

26-1213

United States Court of Appeals for the Second Circuit

METROPOLITAN TRANSPORTATION AUTHORITY, TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY

Plaintiffs-Appellees,

RIDERS ALLIANCE, SIERRA CLUB, NEW YORK STATE DEPARTMENT OF
TRANSPORTATION, NEW YORK CITY DEPARTMENT OF TRANSPORTATION

Intervenor-Plaintiffs-Appellees,

v.

SEAN DUFFY, in his official capacity as Secretary of the United States Department
of Transportation, GLORIA SHEPARD, in her official capacity as Executive Director
of the Federal Highway Administration, THE UNITED STATES DEPARTMENT OF
TRANSPORTATION, AND THE FEDERAL HIGHWAY ADMINISTRATION

Defendants-Appellants.

On Appeal from the U.S. District Court for the Southern District of New York
No. 25-cv-1413 Hon. Lewis J. Liman

BRIEF FOR AMICI CURIAE IN SUPPORT OF AFFIRMANCE

Andrew D. Otis
Karen Steinberg Kennedy
Katy Keane
HERBERT SMITH FREEHILLS KRAMER
(US) LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100
Attorneys for Amici Curiae
Andrew.Otis@hsfkramer.com
Karen.Kennedy@hsfkramer.com
Katy.Keane@hsfkramer.com

Charles S. Warren
McLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, New York 10016
(212) 448-1100
Attorney for Amici Curiae
CWarren@mclaughlinstern.com

Eric A. Goldstein
Mark A. Izeman
NATURAL RESOURCES DEFENSE
COUNCIL
40 West 20th Street, 11th Floor
New York, New York 10011
(212) 727-2700
Attorneys for Amici Curiae
EGoldstein@nrdc.org
MIzeman@nrdc.org

CORPORATE DISCLOSURE STATEMENT

Pursuant to the Federal Rule of Appellate Procedure 26.1, amici curiae Environmental Defense Fund, Natural Resources Defense Council, New York League of Conservation Voters, Partnership for New York City, Real Estate Board of New York, WE ACT for Environmental Justice, Open Plans, Reinvent Albany, MoveNY, CIVITAS, New York Public Interest Research Group Fund, Tri-State Transportation Campaign, New York City Environmental Justice Alliance, Bike Jersey City, New York Lawyers for the Public Interest are all non-profit entities that have no parent corporation. No publicly held corporation holds 10% or more of any stake or stock in *amici curiae*.

Date: September 23, 2026

/s/ Andrew D. Otis
Andrew D. Otis

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF THE <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	5
ARGUMENT	7
I. Allowing Defendants-Appellants to Unilaterally Terminate the VPPP Agreement and Rescind its Approval of the CBD Tolling Program Would Harm <u>Millions in the New York City Tri-State</u> <u>Area</u>	7
II. Potential Impacts to Environmental Justice Communities from Forecasted Traffic Diversions due to the CBD Tolling Program Have Not Actually <u>Occurred</u>	15
III. The CBD Tolling Program Enjoys Broad and Growing <u>Support</u>	18
CONCLUSION	20

TABLE OF AUTHORITIES

	Page(s)
 Other Authorities	
Bridges and Tunnels Committee Meeting Package (July 27, 2026) Meeting Package, https://www.mta.info/document/214861	13 n.17
<i>CBDTP Financial Report</i> , MTA Bridges and Tunnels, (Jan. 28, 2026) https://www.mta.info/document/197586	13 n.16
Cody Cook et al., <i>The Network-Wide Effects of Congesting Pricing: Evidence from New York City</i> , NAT’L BUREAU OF ECON. RSCH., (Revised Aug. 2026), https://www.nber.org/papers/w33584	8 n.4
<i>Congestion Relief Zone Tolling First Evaluation Report</i> , MTA Bridges and Tunnels, (Jan. 2026), https://www.mta.info/document/195631	7 n.2, 8 n.7, 13 n.18
<i>Downtown Congestion Pricing Study Case Study: London</i> , San Francisco County Transportation Authority (Feb. 2020), https://www.sfcta.org/sites/default/files/2020-02/Congestion-Pricing-Case-Studies_2020-02-13.pdf	11 n.14
Emily Badger et al., <i>27 Million Fewer Car Trips: Life After a Year of Congestion Pricing</i> , N.Y. TIMES (Jan. 5, 2026) https://www.nytimes.com/interactive/2026/01/05/upshot/congestion-pricing-one-year.html	8 n.6
Finding of No Significant Impact; Central Business District (CBD) Tolling Program, Federal Highway Administration, June 2023	15 n.21
Geneviève Boisjoly et al., <i>Invest in the ride: A 14 year longitudinal analysis of the determinants of public transport ridership in 25 North American cities</i> , 116 TRANSP. RSCH. PART A: POL’Y AND PRAC. 434 (2018), https://doi.org/10.1016/j.tra.2018.07.005	14 n.20

- Geertje Schuitema et al., *Explaining differences in acceptability before and acceptance after the implementation of a congestion charge in Stockholm*, 44 TRANSP. RSCH. PART A: POL'Y & PRAC. 99, 107 (2010), <https://doi.org/10.1016/j.tra.2009.11.005>;.....20 n.30
- Joe Peach, *5 Cities with Congestion Pricing*, Smartcities dive, <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/five-cities-congestion-pricing/28437/>10 n.12
- Kate Slevin & Rachel Weinberger, *Congestion Pricing What it Means to Save Time* Regional Plan Association (Mar 11, 2025) <https://rpa.org/news/lab/what-it-means-to-save-time> 10 nn.10-11
- Magnus Berquist et al., *Public attitude, behavior and social norm changes over six months with the NYC congestion charge*, 2 NPJ SUSTAINABLE MOBILITY & TRANSP. 1 (2025), <https://doi.org/10.1038/s44333-025-00069-x>.....19 n.29
- MTA, “Congestion Pricing provides \$330M in mitigation funding”, <https://www.mta.info/agency/bridges-and-tunnels/congestion-relief-zone/program/mitigation> (last updated June 30, 2026)17 n.23
- N.Y.C. Mayor’s Off. for People with Disabilities, *AccessibleNYC 2025 Report: Transportation* (2025), <https://www.nyc.gov/site/mopd/publications/accessiblenyc-2025-report-transportation.page>.....8 n.5
- New York City Department of Health, *Air Quality Impacts of Congestion Relief Zone Tolling*, (Aug. 14, 2026).16 n.22
- 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*, Johns Hopkins University (Mar. 2, 2017), <https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/> (last visited Sept. 22, 2026)12 n.15
- Paul Redelmeier & Ahmed El-Geneidy, *If You Cut It Will They Ride? Longitudinal Examination of the Elasticity of Public Transport Ridership in the Post-Pandemic Era*, 2678 TRANSP. RSCH. REC. 241 (2024), <https://doi.org/10.1177/03611981241240754>.....14 n.20

Rachel Weinberger, Will Cao, Sam Bowden Akbari, Kelly McGuinness, AICP, David Oke, Grace Walz Regional Plan Association & Sam Schwartz, Roosevelt House at Hunter College, <i>Congestion Pricing One Year Later</i> (Jan. 2026), https://rpa.org/news/lab/congestion-pricing-one-year-later	9 nn.8-9
<i>Reduction in Vehicle Entries to the CBD in 2025</i> , MTA METRICS (DEC. 2025), https://metrics.mta.info/?cbdtv/vehiclereductions	7 n.3
Shenghao Bi et al., <i>Can public transportation development improve urban air quality? Evidence from China</i> , 54 URB. CLIMATE 1 (2024), https://doi.org/10.1016/j.uclim.2024.101825	14 n.19
Stefan Bauernschuster et al., <i>When Labor Disputes Bring Cities to a Standstill: The Impact of Public Transit Strikes on Traffic, Accidents, Air Pollution, and Health</i> , 9 AM. ECON. J.: ECON. POL'Y 1 (2017), https://www.aeaweb.org/articles?id=10.1257/pol.20150414	14 n.19
Timothy Fraser, Yeonkyeong Gina Park, Danni Lu, Mohannad Tayarani, Haiyan Deng & H. Oliver Gao, NPJ Clean Air (2025), https://doi.org/10.1038/s44407-025-00037-2	16 n.22
<i>Two decades in, what can other cities learn from the London congestion charge?</i> , ARUP, https://www.arup.com/perspectives/two-decades-in-what-can-other-cities-learn-from-the-london-congestion-charge (last visited Sept. 22, 2026)	11 n.13
Transport For London, IMPACTS MONITORING: SECOND ANNUAL REPORT 76 (2004), https://content.tfl.gov.uk/impacts-monitoring-report-2.pdf	20 n.30

INTERESTS OF THE *AMICI CURIAE*

Amici Curiae are 15 organizations committed to protecting the safety and well-being of residents in and around New York City through environmental, transit, and civic advocacy.¹

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 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.

The Natural Resources Defense Council, incorporated as a non-profit organization under the laws of New York State in 1970, 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.

Bike Jersey City is a nonprofit cycling and complete streets advocacy group committed to promoting bicycle lane creation, secure bike parking installation, cycling education, bike valets, and group rides.

¹ *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. All parties have consented to the filing of this amicus brief.

CIVITAS is an organization of citizens founded in 1981, 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.

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.

New York Lawyers for the Public Interest is a non-profit civil rights law firm located in New York City specializing in disability rights, access to health care, and environmental justice.

New York City Environmental Justice Alliance is a non-profit membership network linking grassroots organizations from low-income neighborhoods and communities of color in their fight for environmental justice.

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.

New York Public Interest Research Group 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.

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

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.

The Real Estate Board of New York ("REBNY") is New York City's leading real estate trade association. Founded in 1896, REBNY has more than 14,000 members with extensive experience in the City's real estate development industry, including commercial, residential and institutional property owners, builders, managers, investors, and others. REBNY regularly publishes market data, policy reports, and broker surveys, and it provides members with various resources, including educational courses and charitable service opportunities and a wide range of other member benefits. REBNY works to promote sound public and industry policies to expand and improve New York's economy.

Reinvent Albany advocates for transparent and accountable New York government.

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.

WE ACT for Environmental Justice is a community-based organization, founded in 1988, 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.

SUMMARY OF ARGUMENT

From its start in January 2025, the Central Business District (“CBD”) Tolling Program has improved the lives of millions in the New York City Tri-State Area and any contention by Defendants-Appellants that the CBD Tolling Program has damaged area residents is contrary to the plain facts.

Evaluations of the CBD Tolling Program show that it has been one of the most effective tools to reduce the ever-worsening twin ills of traffic congestion and air pollution in the New York City metropolitan area. The benefits of the reduction in congestion have been felt well beyond the Congestion Relief Zone and even beyond New York City and State. New Jersey commuters have seen some of the most dramatic reductions in travel times into the New York CBD.

This reduction in congestion has reduced air emissions and given back to millions of commuters in the New York and New Jersey area the gift of time - resulting in billions in economic benefit. Mass transit ridership has increased and service has improved as the recent trend of slowing bus speeds has decreased and reversed. The program has resulted in other ancillary benefits, such as quieter and safer streets.

None of this should come as a surprise since it is consistent with the experience of every other major metropolitan area that has implemented a congestion pricing program, including London and Stockholm.

While the Value Pricing Pilot Program (“VPPP”) Agreement does not provide for any monetary recovery from the federal government, the tolling revenue generated by the CBD Tolling Program has provided funding for necessary capital improvements and increases in service, such as extension of the Second Avenue Subway and significant increases in system accessibility. These long-term capital investments require consistent revenue sources that provide funding over the years that will be required to complete these projects. The threat of termination of the VPPP Agreement and the CBD Tolling Program creates uncertainty regarding these funding sources and jeopardizes the completion of these improvements that will be enjoyed by millions and will keep the system in good operating order for years to come.

Potential impacts of the CBD Tolling Program diverting truck traffic and increasing air pollution in already overburdened environmental justice communities have not happened. Regional air quality has either improved or held steady but has not deteriorated, including in environmental justice communities. Moreover, tolling revenue from the CBD Tolling Program continues to fund both place-based and other mitigation measures that were committed to when the program was first authorized by Defendants-Appellants, creating a significant opportunity to improve the quality of life in those communities traditionally overburdened with air pollution.

The public health, environmental and societal benefits of the CBD Tolling Program should not be ripped away from millions by allowing Defendants-Appellants to unilaterally rescind the program for no apparent valid reason.

ARGUMENT

I. ALLOWING DEFENDANTS-APPELLANTS TO UNILATERALLY TERMINATE THE VPPP AGREEMENT AND RESCIND ITS APPROVAL OF THE CBD TOLLING PROGRAM WOULD HARM MILLIONS IN THE NEW YORK CITY TRI-STATE AREA

The CBD Tolling Program has benefitted millions of people within the Congestion Relief Zone, within Manhattan and New York City generally, and across state lines. Transit riders, pedestrians, and drivers have all benefitted from the program, and those benefits will only increase as the tolling revenue it generates funds much-needed capital projects to improve regional transit system-wide.

As expected, the CBD Tolling Program has incentivized increased transit use. Bus ridership has increased 8% per year within the Congestion Relief Zone and subway trips have increased 9% since the implementation of the CBD Tolling Program in January 2025.² These increases have resulted in fewer vehicles on the roads in the Congestion Relief Zone, reducing congestion and vehicle air

² “Congestion Relief Zone Tolling First Evaluation Report” at 1 Triborough Bridge and Tunnel Authority (Jan. 2026), <https://www.mta.info/document/195631>

emissions and increasing public safety. Twenty-six million fewer vehicles entered the CBD between January and December 2025.³ This has increased average vehicle speeds within the Zone by 11%.⁴ That means swifter travel for those who must rely on vehicle transportation, including the New Yorkers with disabilities who use Access-A-Ride paratransit.⁵ Bus speeds have also increased within the Congestion Relief Zone by 2.4%, reversing a long trend of slowing bus speeds while providing a time savings benefit to bus riders, including many lower income New Yorkers for whom the bus is their primary transportation.⁶

³ *Reduction in Vehicle Entries to the CBD in 2025*, MTA METRICS (Dec. 2025), <https://metrics.mta.info/?cbdt/vehiclereductions>.

⁴ Cody Cook et al., *The Network-Wide Effects of Congestion Pricing: Evidence from New York City*, NAT'L BUREAU OF ECON. RSCH., at 11 (Revised Aug. 2026), <https://www.nber.org/papers/w33584> (measuring traffic conditions from September 2024 through June 2026).

⁵ N.Y.C. Mayor's Off. for People with Disabilities, *AccessibleNYC 2025 Report: Transportation* (2025), <https://www.nyc.gov/site/mopd/publications/accessiblenyc-2025-report-transportation.page>.

⁶ Emily Badger et al., *27 Million Fewer Car Trips: Life After a Year of Congestion Pricing*, N.Y. TIMES (Jan. 5, 2026) <https://www.nytimes.com/interactive/2026/01/05/upshot/congestion-pricing-one-year.html> (comparing bus speeds from January through November in both 2024 and 2025) (citing *MTA Bus Route Segment Speeds: Beginning 2025*, DATA.NY.GOV (Updated Aug. 31, 2026), <https://data.ny.gov/d/kufs-yh3x>).

Fewer cars have also meant fewer air emissions. Greenhouse gas emissions were also reduced 6.1% between January and September 2025 compared to the previous year.⁷

The CBD Tolling Program is improving quality of life beyond reducing congestion and air emissions. Traffic noise complaints within the Congestion Relief Zone were down 23% as of November 2025. Illegal parking complaints within the Congestion Relief Zone were down 14% during the same period. Perhaps most significantly, serious injuries in crashes were down 8.6% in the Congestion Relief Zone as of November.⁸

Transit riders are not the only commuters benefiting from reduced congestion. Drivers benefit as well. As a result of fewer cars in the Congestion Relief Zone, drivers are spending less time in traffic jams in Manhattan. As of April 2025, the sum hours of network delay from traffic jams recorded in the MTABT Waze partner portal on Manhattan streets was down by 28.4%.⁹

⁷ *Congestion Relief Zone Tolling First Evaluation Report* at 63-64, MTA Bridge and Tunnel (Jan. 2026), <https://www.mta.info/document/195631>.

⁸ Rachel Weinberger, Will Cao, Sam Bowden Akbari, Kelly McGuinness, AICP, David Oke, Grace Walz Regional Plan Association & Sam Schwartz, *Congestion Pricing One Year Later*, Roosevelt House at Hunter College, (Jan. 2026). <https://rpa.org/news/lab/congestion-pricing-one-year-later>

⁹ *Id.*

These benefits are not restricted to the Congestion Relief Zone nor even to the City and State of New York. Outside of Manhattan, traffic delays in the region were also down by 9% as of April 2025. Vehicle speeds on crossings during the morning commute improved a remarkable 23% through October 2025. The most dramatic improvements have been on the crossings from New Jersey into the Central Business District. The Regional Plan Association estimates that New Jersey bus riders and drivers have saved as much as an average of 21 minutes per one way trip for all work trips.¹⁰

These time savings result in real economic benefits. In 2019, the Partnership for New York City estimated that traffic congestion cost the regional economy \$20 billion annually due to slower goods movements, delays and uncertainties while traveling for business across the city, commuting and other considerations. According to the Regional Plan Association, the value of annual time savings to commuters because of the CBD Tolling Program could total as much as \$1.3 billion.¹¹

The societal benefits of the CBD Tolling Program are no surprise since they are consistent with the benefits that other cities have experienced when

¹⁰ Kate Slevin & Rachel Weinberger, *Congestion Pricing: What it Means to Save Time*, Regional Plan Association (Mar11, 2025), <https://rpa.org/news/lab/what-it-means-to-save-time>

¹¹ *Id.*

they implemented similar programs. Five cities around the world have introduced congestion pricing programs similar to the Manhattan CBD Tolling Program.¹² The first was in Singapore in 1975 and that program continues. Introduced in 2003, the London Congestion Charging Scheme (“LCCS”) initially required non-exempt 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 CBD Tolling Program, the overall plan included major investments in transit.¹³ Since then, the charge has risen to £15 (\$20.30), and the effective times have been changed.

The LCCS has been an impressive success. As of 2020, congestion was reduced in central London by 30% and greenhouse gas emissions by 12% while transit ridership increased by 38%. Between 2002 and 2014, car traffic entering central London fell by 39%. London has continued to monitor impacts from the LCCS and has adapted the program accordingly.¹⁴

¹² See Joe Peach, *5 Cities with Congestion Pricing*, Smartcities dive, <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/five-cities-congestion-pricing/28437/>.

¹³ 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 Sept. 22, 2026).

¹⁴ See *Downtown Congestion Pricing Study Case Study: London*, San Francisco County Transportation Authority (Feb. 2020), https://www.sfcta.org/sites/default/files/2020-02/Congestion-Pricing-Case-Studies_2020-02-13.pdf.

The LCCS offers a useful model for the CBD Tolling Program. Both programs cover areas of similar size with access points that allow for relatively easy tolling. The areas covered by both cities' congestion pricing programs: (i) are financial and transport hubs; (ii) had or have extensive traffic congestion and related air pollution issues; and (iii) are served by transit and have high rates of transit usage that could rise even higher. In addition, both cities require significant investment to maintain transit infrastructure and service levels. Initial evaluations of the effectiveness of the CBD Tolling Program show similar societal benefits to the benefits from the LCCS.

Following its establishment in 2007 after a seven-month trial period in 2006, the Stockholm congestion pricing program has also produced impressive public health and environmental benefits. A researcher at Johns Hopkins University reported that the rate of asthma attacks among local children dropped by nearly 50% and air pollution levels dropped between 5% and 10% as result of the congestion pricing program.¹⁵ During the trial period in 2006, the rate of asthma symptoms in children began to decline immediately and decreases were even more pronounced a few years after the scheme became permanent.

¹⁵ 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*, Johns Hopkins University (Mar. 2, 2017), (last visited Sept. 22, 2026), <https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/>.

Additional benefits were felt immediately as congestion levels fell 20% to 25% during the seven-month trial period in 2006.

These tangible quality-of-life improvements are not the only benefits of the CBD Tolling Program. The Program generated \$562 million in net tolling revenue in its first year of operation according to the MTA.¹⁶ These revenues have continued to exceed projections by 17% as of the first half of 2026.¹⁷

The MTA has used this tolling revenue to finance \$1 billion in short-term debt in 2025 to help fund \$4.5 billion in capital projects that will materially improve the lives of hundreds of thousands of New Yorkers. These projects include extension of the Second Avenue Subway, replacing 56 elevators at various stations, other accessibility improvements at subway and Long Island Rail Road (“LIRR”) stations – essential for people with disabilities, seniors, and many others and the purchase of new LIRR and Metro North railcars and almost 500 electric buses that will reduce diesel particle emissions throughout the city. The funds will also be used to invest in upgrades to the decades-old technology that underlies the New York City transit system, such as improving communications and signals, line equipment and structural repair and maintenance, and power substation renewal

¹⁶ CBDTP Financial Report, MTA Bridges and Tunnels, (Jan. 28, 2026) <https://www.mta.info/document/197586>

¹⁷ Bridges and Tunnels Committee Meeting Package at 40 (July 27, 2026), <https://www.mta.info/document/214861>

and rehabilitation. Although less visible than new elevators, rail cars or buses, this work is necessary to maintain proper system functioning and to improve system performance and customer service.¹⁸ Research has shown that investment in public transit improves air quality over time.¹⁹ And a lack of investment has been shown to risk a “doom spiral” in which ridership and revenue drop in response.²⁰

¹⁸ *Congestion Relief Zone Tolling First Evaluation Report* at 69.

¹⁹ See Shenghao Bi et al., *Can public transportation development improve urban air quality? Evidence from China*, 54 URB. CLIMATE 1, 14 (2024), <https://doi.org/10.1016/j.uclim.2024.101825> (“The mechanism analysis reveals that the ‘Transit Metropolis’ policy improves urban air quality by slowing down private car ownership and upgrading industrial structure.”); see also Stefan Bauernschuster et al., *When Labor Disputes Bring Cities to a Standstill: The Impact of Public Transit Strikes on Traffic, Accidents, Air Pollution, and Health*, 9 AM. ECON. J.: ECON. POL’Y 1, 23 (2017), <https://www.aeaweb.org/articles?id=10.1257/pol.20150414> (“The estimates in the first panel indicate that public transit strikes have a statistically significant and positive effect on morning peak emissions from particulate matter, a major traffic-related pollutant. In particular, the results in columns 1 to 4 imply that particle pollution significantly increases by 13.3 to 14.8 percent during the am peak hours of a strike day.”).

²⁰ See Paul Redelmeier & Ahmed El-Geneidy, *If You Cut It Will They Ride? Longitudinal Examination of the Elasticity of Public Transport Ridership in the Post-Pandemic Era*, 2678 TRANSP. RSCH. REC. 241, 249 (2024), <https://doi.org/10.1177/03611981241240754> (“If transit agencies cut services, then they can expect to lose more riders, worsening their fiscal position. This suggests that further public funding for transit operations is necessary to stave off a total collapse of the system.”); see also Geneviève Boisjoly et al., *Invest in the ride: A 14 year longitudinal analysis of the determinants of public transport ridership in 25 North American cities*, 116 TRANSP. RSCH. PART A: POL’Y AND PRAC. 434, 444 (2018), <https://doi.org/10.1016/j.tra.2018.07.005> (“The results of this study emphasize the need to invest in public transport, especially bus operations, to support higher levels of ridership.”).

Allowing Defendants-Appellants to arbitrarily rescind this program with no valid justification would subject millions of people in the nation's largest metropolitan area to increased congestion, more air pollution and more dangerous streets. It would allow Defendants-Appellants to deprive millions of people of the economic benefits they have gained from implementation of the CBD Tolling Program.

II. POTENTIAL IMPACTS TO ENVIRONMENTAL JUSTICE COMMUNITIES FROM FORECASTED TRAFFIC DIVERSIONS DUE TO THE CBD TOLLING PROGRAM HAVE NOT ACTUALLY OCCURRED

In its June 2023 Finding of No Significant Impact (“FONSI”), Defendants-Appellants concluded that “some [environmental justice] communities that are already overburdened by pre-existing air pollution and chronic disease could see an adverse effect as a result of increased traffic” and air pollution and that these areas merited place-based mitigation of such potential adverse effects.²¹ In addition to expansion of the New York City Department of Transportation Clean Trucks Program and an off hours delivery program, the FONSI committed to the following place-based mitigation measures: (i) replacement of diesel-burning Transport Refrigeration Units (“TRUs”) with cleaner vehicles; (ii) expanded electric charging infrastructure; (iii) roadside vegetation to improve near road air

²¹ Finding of No Significant Impact; Central Business District (CBD) Tolling Program at 14, Federal Highway Administration, June 2023.

quality; renovated parks and green spaces; and (iv) installed or upgraded air filtration units in schools. This was in addition to structuring the CBD Tolling Program to discourage truck diversions and monitoring air pollution levels in potentially impacted environmental justice communities.

A recent comprehensive evaluation by the New York City Department of Health of the impact of the CBD Tolling Program on neighborhood air quality has concluded that the potential negative impacts to environmental justice communities identified in the FONSI did not, in fact, materialize, and that the CBD Tolling Program has not negatively impacted air quality in any location, with air quality remaining stable or improving across the City.²²

Plaintiffs-Appellees have also ensured that the place-based mitigation measures committed to in the FONSI continue to be implemented. For example, Plaintiffs-Appellees have committed \$105 million in funding from the CBD Tolling Program for 13 communities in New York and New Jersey with pre-existing high pollution and chronic disease burdens that air quality modeling

²² New York City Department of Health, *Air Quality Impacts of Congestion Relief Zone Tolling* (Aug. 14, 2026). Air quality can vary significantly depending on many exogenous factors. One study by researchers at Cornell University found that the CBD Tolling Program improved air quality within its first six months of operation (“A first look into congestion pricing in the United States: PM_{2.5} impacts after six months of New York City cordon pricing”). Timothy Fraser, Yeonkyeong Gina Park, Danni Lu, Mohannad Tayarani, Haiyan Deng & H. Oliver Gao NPJ Clean Air (2025) 1:39 <https://doi.org/10.1038/s44407-025-00037-2>.

showed could experience increases in truck traffic due to diversions from the Congestion Relief Zone.

Although these truck diversions and associated increased air emissions have not occurred, Plaintiffs-Appellees have proceeded to implement the mitigation measures. Forty-two TRUs at the Hunts Point Market have been replaced and another 48 are in the pipeline to be replaced. Almost \$9 million has been allocated to expand asthma-related services and education in the Bronx, and \$11.1 million has been expended to expand the Asthma Case Management Program to provide intensive, school-based support to improve asthma control for students that will reduce hospitalizations, doctor visits, and missed school days. School buildings within 300 meters of highways in areas requiring mitigation have been identified and air filtration systems will be installed in those schools. Sites have been identified for roadside vegetation, and parks and green space have been identified to upgrade. Projects and sites have also been identified for new electric truck charging infrastructure to serve trucks operating within New York City's mitigation communities.²³

Even though the forecasted adverse environmental effects have not occurred in these communities, these mitigation measures will serve the very

²³ See generally, MTA, *Congestion Pricing provides \$330M in mitigation funding*, <https://www.mta.info/agency/bridges-and-tunnels/congestion-relief-zone/program/mitigation>.

important public health purpose of addressing decades of disproportionate air pollution and disease burdens. Because these programs can enhance air quality in these communities in the absence of negative impacts from the CBD Tolling Program, they are all the more valuable and likely to positively impact thousands of local residents.

Allowing Defendants-Appellants to unilaterally rescind the VPPP Agreement, effectively ending the CBD Tolling Program and stopping the associated tolling revenues that fund these mitigation measures, would be tantamount to aggravating the assault on these communities from existing air pollution sources. There is no rational basis on which Defendants-Appellants can claim that such assault is in the public interest. In fact, the exact opposite is true.

III. THE CBD TOLLING PROGRAM ENJOYS BROAD AND GROWING SUPPORT

The demonstrated beneficial impacts of congestion pricing have spurred broad and growing support among diverse constituencies throughout New York. The list starts with the largest transportation and environmental groups,²⁴ as

²⁴ This includes intervenors Riders Alliance and Sierra Club, *amici* Environmental Defense Fund, Natural Resources Defense Council, TriState Transportation Campaign, Move NY, and the New York League of Conservation Voters, as well as Transportation Alternatives, the NYPIRG Straphangers Campaign, and the Permanent Citizens Advisory Committee to the MTA.

well as the city's leading environmental justice organizations.²⁵ It also comprises prominent civic and planning organizations,²⁶ and well-established disability rights groups.²⁷ Significantly, New York City's business community—recognizing both the costs of congestion and the economic benefits of the congestion pricing strategy—has actively joined in the campaign to support this measure.²⁸

Finally, despite initial skepticism, public support for congestion pricing has grown and deepened since the program was introduced. According to a December 2025 analysis published by Sustainable Mobility and Transport journal, public support for New York's congestion pricing program was 57% before the program began. Their analysis showed that proponents of congestion pricing deepened their support for the program over the first six months of implementation while those who objected to congestion pricing at the start of the program softened

²⁵ New York City Environmental Justice Alliance and WE ACT for Environmental Justice.

²⁶ Among them are *amici* Regional Plan Association and Reinvent Albany, along with the City Club of New York, the Municipal Arts Society, the Community Service Society, and the Citizens Budget Commission.

²⁷ The list includes *amici* Mobilization for Justice, New York Lawyers for the Public Interest, as well as the Center for Independence of the Disabled, Access-a-Ride Reform Group, and Disabled in Action of Metropolitan New York.

²⁸ Among those organizations are The Partnership for New York City, the Association for a Better New York, the Real Estate Board of New York, and the New York Building Congress.

the intensity of their opposition by the six-month mark.²⁹ This is consistent with the experiences in other jurisdictions that have implemented congestion pricing programs—as residents have actually experienced the wide-ranging benefits of this anti-congestion strategy, public support has intensified.³⁰

CONCLUSION

This Court should not allow Defendants-Appellants to stop, for no legally cognizable reason, this important program which has brought so many benefits to New York City and the surrounding areas. The decision of the District Court should be affirmed.

²⁹ Magnus Bergquist et al., *Public attitude, behavior, and social norm changes over six months with the NYC congestion charge*, 2 NPJ SUSTAINABLE MOBILITY & TRANSP. 1, 2 (2025), <https://doi.org/10.1038/s44333-025-00069-x>.

³⁰ Geertje Schuitema et al., *Explaining differences in acceptability before and acceptance after the implementation of a congestion charge in Stockholm*, 44 TRANSP. RSCH. PART A: POL'Y & PRAC. 99, 107 (2010), <https://doi.org/10.1016/j.tra.2009.11.005>; TRANSPORT FOR LONDON, IMPACTS MONITORING: SECOND ANNUAL REPORT 76 (2004), <https://content.tfl.gov.uk/impacts-monitoring-report-2.pdf>.

Dated:
September 23, 2026
New York, NY

Respectfully submitted,

/s/ Andrew D. Otis

Andrew D. Otis (*admission pending*)

Karen Steinberg Kennedy

Katy Keane (*admission pending*)

HERBERT SMITH FREEHILLS

KRAMER (US) LLP

1177 Avenue of the Americas

New York, New York 10036

(212) 715-9100

Andrew.Otis@hsfkramer.com

Karen.Kennedy@hsfkramer.com

Katy.Keane@hsfkramer.com

Charles S. Warren

McLAUGHLIN & STERN, LLP

260 Madison Avenue

New York, New York 10016

(212) 448-1100

CWarren@mclaughlinstern.com

Eric A. Goldstein (*application for admission
forthcoming*)

Mark A. Izeman

NATURAL RESOURCES DEFENSE

COUNCIL

40 West 20th Street, 11th Floor

New York, New York 10011

Telephone: (212) 727-2700

egoldstein@nrdc.org

mizeman@nrdc.org

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rules of Appellate Procedure 32(g)(1) and Local Rules 29.1 and 32.1, I certify that the foregoing brief is proportionately spaced using 14-point Times New Roman font and contains 4,200 words, excluding the parts exempted from length limits by Federal Rule 32(f).

/s/ Andrew D. Otis
Andrew D. Otis

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2026, I electronically filed the foregoing amicus brief with the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: September 23, 2026

/s/ Andrew D. Otis
Andrew D. Otis

Counsel for Amici Curiae