

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

In the Matter of the Application of

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.

Oral Argument Requested

VERIFIED PETITION

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July 24, 2024

PRELIMINARY STATEMENT

1. New York City is choking on cars. The City's streets are clogged with some of the worst traffic in the world. The fumes emitted by the nearly one million vehicles that enter Manhattan's Central Business District ("CBD") each day are making the City's residents sick, harming the City's economy and quality of life, and exacerbating the climate crisis.

2. New York City's degraded air quality has serious consequences. Every year, more than one thousand City residents die prematurely from air pollution produced by motor vehicle traffic alone. Vehicle emissions are the largest source of many of the most dangerous pollutants in the City's air.

3. New York City's public transportation system is suffering the consequences of chronic underinvestment. Many parts of the City's transit infrastructure are over one hundred years old, and repairs and capital improvements have been repeatedly deferred. Much of the subway system is unsafe and inaccessible to riders with disabilities, and the City's buses now crawl at the slowest speed of all major cities in the United States.

4. New Yorkers found a solution. After decades of advocacy by broad coalitions of New Yorkers, the Legislature in 2019 enacted the Traffic Mobility Act. The Act rests on the Legislature's determination that the City's twin problems of traffic congestion and a failing public transit system can be addressed together by imposing a toll on vehicle traffic. The Act requires the establishment of a tolling program in the CBD, defined as Manhattan south of 60th street, except for FDR Drive and the West Side Highway. A minimum of fifteen billion dollars in funding collected from the toll, in turn, must be used for capital projects to fund public transit.

5. The Congestion Pricing Program, which was set to begin on June 30, 2024, implements the requirements imposed by the Traffic Mobility Act. It is the product of years of

environmental planning, infrastructure procurement, and coordination between local, state, and federal authorities. The Congestion Pricing Program will reduce the number of vehicles on New York City's overloaded streets, dramatically diminishing the dangerous air pollutants and planet-heating greenhouse gases emitted daily from hundreds of thousands of tailpipes into New York City's air. The Program is essential to New York City's future: It provides cleaner air and a healthier economy, reduces traffic congestion, and funds desperately needed improvements to the public transit system that will allow it to better serve the needs of all New Yorkers, including New Yorkers with disabilities.

6. On May 20, 2024, Governor Hochul hailed the imminent beginning of the Congestion Pricing Program.¹ The Governor explained that within weeks the Program "will reduce the volume of vehicles in Manhattan's central business district by seventeen percent. Fewer cars mean less gridlock, traffic and pollution." And, Governor Hochul continued, the Congestion Pricing Program would provide essential funding to the City's ailing public transit system: "Congestion pricing will generate \$1 billion every year, which will then fund large-scale projects that make public transit faster and more accessible. . . . [E]xpanded train service or an extra subway stop can actually change the trajectory of someone's life. That's powerful. That's what cities are meant to do." The Governor stressed that urgent action to reduce emissions was necessary to prevent an existential threat to New York City: "We are the first generation to feel the effects of climate change and the last generation to be able to do something about it. Because of their density, geography, and reliance on mass transit systems, the threat is more profound and more existential for major cities."

¹ Governor Kathy Hochul, Keynote Remarks at the Global Economic Summit (May 20, 2024), <https://www.governor.ny.gov/news/photos-remarks-prepared-governor-hochul-delivers-keynote-remarks-global-economic-summit>.

7. Two weeks later, on June 5, 2024, Governor Hochul announced that she would unilaterally block the Congestion Pricing Program from going into effect.

8. Governor Hochul's disastrous about-face on the Congestion Pricing Program jeopardizes the safety and future of New York City's residents. It also violates New York State law and the State Constitution.

9. The Congestion Pricing Program is not a unilateral policy decree bestowed by the state's Governor, to be granted or taken away on gubernatorial whim. In addition to the requirement for a tolling program that the Legislature imposed in the Traffic Mobility Act, the Legislature also required that executive branch officials achieve steep and mandatory cuts in greenhouse gas emissions. In the same session in which it enacted the Transit Mobility Act, the Legislature also enacted the transformative Climate Leadership and Community Protection Act ("CLCPA") to address the mounting threat of climate change. The CLCPA requires executive branch officials to ensure their decisions help achieve specific emissions reductions. The State's official plan for achieving the CLCPA's goals explicitly identifies the Congestion Pricing Program as a key component of the strategy to meet the existential threat of climate change. The Governor's decision to block the Congestion Pricing Program violates the obligations the Legislature imposed on all state decisionmakers through the CLCPA.

10. The Governor's decision also violates the New York State Constitution, which was amended by the Legislature and the people of New York in 2021 to guarantee each person in New York a right to "clean air and water, and a healthful environment." N.Y. Const. art. I, § 19. The Governor's unilateral action deprives the people of New York of the air quality protection that the Legislature provided in the Traffic Mobility Act, resulting in unnecessary and unlawful illnesses and deaths that would have been avoided under the Congestion Pricing Program.

11. The Court should declare the Governor's action unlawful and vacate her decision. The people of New York City deserve to breathe.

PARTIES

12. Petitioner Riders Alliance is New York City's grassroots nonprofit membership organization of thousands of subway and bus riders who come together to work toward a more reliable, accessible, and affordable public transit system. Riders Alliance members participate in a wide variety of activities to improve public transit, including community meetings, rallies, press conferences, interviews, public testimony, visits with elected and appointed officials and more. Since forming in 2012, the group's organizers have canvassed subway platforms and bus stops to recruit thousands of members to volunteer on a range of campaigns. In 2018 and 2019, Riders Alliance members were integral to the adoption of the Congestion Pricing Program. Riders Alliance members have joined Governor Kathy Hochul on multiple occasions to celebrate progress toward the start of congestion pricing. Together, Riders Alliance and the governor made public statements about the importance of the program to fund public transit upgrades, speed up bus service, and improve air quality. As transit riders, many of whom depend on bus service and are particularly vulnerable to air pollution, Riders Alliance members have a significant interest in the outcome of this litigation and the implementation of congestion pricing.

13. Petitioner Sierra Club is a grassroots environmental organization with more than 800,000 members across the country; the Atlantic Chapter is responsible for membership and activities in New York State. Sierra Club works to promote a cleaner, healthier, and more sustainable natural environment in its members' communities. Sierra Club has approximately 50,000 members in New York State.

14. Petitioner New York City Environmental Justice Alliance (“NYC-EJA”) is a nonprofit membership network of grassroots organizations, founded in 1991 in New York City. NYC-EJA empowers its member organizations to advocate for improved environmental conditions and against inequitable environmental burdens. NYC-EJA was founded with two clear, yet profound charges: to identify the systemic reasons why communities of color were environmentally and economically overburdened, and to develop strategies to dismantle those inequitable systems. For more than a decade, NYC-EJA has been a key part of efforts to secure and implement the Congestion Pricing Program with the goal of improved transit, improved air quality, and climate justice. NYC-EJA was a member of the Environmental Justice Technical Advisory Group convened as part of the environmental review process and was instrumental in securing meaningful mitigation commitments from the MTA that will improve air quality in environmental justice communities in New York City.

15. Numerous Riders Alliance and Sierra Club members, and numerous individual members of NYC-EJA’s organizational membership live in and around the areas of New York City directly affected by the Congestion Pricing Program. Those members are adversely affected by the Governor’s decision to block the Congestion Pricing Program in numerous ways, including by: suffering from degraded air quality around their homes, workplaces, and the outdoor areas they regularly use and enjoy; reducing their ability to access medical care and business opportunities due to buses afflicted by the slowest speeds in the nation; and reducing their ability to use public transport due to the defunding of the MTA’s previously budgeted accessibility improvements.

16. Riders Alliance members include Bill Cryer. He and his family live less than one mile from the Kingsbridge bus depot. He works less than half a mile from the Holland Tunnel.

His child attends kindergarten less than one mile from the Trans-Manhattan Expressway, where Interstate 95 crosses Manhattan east of the George Washington Bridge. The Congestion Pricing Program would significantly reduce traffic near the Holland Tunnel, improving air quality. Additionally, as part of the Congestion Pricing Program, the MTA has prioritized transitioning the fossil fuel-burning bus fleet at the Kingsbridge Depot and the Gun Hill Depot to electric buses, in order to improve the air quality near both locations.² In the absence of revenue from the Congestion Pricing Program, this transition will not occur as scheduled and the Kingsbridge bus depot will continue to be a site of significant air pollution. Without the Congestion Pricing Program, Mr. Cryer and his family will be exposed to increased pollution both during his workday and at home.

17. Deborah Baldwin is a Riders Alliance member from Manhattan. She is a senior citizen and is undergoing cancer treatments. She lives and works near the Queens-Midtown Tunnel portal and is heavily exposed to car and truck exhaust fumes whenever she goes outside. The Congestion Pricing Program would significantly reduce car and truck volume through the Midtown Tunnel portal.³ Ms. Baldwin also rides buses to visit her doctors and to other appointments; Manhattan's bus speeds would be significantly improved if the Congestion Pricing Program went into effect.

18. Norma Ginez is a Riders Alliance member from the Bronx. She lives several blocks from the Cross Bronx Expressway. She has three children with special needs who also attend schools within several blocks of the Cross Bronx Expressway. She and her family depend on buses to get around and often endure long waits for service in congested areas. They would

² Environmental Assessment for the Central Business District Tolling Program, Ch. 17 at 17-36 (Apr. 2023), <https://new.mta.info/document/110886> (hereinafter "EA").

³ Environmental Assessment ("EA") Ch. 10 at 10-42, <https://new.mta.info/document/110851>.

benefit from the mitigation projects that would be funded as part of the Congestion Pricing Program, as well as from the faster bus service that would result from the Program.

19. George Bettman is a Riders Alliance member from Brooklyn. He is a senior citizen and suffers from impaired mobility. He rides the subway to work and to medical appointments, but reaching the subway platform in stations without elevators is extremely difficult for him. The Congestion Pricing Program would have funded the accessibility improvements that he and other riders with disabilities desperately need.

20. Barbara Moore is a Riders Alliance member who has lived on Canal Street in lower Manhattan since 1978. She is seventy-two years old. She spends the majority of her time in the CBD and enjoys walking and biking outdoors in the CBD. Because Ms. Moore was diagnosed with Chronic Obstructive Pulmonary Disease, she has to curtail her outdoor activities when the air quality is poor. She has also had to invest in two large indoor air purifiers or deal with the degraded air quality around her home. She has been waiting for congestion pricing to be implemented to help improve her life and the lives and health of her neighbors.

21. Numerous individual Sierra Club members live in or near the Manhattan CBD, regularly engage in outdoor activities in the CBD, and are particularly vulnerable to the threats posed by air pollution in the CBD in the absence of the Congestion Pricing Program.

22. For example, Michelle M. Tokarczyk is a Sierra Club member who has lived for decades in Chelsea, which is within the Manhattan CBD. Ms. Tokarczyk enjoys cycling on the Manhattan Waterfront Greenway in the CBD and taking long walks outdoors near her home in the Manhattan CBD. But Ms. Tokarczyk is seventy-one years old and has diabetes and Microvascular Cardiac Disease. She has been instructed by her cardiologist to avoid exerting herself outdoors when the air quality is impaired. As a result, she has been unable to ride her

bicycle or take long walks outdoors due to the frequent high levels of air pollution in the Manhattan CBD. The Congestion Pricing Program would have improved the air quality near Ms. Tokarczyk's home and allowed her to resume her use and enjoyment of the parks and roads near her home.

23. Lawrence S. Freund is a Sierra Club member who regularly runs outdoors in the Manhattan CBD. However, he is eighty-one years old and has already had lung cancer surgery that removed a portion of one lung. He is also susceptible to pulmonary diseases from working on Wall Street on September 11, 2001, and in the weeks and months following the World Trade Center attacks. Mr. Freund was exposed to the World Trade Center dust cloud and spent significant amounts of time in the disaster area, and his pulmonary health has been monitored for several years by the World Trade Center Health Program. He faces significant health risks from poor air quality in the Manhattan CBD.

24. Mary Olowin is a Sierra Club member who lives in the Manhattan CBD. She is seventy-six years old. Ms. Olowin frequently spends time outdoors in the CBD, walking an average of five miles a day outdoors. Ms. Olowin faces increased risks from the Manhattan CBD's degraded air quality due to her age and the number of outdoor activities she undertakes. Ms. Olowin moved to the CBD specifically so that she could give up her car and use public transportation. Yet the public transportation Ms. Olowin relies on has been placed in financial jeopardy due to the Governor's block on the Congestion Pricing Program. Ms. Olowin has also had to curtail her use of the East River Esplanade due to the amount of traffic congestion.

25. Respondent Governor Kathy Hochul is the Governor of the State of New York and is sued in her official capacity.

26. Respondent the New York State Department of Transportation (“DOT”) is a New York State government agency.

27. Respondent Marie Therese Dominguez is the Commissioner of the DOT and is sued in her official capacity.

28. Respondent the Metropolitan Transportation Authority (“MTA”) is a public benefit corporation responsible for public transportation in the New York City metropolitan area. *See* N.Y. Pub. Auth. L. § 1263. The MTA is named solely as a necessary party to this action under CPLR § 1001.

29. Respondent the Triborough Bridge and Tunnel Authority (“TBTA”), also known as MTA Bridges and Tunnels, is a public benefit corporation affiliated with the MTA. The TBTA operates toll bridges and tunnels in New York City. The TBTA is named solely as a necessary party to this action under CPLR § 1001.

JURISDICTION AND VENUE

30. This Court has jurisdiction pursuant to CPLR 3001, 6001, 7801, 7803, and 7804(b).

31. Petitioners timely initiated this special proceeding by properly filing their Order to Show Cause, Verified Petition, and all supporting affirmations.

32. Venue is properly in New York County pursuant to CPLR 503, 505(a) & 506(b), because claims are asserted against state agencies and officers with respect to facilities located in New York County, the claims concerns decisions made in New York County and refusals to perform a duty in New York county, the material events otherwise took place in New York County, and Petitioner Riders Alliance is headquartered in New York County.

BACKGROUND

New York City's Air Quality, Traffic Congestion, and Public Transit System Are in Desperate Need of Reform.

33. New York City's traffic congestion is among the worst in the United States. The cars, trucks, and diesel buses that clog the roads are a major source of harmful air pollution in the metropolitan area, and a significant contributor to climate change. Vehicles emit air pollutants such as particulate matter, nitrogen oxides (which lead to ozone formation), as well as toxics like benzene and volatile organic compounds that are known to lead to and exacerbate health problems including chronic obstructive pulmonary disease, lung cancer, asthma, and diabetes.

34. Air pollution from cars, trucks, and buses is estimated to cause over 1,000 deaths each year in New York City, as well as many emergency department admissions and missed days of school and work.⁴

35. Traffic emissions are by far the largest contributor to high ozone levels in the New York City metropolitan area.⁵ For many years, the New York City metropolitan area has been out of compliance with federal air quality standards for ozone, and ozone levels in New York City were higher in 2022 than any previous year of citywide air monitoring.⁶

⁴ Susan Anenberg et al., Int'l Council on Clean Transp., *A Global Snapshot of the Air Pollution-Related Health Impacts of Transportation Sector Emissions in 2010 and 2015*, at 19 tbl.4, 38 tbl.A2 (2019),

https://theicct.org/sites/default/files/publications/Global_health_impacts_transport_emissions_2010-2015_20190226.pdf; *see also* Calvin A. Arter et al., *Mortality-Based Damages Per Ton Due to the On-Road Mobile Sector in the Northeastern and Mid-Atlantic U.S. by Region, Vehicle Class, and Precursor*, 16 Env't Rsch. Ltrs 065008 (2021), <https://iopscience.iop.org/article/10.1088/1748-9326/abf60b>.

⁵ Ozone Transp. Comm'n, *Mobile Sources Committee Annual Report 2020*, at 2 (2020), https://otcair.org/upload/Documents/Reports/OTC_MSC_Annual_Report_2020.pdf

⁶ NYC Community Air Survey Report, 2008–2022, <https://a816-dohbesp.nyc.gov/IndicatorPublic/data-features/nyccas/>.

36. According to the United States Environmental Protection Agency, exposure to ozone “can cause a number of health problems, including coughing, breathing difficulty, and lung damage. Exposure to ozone can make the lungs more susceptible to infection, aggravate lung diseases, increase the frequency of asthma attacks, and increase the risk of early death from heart or lung disease.”⁷ People at greater risk from ozone exposure include people with lung disease, older adults, and people who are active outdoors.

37. Traffic congestion causes people living in the New York City metropolitan area to experience extremely high levels of air toxics cancer risk, air toxics respiratory hazard risk, and diesel particulate matter, compared to the rest of the United States.⁸

38. Concentrations of fine particulate matter, nitrogen oxides, and black carbon are highest in parts of the city with high traffic density – in particular, the CBD.⁹

39. Older adults with lung disease and diabetes are particularly vulnerable to air pollution. According to the EPA, “Ozone and Particulate Matter (PM) (especially smaller, fine particle pollution called PM 2.5) have the greatest potential to affect the health of older adults. Fine particle pollution has been linked to premature death, cardiac arrhythmias and heart attacks, asthma attacks, and the development of chronic bronchitis. Ozone, even at low levels, can exacerbate respiratory diseases.”¹⁰

40. While traffic congestion pollutes the air and snarls travel on the streets, below ground New York City subway travelers face crumbling infrastructure and crippling transit

⁷ EPA, Air Quality Guide for Ozone, at 2 (2015), https://www.epa.gov/sites/default/files/2017-12/documents/air-quality-guide_ozone_2015.pdf.

⁸ EA App. 17D at 17D-18, <https://new.mta.info/document/111056>.

⁹ NYC Community Air Survey Report, 2008–2002, <https://a816-dohbsep.nyc.gov/IndicatorPublic/data-features/nyccas/>.

¹⁰ *Older Adults and Air Quality*, AirNow, <https://www.airnow.gov/air-quality-and-health/older-adults/> (last visited July 24, 2024).

delays from a major backlog of capital investment needs. Aboveground, bus speeds slowed by twenty-eight percent in the CBD between 2010 and 2019. The average traffic speed in the CBD in 2019 was only seven miles per hour.¹¹

41. Millions of people use public transit to reach and travel around New York City each day. In 2019, New York City subways served 1.7 billion passengers, and MTA buses served 677.6 million passengers.¹²

42. Underinvestment renders many parts of the transit system unsafe, particularly for riders with disabilities. Many parts of New York City's transit infrastructure are over 100 years old and "essential capital needs remain to ensure a state of good repair and to bring MTA's transit and rail assets into the 21st Century." The MTA's 2020–2024 capital program identifies "\$52.0 billion in investments in the region's subways, buses and commuter railroads" that are required to improve and sustain adequate service.¹³

43. During the spring and summer of 2017, New Yorker subway riders experienced "seemingly daily failures of the tracks, signals, switches or power systems, including three derailments," leading to major travel delays. In June 2017, Governor Cuomo declared the MTA – specifically, the New York City Transit Authority – to be in a state of emergency.¹⁴

The Legislature Enacts Congestion Pricing and Climate Mandates.

44. In 2019, New York enacted several pieces of landmark legislation to improve New York City traffic congestion and air quality, and to address climate change by rapidly reducing statewide greenhouse gas emissions.

¹¹ EA Exec. Summary at ES-6, <https://new.mta.info/document/110756>.

¹² *Id.*

¹³ *Id.*

¹⁴ Fix NYC Advisory Panel Report, at 10 (Jan. 2018), <https://www.hntb.com/fix-nyc-report/>.

45. After years of advocacy and organizing, a broad coalition of New Yorkers—ranging from grassroots organizations like Petitioner Riders Alliance to a mix of community representatives, business leaders, and government officials convened by the Governor to serve on the Fix NYC Advisory Panel—successfully persuaded the Legislature and Governor to sign into law legislation requiring the Congestion Pricing Program.

46. On April 1, 2019, the Legislature enacted the Traffic Mobility Act. The Act’s legislative findings declare that traffic in New York is estimated to cost the metropolitan economy more than “one hundred billion dollars over the next five years”, and that it is “crippling . . . [for] residents, commuters, taxi and for-hire vehicle traffic, bus transit and emergency services” and “a significant contributor to decreased air quality.” Vehicle and Traffic Law § 1701. Moreover, the Legislature determined that ongoing failures with New York City’s subway infrastructure “continue to have a significant deleterious impact on the health, safety, and livelihood of commuters, tourists, resident New Yorkers, as well as . . . the economy of the state of New York,” such that “a long-term and sustainable solution is necessary in order to ensure stable and reliable funding to repair and revitalize this significantly important mass transit asset.” *Id.*

47. To address the twin issues of overwhelming traffic and underfunded public transit infrastructure, the Act directs the TBTA to establish a tolling program in the CBD. The tolling must, “at minimum, ensure annual revenues and fees collected under such program, less costs of operation of the same, provide for sufficient revenues . . . to fund fifteen billion dollars for capital projects for the 2020 to 2024 MTA capital program, and any additional revenues above that amount to be available for any successor programs.” *Id.* § 1704-A.

48. In 2019 the Legislature also passed, and the Governor signed, the landmark Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (S. 6599) (“CLCPA”), to address the urgent threat of climate change. The CLCPA requires the state to rapidly reduce its greenhouse gas emissions and transition to a clean energy economy. The CLCPA was built on years of advocacy by a broad coalition of environmental justice, faith, labor, environmental and community groups, including Petitioners NYC-EJA and Sierra Club.

49. The Legislature based the law on its findings that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York.” CLCPA § 1. It further determined that “substantial emissions reductions are necessary to avoid the most severe impacts of climate change.” *Id.* § 1(5).

50. The Legislature recognized that the decisions New York officials make today are critical to addressing and mitigating the dangers posed by climate change: “The severity of current climate change and the threat of additional and more severe change will be affected by the actions undertaken by New York and other jurisdictions to reduce greenhouse gas emissions.” *Id.* § 1(2)(a).

51. Based on those findings, the CLCPA requires that by 2030 greenhouse gas emissions be reduced 40% from the level they were at in 1990, and that by 2050 emissions be reduced 85% from the 1990 level, across all sectors of the economy. ECL 75-0107(1)(a)–(b), 75-0109(4)(a)–(b), (f). To achieve these requirements, the Legislature ordered all state agencies, offices, authorities and divisions to evaluate the climate impacts of each “administrative approval and decision” to ensure that decisions will help achieve the reduction in emissions the CLCPA requires, and will not undermine the state’s ability to meet the CLCPA emissions limits. CLCPA § 7(2).

52. If a decisionmaker determines that a decision inconsistent with these limits is nonetheless justified, she must provide “a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.” *Id.*

53. To ensure that state decisionmakers understand how to make decisions consistent with attainment of the statewide greenhouse gas emissions limits, the Legislature established the Climate Action Council, a statewide body charged with developing a roadmap to guide decision-making by government officials throughout the state. ECL 75-0103. The Council is staffed with the heads of all major state agencies, as well as expert appointees of the Governor and Legislature. *Id.* The Climate Action Council was required to develop and approve, by supermajority vote, a Final Scoping Plan. *Id.* After holding 32 meetings and receiving over 35,000 public comments, the Climate Action Council voted on December 19, 2022, to advance the Final Scoping Plan.

54. Under the Final Scoping Plan, New York authorities “need to substantially reduce [Vehicle Miles Traveled] while increasing access to public transportation.” The Scoping Plan therefore relies on efforts that “shift travel to cleaner shared mobility alternatives or reduce discretionary single occupant [Vehicle Miles Traveled]” to meet the CLCPA’s goals. As the Council determined, “[a]n aggressive and implementable mix of policies will be required to accelerate GHG emission reductions to the level needed by 2030,” and “a substantial portion of personal transportation in urbanized areas would be required to shift to public transportation and other low-carbon modes.”¹⁵

¹⁵ New York State Climate Action Council, Scoping Plan at 123, 147-148 (Dec. 2022), <https://climate.ny.gov/-/media/Project/Climate/Files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>.

55. The Congestion Pricing Program is a key part of the Final Scoping Plan. The Scoping Plan observes that congestion pricing “can provide the dual benefits of discouraging more costly carbon-intensive behavior and providing a revenue source for investment in other strategies ... Congestion pricing ... reduces emissions by pricing driving and ... provides a funding source for enhancements in the region’s low-carbon public transportation system.” The Scoping Plan also notes that “congestion pricing ... can alleviate major bottlenecks and improve local air pollution, especially in communities located near busy roads.”

56. The requirements of CLCPA § 7(2) became effective on January 1, 2020. CLCPA § 14. The Legislature did not exempt any state office, including the Office of the Governor, from the CLCPA’s strict requirements.

The People of New York Enshrine a Right to Clean Air and a Healthful Environment in the State Constitution.

57. In 2019 the Legislature also took the first step toward amending the New York Constitution to add a provision in the Bill of Rights that states: “Each person shall have the right to clean air and water, and a healthful environment.” To successfully amend the State Constitution, a bill must pass the legislature in two consecutive legislative sessions and then the proposed language must be put on the ballot during a general election and passed by voters. N.Y. Const. art. XIX, § 1.

58. Both the Senate and Assembly passed bills (Assembly Bill 2064, Senate Bill 2072) in 2019 to add that provision to the constitution.

59. A key reason motivating passage of the Environmental Rights Amendment was the insufficiency of the environmental protections and programs that existed at the time of its passage. As set forth in the legislative sponsor memo justifying the need for Assembly Bill 2064, “[r]ecent water contamination and ongoing concerns about air quality have highlighted the

importance of clean drinking water and air as well as the need for additional protections.” The sponsor memo also makes clear the intent to “ensure that clean air and water are treated as fundamental rights for New Yorkers.”

60. The Environmental Rights Amendment was also passed to act as a bulwark against a possible rollback of even the current, yet insufficiently protective, environmental laws and programs caused by changing political winds, as the federal government was doing at the time.

61. In the spring of 2021, during the next legislative session, the Senate and Assembly again passed bills (Assembly Bill 1368, Senate Bill 528) resolving to add the Environmental Rights provision to the Constitution.

62. In November 2021, seventy percent of New York voters approved the ballot measure to add the Environmental Rights provision to Article I of the New York Constitution. The constitutional amendment went into effect on January 1, 2022, and became part of the state’s Bill of Rights, as Article I, Section 19 of the New York Constitution.

The City, State, and Federal Government Expend Significant Resources to Ensure that Congestion Pricing Would Begin on June 30, 2024.

63. After passage of the Traffic Mobility Act, federal and state authorities expended substantial time, effort, and resources to develop and study the potential effects of a Congestion Pricing Program, as well as to seek and incorporate input on the design and effects of the Program from stakeholders and the public. Throughout the process, the assessment focused on the Program’s likely impacts on air quality and climate.

64. In spring 2021, the Federal Highway Administration (“FHWA”) commenced a comprehensive Environmental Assessment of the proposed Congestion Pricing Program under

the National Environmental Policy Act. It released an 868-page draft Environmental Assessment along with appendices for public comment in August 2022.

65. The FHWA considered nearly 70,000 public submissions on the draft, including more than 14,000 individual submissions, oral testimony at public hearings, letters, e-mails, voicemails, and submissions via an electronic form. The Project Sponsors conducted six public hearings.¹⁶

66. In response to initial findings and public concern about impacts on some environmental justice communities, relevant transit agencies also convened an Environmental Justice Technical Advisory Group as well as an Environmental Justice Stakeholder Working Group. After engaging with these groups and conducting a supplementary environmental justice analysis, the MTA committed to \$155 million investment in various mitigation measures to ensure air quality benefits in environmental justice communities.

67. The MTA also held at least twenty-five public meetings on the Congestion Pricing Program, the FHWA-conducted Environmental Assessment, and environmental justice implications of the Program throughout the New York City metropolitan region in 2021 and 2022. It received more than 22,000 individual comments and more than 55,000 form submissions on the Environmental Assessment, and more than 25,000 comments on the tolling structure.

68. In April 2023, the FHWA completed the 958-page Final Environmental Assessment, along with thousands of pages of appendices.

69. The Governor hailed the federal environmental approval of the Congestion Pricing Program in the summer of 2023, as the City suffered through smoke from wildfires burning in Canada: “[F]or many New Yorkers in the City, poor air quality isn’t a rare

¹⁶ EA Ch. 18 at 18-21–22

occurrence. It's already making people sick in our own City. . . . We're more cognizant of what's going into our lungs these days, and we're experiencing the effects of the wildfires in Canada. What about the wildfires that are happening on our own streets right here coming out of the exhaust pipes from all these vehicles - 700,000 vehicles enter the central business district every single day of the week. That's almost impossible to comprehend. And so, buses, like I said, can't move. They're trying to do the right thing, people on buses. You're trying to make sure they're doing what's maybe more affordable for them, which is important. We have to keep those buses moving. These people have to get to their jobs too. It doesn't help that they have our buses immobilized.”¹⁷

70. Relevant agencies convened a Transportation Mobility Board to recommend a tolling structure for the Program including toll rates, credits, discounts and exemptions. The Transportation Mobility Board shared its recommendations with the MTA in December 2023 and held multiple public comment meetings. The MTA Board adopted final toll rates and exemptions in March 2024. By that month the MTA had fully installed the infrastructure required to begin collecting the toll, including sensors, gantries, and transponders.

71. On April 26, 2024, the MTA announced that the Congestion Pricing Program would go into effect June 30, 2024, promising reduced traffic and cleaner air for New Yorkers.

The Governor Unilaterally Blocks the Congestion Pricing Program.

72. On June 5, 2024, Governor Hochul abruptly announced that she had directed the MTA to “indefinitely pause” the Congestion Pricing Program

¹⁷ Press Release, Governor Kathy Hochul, *Governor Hochul Announces First-in-Nation Congestion Pricing Will Move Forward, Improving Air Quality and Reducing Traffic* (June 27, 2023), <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-announces-first-nation-congestion-pricing>.

73. Under the terms of the Traffic Mobility Act, the Governor has no role to play in deciding whether and when the Congestion Pricing Program goes into effect. Nor does the Act provide for an “indefinite pause” at the Governor’s discretion. The Governor did not supply a public explanation of the means by which she intended to block the Congestion Pricing Program from beginning, as planned, a few weeks later on June 30, 2024.

74. On information and belief based on reporting, it appears that the Governor has directed DOT to withhold its signature from a road-tolling agreement between the FHWA, the TBTA, the MTA, and the New York City Department of Transportation that is a predicate to beginning the Congestion Pricing Program. Under the Governor’s apparent theory, the requirement of a road-tolling agreement with a state agency signatory confers upon the Governor’s office the ability to unilaterally veto the Congestion Pricing Program, and thereby effectively repeal or annul the requirements of the Traffic Mobility Act.

75. Following the Governor’s shocking about-face, the federal and state agencies responsible for implementing the Congestion Pricing Program have confirmed that it is only the Governor’s decision that is blocking the Program from going into effect.

76. The FHWA released its required Reevaluation of the Environmental Assessment on June 14, 2024, confirming that no additional environmental review was necessary.

77. The MTA Board approved a resolution on June 26, 2024, in which it “recognizes that the [Congestion Pricing Program] will not be implemented in June 2024, due to the pause in the program,” and extended the date of implementation “until after such time as the execution of the legally-required tolling agreement among the Project Sponsors.” The resolution makes clear

that the MTA will be ready to move forward with the Program as soon as the final tolling agreement has been signed by all parties.¹⁸

The Governor's Decision Inflicts Immediate Harms.

78. Governor Hochul's sudden decision to stop the Congestion Pricing Program from going into effect deprives New Yorkers of necessary air quality benefits and greenhouse gas reductions that were required by law and relied on in official plans to achieve climate mandates.

79. Preventing the implementation of the Congestion Pricing Program means that New Yorkers will not see an immediate reduction of approximately 400,000 vehicle miles traveled each day.¹⁹ This reduction would have had significant near-term and ongoing benefits to air quality and achieving New York's climate mandates.

80. Preventing the implementation of the Congestion Pricing Program deprives New Yorkers of the Program's anticipated benefits to regional air quality. The Environmental Assessment concluded the Program would reduce levels of all pollutants in the New York City metropolitan area that are regulated under the Clean Air Act.²⁰

81. Residents and commuters are not experiencing the decrease of air pollutants expected under the Congestion Pricing Program that would have resulted in significant public health benefits. The final Environmental Assessment Reevaluation estimated that congestion pricing would sharply reduce particulate matter levels in the Central Business District by 11% and fine particulate matter by 10.49%.²¹

¹⁸ MTA, June 2024 MTA Board Action Items at 6, <https://new.mta.info/document/144021>.

¹⁹ EA Ch. 10 at 10-12, tbl.10-3, <https://new.mta.info/document/111101>.

²⁰ *Id.* at 10-21.

²¹ CBD Tolling Program Reevaluation at 93, tbl.10-3 (June 2024), <https://new.mta.info/document/142711> (hereinafter "Reevaluation").

82. In addition, with the decision to stop the Congestion Pricing Program from going into effect, the MTA will no longer be implementing the promised mitigation measures in environmental justice areas that would have decreased air pollution below existing, baseline levels. For example, the MTA committed to replacing up to 1000 highly polluting transport refrigeration units (“TRUs”) at the Hunts Point Market in the Bronx as part of the implementation of congestion pricing. Replacing just 100 TRUs would eliminate 21 tons per year of nitrogen oxides and 2.5 tons per year of fine particulate matter emissions.²²

83. With the halt of the Congestion Pricing Program, the MTA has stated that it will have to delay its planned purchases of electric buses and buildout of bus charging infrastructure. The MTA’s plans to use revenue from the Congestion Pricing Program to replace at least 250 diesel buses with electric, zero-emission buses would have further improved air quality throughout the city, particularly in low-income communities of color where the majority of MTA bus depots are located, and significantly reduced greenhouse gas emissions. The Scoping Plan highlights the importance of replacing diesel buses with electric buses, which have no tailpipe emissions, especially because of the immediate and meaningful public health benefits. The MTA had committed to prioritizing electric buses and charging infrastructure for depots in upper Manhattan and the Bronx as part of the Congestion Pricing Program. The planned purchase of at least 250 electric buses would have reduced carbon dioxide emissions by approximately 25,000 metric tons each year. Delays of the planned electric bus purchases in the upcoming capital budget due to the loss of revenue from the Congestion Pricing Program could jeopardize the MTA’s achievement of its commitment to an all-electric bus fleet by 2040 even if funding

²² EA Appendix 17D at 77, <https://new.mta.info/document/111101>.

becomes available later, because of long wait-lists for large orders from electric bus manufacturers.

84. The Governor's decision to prevent the elimination of over 400,000 vehicle miles traveled each day also has immediate climate impacts for the city. According to the Environmental Assessment, the Congestion Pricing Program would have reduced greenhouse gas emissions by at least 100,000 tons of carbon dioxide equivalent each year beginning immediately. Instead, vehicles continue to emit those greenhouse gases each day the Program is not in effect.²³ The decision to block congestion pricing has already resulted in the release of thousands of tons of avoidable carbon dioxide that will exacerbate climate change and put the State's greenhouse gas emissions limits further out of reach.

85. The Governor's decision to halt Congestion Pricing is directly contrary to the State's official plan for achieving the greenhouse gas reductions required by the CLCPA. As the New York Climate Scoping Plan makes clear, encouraging people to use public transit instead of personal vehicles is one of the best ways to reduce greenhouse gas emissions from the transportation sector. The Scoping Plan states that "mitigating single-occupant discretionary vehicle trips, associated vehicle congestion, and harmful GHG emissions" is a crucial strategy for the state to comply with the CLCPA. In fact, the Scoping Plan assumes that the Congestion Pricing Program will go into effect. It lists the Traffic Mobility Act as one of New York's climate leadership policies that have already been enacted and cites congestion pricing as a model for other market-based policies that could reduce emissions by pricing driving.

86. The Governor's block of congestion pricing is also financially disastrous. Because the decision deprives the MTA of desperately needed funding that is required to strengthen the

²³ Reevaluation at 92, tbl. 10-2, <https://new.mta.info/document/142711>.

use of public transit, each month the program remains blocked also represents a disinvestment in the same transit infrastructure that is required to meet the CLCPA's goals.

87. The amount of money that has already been committed to getting the Congestion Pricing Program ready for its June 30, 2024 launch date has been estimated at up to \$1 billion by the watchdog group Reinvent Albany. This figure includes a \$556 million contract for the tolling software, cameras, and other infrastructure that were ready to begin operations on June 30, as well as enormous amounts of staff time invested in developing and implementing the Congestion Pricing Program. MTA officials estimated that 600 people have worked on the plan, with some employees spending four years on it. Even the customer service required to support the Congestion Pricing Program was ready for deployment: The MTA has already spent \$33,000,000 and hired 100 employees for a dedicated customer-service center. Now the MTA faces a multi-billion-dollar shortfall in its capital budget, and stands to lose out on billions more in matching federal funds. As New York City's Independent Budget Office points out, the Governor's action "creates a major financial risk to the [MTA]'s ability to modernize and upgrade the largest transit system in North America," which jeopardizes its "ability to maintain and improve the transit system that New York City's economy relies on."²⁴

FIRST CAUSE OF ACTION

Failure to Comply with CLCPA Section 7(2)

88. Petitioners repeat and re-allege the allegations contained in each paragraph above and incorporate such allegations by reference as if set forth herein.

²⁴ Press Release, City of New York Independent Budget Office, *Cancelling Congestion Pricing Removes Largest Source of Funding for Transit Capital Plan Without Long-Term Alternative to Fund Crucial Repairs and Improvements* (June 6, 2024), <https://www.ibo.nyc.ny.us/pressreleases/press-release-congestion-pricing-gov-announcemnet-june-2024.pdf>.

89. The CLCPA requires all state executive branch decisionmakers, including state officers, to consider whether their decisions are inconsistent with or would interfere with New York's attainment of greenhouse gas reduction requirements established in Article 75 of the Environmental Conservation Law. CLCPA § 7(2).

90. It also requires a decisionmaker who concludes that a decision inconsistent with these limits is nonetheless justified to provide "a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located." CLCPA § 7(2).

91. The Governor's decision to block the congestion pricing program violated the obligations the Legislature imposed on all state decisionmakers through the CLCPA.

92. The decision plainly interferes with achieving the limits mandated by CLCPA. Rather than reducing greenhouse gas emissions, the decision increases them.

93. Neither the Governor nor her office has provided the required detailed justification, much less identified any alternatives or mitigation to ameliorate the enormous increase in greenhouse gas emissions that the Governor's decision is causing.

94. The Governor's decision therefore violates the CLCPA.

SECOND CAUSE OF ACTION

Violation of the New York State Constitution, Article I § 19

95. Petitioners repeat and re-allege the allegations contained in each paragraph above and incorporate such allegations by reference as if set forth herein.

96. The New York State Constitution guarantees that "[e]ach person shall have a right to clean air and water, and a healthful environment."

97. The state constitutional Environmental Rights Amendment sets forth fundamental rights.

98. Governor Hochul's decision to block the Congestion Pricing Program deprives New Yorkers of their right to the cleaner air that the State committed to when it enacted the Transit Mobility Act in 2019. It is a per se violation of the Environmental Rights Amendment.

99. Governor Hochul's decision to block the Congestion Pricing Program also violates the Environmental Rights Amendment because it infringes on a fundamental right, yet is not necessary or narrowly tailored to further a compelling state interest.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court:

- a) Pursuant to CPLR 7803(3) and 7806, enter judgment in favor of Petitioners and grant the relief required to vacate, annul, or otherwise undo the Governor's decision to block the Congestion Pricing Program;
- b) Pursuant to CPLR 3001, declare that Governor Hochul has violated the CLCPA and/or the New York State Constitution by blocking the Congestion Pricing Program, and that any actions that have been or will be taken, or failures to act, by the State Department of Transportation or its Commissioner in furtherance of Governor Hochul's decision to block the Congestion Pricing Program, violate the CLCPA and/or the Constitution;
- c) Pursuant to CPLR 7806, enjoin Governor Hochul, the State Department of Transportation, and the Commissioner of Transportation from continuing to block the Congestion Pricing Program, and enjoin Governor Hochul, the State Department of Transportation, and the Commissioner of Transportation to take whatever actions are necessary to vacate, annul, or otherwise undo the Governor's unlawful decision to block the Congestion Pricing Program;
- d) Award Petitioners costs, fees, and disbursements incurred in connection with

these proceedings; and,

e) Grant such other and further relief as this Court deems just and proper.

Dated: July 24, 2024
New York, NY

Respectfully submitted,

EARTHJUSTICE

By:



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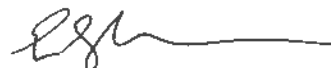
*Counsel for Petitioners
Riders Alliance, Sierra Club, and
New York City Environmental
Justice Alliance*

VERIFICATION

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) ss.:

Elizabeth Plum, being duly sworn, hereby affirms under penalty of perjury: I am the Executive Director of Riders Alliance, and I have authority to approve the foregoing petition on behalf of Riders Alliance. Riders Alliance is joined in interest and pleading together with the other parties in this matter. I have reviewed the petition and know its contents. The petition is true to my knowledge, except to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I make this verification under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Elizabeth (Betsy) Plum

Sworn before me this 24th
 day of July, 2024.

Melissa Anne Legge
 NOTARY PUBLIC, STATE OF NEW YORK
 Registration No. 02LE6397265
 Qualified in Kings County
 Commission Expires 09 03 2025

NOTARY PUBLIC

