge the Court to grant
Petitioners' Verified Petition.

Dated: August 23, 2024

Respectfully submitted,

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Advocates New York, Sam Schwartz, CIVITAS,
Open Plans, New York Public Interest Research*

*Group Fund, Bike New York, Andrew Albert,
Gerard Bringmann, Randolph Glucksman,
Congressman Jerry Nadler, Open New York,
Evergreen Action, Effective Transit Alliance,
Partnership for New York City, Move NY, and
Comptroller Brad Lander*

Certification of Word Count Compliance

The undersigned counsel hereby certifies that the body of the foregoing affirmation contains 6,843 words (excluding the caption, table of contents, table of authorities, and signature block).

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