

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

THE CITY CLUB OF NEW YORK, CHRISTINE
BERTHET, KATHLEEN TREAT

Index No.

Petitioners-Plaintiffs,

-against-

VERIFIED PETITION

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, TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY,
METROPOLITAN TRANSPORTATION
AUTHORITY,

**ORAL ARGUMENT
REQUESTED**

Respondents-Defendants.

Petitioners- Plaintiffs the City Club of New York, Christine Berthet, and Kathleen Treat (collectively, “Petitioners”), by and through their attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, for their Verified Petition, allege as follows:

PRELIMINARY STATEMENT

1. “From time to time, leaders are called upon to envision a better future, be bold in the implementation and execution, and be undaunted by the opposition,” Governor Kathy Hochul said at a rally in December, championing New York’s soon-to-be-implemented congestion pricing program. “This is when we demonstrate leadership,” she added.¹

2. Over five years ago, the New York State Legislature had accomplished what the Governor described, passing bold, historic legislation in the Traffic Mobility Act (the “TMA” or the “Act”) to implement a program that would use a pricing scheme to reduce traffic within

¹ Grace Ashford et al., *How Governor Hochul Decided to Kill Congestion Pricing in New York*, N.Y. Times (Jun. 9, 2024), <https://perma.cc/N57S-AT2S>.

Manhattan’s central business district, raise significant revenue to upgrade New York’s crumbling public transportation infrastructure, and reduce carbon and co-pollutant emissions to ensure that New Yorkers can breathe cleaner air today and protect the environment for future generations.

3. The congestion pricing program enacted by the Act—the Central Business District Tolling Program (the “CBDTP”)—was the culmination of decades upon decades of expert analyses and studies, efforts by prior New York City and State administrations, and extensive public consultation and input from community groups, experts, advocacy organizations, activists, and everyday New Yorkers. Whether one supports congestion pricing or opposes it, one thing is clear: the CBDTP reflects democracy at work, the give-and-take of policy and politics that results in the enactment of law—a law to which all must adhere.

4. Governor Hochul has long recognized the historic and essential nature of the CBDTP. She has described it as a “program [] critical to New York City’s long-term success.”² She has championed the program for years, boasting that the CBDTP “will be a model for the nation” that will support total public transportation “without creating an undue financial burden.”³ She consistently hewed to this position throughout the COVID-19 pandemic and beyond.

5. But, in a shocking about-face, on June 5, 2024—less than a month before the CBDTP was scheduled to launch—Governor Hochul announced that she was purportedly “directing the [Metropolitan Transportation Authority] to indefinitely pause the program.”⁴

² Press Release, Kathy Hochul, Governor, New York, *Governor Hochul Announces Central Business District Tolling Program Final Environmental Assessment and Draft ‘Finding of No Significant Impact’ Now Available* (May 12, 2023), <https://perma.cc/76FG-TWY7>.

³ *Unlike Mayor Adams, Gov. Hochul’s Support for Congestion Pricing Toll is Full-Throated*, Streetsblog (Nov. 30, 2023), <https://perma.cc/3ZA8-J88N>.

⁴ Forbes Breaking News, *BREAKING: New York Gov. Kathy Hochul Announces Indefinite Pause On NYC Congestion Pricing*, YouTube (Jun. 5, 2024), <https://perma.cc/SH89-E8TA>

6. As powerful as a governor is, this Governor has no legal authority—none—to “direct” the Metropolitan Transportation Authority (the “MTA”) to “pause” the CBDTP, much less to directly use her powers as the State’s chief executive to do so. By the express design of the New York State Legislature, the *only* state actor empowered to control—and mandated to implement—the CBDTP is the Triborough Bridge and Tunnel Authority (the “TBTA”), a creature of the MTA. The key provision is clear and unambiguous: “Notwithstanding any law to the contrary . . . the [TBTA] *shall* . . . plan, design, install, construct, and maintain a central business district toll collection system and implement and operate the same to collect the central business district toll.”⁵ The mandate to implement congestion pricing rests exclusively with the TBTA; the Governor has no say in the matter. That is the law.

7. Accordingly, Governor Hochul’s purported “pause” of the CBDTP is, quite literally, lawless: it lacks any basis in the law as democratically enacted.

8. Notwithstanding this, but intent on blocking the CBDTP nonetheless, the Governor hit upon a technical means to block congestion pricing: she directed the New York State Department of Transportation (the “State DOT”) to refrain from engaging in a ministerial act necessary to implement the program.

9. The MTA has already spent hundreds of millions of dollars—some estimates amount to nearly \$700 million—studying the program and planning for its implementation, including to design and install the necessary tolling infrastructure, such as toll cameras, sensors, and gantries. By May 2024, the tolling system was physically complete and simply needed to be switched on.

⁵ N.Y. Vehicle & Traffic L. § 1704(3)(a)-(b) (emphasis added).

10. As a technical matter, the last bureaucratic step necessary for the implementation of the CBDTP is the execution of a road-tolling agreement promulgated by the Federal Highway Administration (the “FHWA”). The signatories to that agreement are the FHWA, the TBTA, the MTA, and the New York City Department of Transportation (the “City DOT”), which controls the streets and roads that are being tolled. State DOT, as the technical “sponsor” of the program, is also a proposed signatory, but its role as signatory is ministerial.

11. Like the Governor, State DOT has no statutory authority over the decision to launch CBDTP. Moreover, as a practical matter, State DOT has no ongoing substantive role in the implementation or operation of the program at all. Far from providing the Governor with a lever to exercise power over the program, the sole reason that State DOT is a signatory to the FHWA agreement is that some tolling infrastructure—the gantries that record entry into the zone—are located on the West Side Highway, which State DOT maintains. Those gantries are in place and ready to be operated by the TBTA once tolling begins.

12. In order to block the CBDTP, Governor Hochul ordered State DOT to withhold its signature from the FHWA tolling-related agreement. State DOT, through its gubernatorially-appointed Commissioner, has done so. This refusal to engage in the ministerial act of signing the FHWA agreement is all that prevents the implementation of the CBDTP.

13. In a resolution passed on June 26, 2024, in the wake of the Governor’s announcement of a “pause,” the MTA’s Board of Directors confirmed that the TBTA remains ready, willing, and able to move forward with the CBDTP as soon as possible. Were the FHWA agreement signed by all parties—or were State DOT’s signature judicially declared unnecessary—the CBDTP would proceed, and congestion pricing would immediately become a reality.

14. Rather than being “bold” or “demonstrate leadership,” the Governor’s arbitrary action in ordering her State DOT Commissioner not to take the ministerial step of signing the FHWA road-tolling agreement is *ultra vires*, violates separation of powers by, in effect, overriding the Legislature’s expressed directive, and is in violation of the Traffic Mobility Act, which grants sole authority to implement the CBDTP to the TBTA and the MTA, and which mandates that the CBDTP proceed.

15. This is a case about democracy and executive overreach. After years of discussion and debate, our State’s democratic processes yielded a plan: the TBTA and the MTA would establish, implement and operate a congestion pricing plan for the Central Business District of Manhattan, and they would do so free from interference by other actors in the State governmental system. Governor Hochul’s “pause,” which she effectuated by directing her Transportation Commissioner not to perform the ministerial act of signing a routine agreement with the federal government, undermines the balance between the Legislature and the Executive struck by the democratic process and, thus, violates state law.

16. This Court must declare the Governor’s “pause” unlawful and order Respondents-Defendants to execute the FHWA road-tolling agreement so that the TBTA and MTA can implement, in accordance with the MTA’s recent Resolution, the CBDTP forthwith pursuant to the authority and mandate granted to it by the New York State Legislature.

PARTIES

17. Petitioner-Plaintiff, the City Club of New York (the “City Club”) is a not-for-profit corporation with its offices located at 9 West 20th Street, Apt. 12, New York, New York 10011. It was founded in 1892 to promote effective and honest government in New York City. The City Club is a membership organization, and many of its members are individuals who, as residents of New York City and users of New York City’s transit system, are adversely affected

by the Governor's "pause" of the CBDTP and would continue to be harmed absent its implementation. Its mission today is to promote thoughtful urban land use policy that responds to the needs of all New Yorkers, including issues directly related to the environment and governmental practices. Among other advocacy efforts, the City Club has been a steadfast advocate for the implementation of congestion pricing in New York City for decades, as well as for environmental and urban land use projects that depend on the revenue raised by congestion pricing. For example, the City Club's advocacy was responsible for the commission of a study to redesign Route 9A and re-envision the West Side Waterfront to address planned pedestrian, bicycle and vehicular use as well as retain stormwater and enhance resiliency to adapt to climate change and tidal surges—none of which can occur without the CBDTP's implementation.

18. Petitioner-Plaintiff Christine Berthet has lived in Hell's Kitchen, what will be the heart of the congestion pricing zone, only one block from the Lincoln Tunnel, for the last 45 years. Because of the traffic near the Tunnel, her neighborhood has the third worst air quality in the City and has constant noise pollution that reaches into her apartment, affecting her ability to enjoy her own property, and is so unbearable outside that she cannot spend time around the neighborhood outdoors either. She is the co-founder of CHEKPEDS, an organization dedicated to pedestrian safety. Ms. Berthet is also active on Community Board 4. She uses public transportation daily as part of her advocacy work and for personal use. However, she often cannot access busses she needs because the constant bumper-to-bumper traffic in her neighborhood results in cars clogging the bus lane. Recently, while trying to get to a medical appointment, Ms. Berthet had to stand in the bus lane in order to prevent cars from entering and blocking her from being able to board the bus she needed to take. She and others in the neighborhood often avoid entire bus lines because the traffic jams make the busses slower than

walking to their destinations. Ms. Berthet would benefit both from the reduced traffic flow in her neighborhood as well as better funding of the bus routes she needs. She will continue to suffer harm as a result absent the CBDTP's implementation.

19. Petitioner-Plaintiff Kathleen Treat has lived in Hells Kitchen, what will be the heart of the congestion pricing zone, since 1986. She lives with her husband, who is a Vietnam War veteran, uses a wheelchair daily, and is the co-founder of CHEKPEDS, an organization dedicated to pedestrian safety. Ms. Treat and her husband do not own a car and take public transportation everywhere. Ms. Treat and her husband take the bus due to her husband's mobility impairments, as busses are typically wheelchair accessible, while not all subway stations are. Ms. Treat and her husband stand to benefit greatly from the accessibility upgrades to the subway system planned because of the CBDTP's anticipated revenue-generation. Petitioner-Plaintiff Treat also lives very close to the Lincoln Tunnel and feels the intense effects of the severe gridlock nearby. She is constantly overwhelmed by the honking, noise, pollution, and gridlock that results from the constant traffic, often causing her and her husband long delays when they travel somewhere by bus. She will continue to suffer harm as a result absent the CBDTP's implementation.

20. Respondent-Defendant Governor Kathy Hochul is the Governor of the State of New York and is sued in her official capacity. Pursuant to Article IV, Section 1 of the New York Constitution, "[t]he executive power shall be vested in the governor."

21. Respondent-Defendant the New York State Department of Transportation is the New York state government agency that is responsible for coordinating and assisting in the development and operation of highway, railroad, mass transit, port, waterway and aviation facilities in the State of New York.

22. Respondent-Defendant Marie Therese Dominguez is the Commissioner of the State DOT and is sued in her official capacity. Pursuant to Article V, Section 4 of the New York Constitution, the Commissioner of the State DOT “shall be appointed by the governor by and with the advice and consent of the senate and may be removed by the governor, in a manner to be prescribed by law.” On June 20, 2019, Commissioner Dominguez was confirmed by the New York State Senate to serve as the State DOT Commissioner.

23. Respondent-Defendant the Metropolitan Transportation Authority is a public benefit corporation responsible for public transportation in the New York City metropolitan area of the U.S. state of New York. *See* N.Y. Pub. Auth. L. § 1263. The MTA is named solely as a necessary party to this action pursuant to CPLR § 1001.

24. Respondent-Defendant the Triborough Bridge and Tunnel Authority, also known as MTA Bridges and Tunnels, is a public benefit corporation with 17 ex-officio board members comprised of the chair and board members of the MTA, with the executive director of the MTA as its ex officio executive director. *See* N.Y. Pub. Auth. L. § 552(1). The TBTA is named solely as a necessary party to this action pursuant to CPLR § 1001.

VENUE AND JURISDICTION

25. This Court, as a court of general jurisdiction, has subject-matter jurisdiction over and is competent to adjudicate the causes of action set forth in this Verified Petition.

26. This Court has jurisdiction over Petitioners’ claims brought under CPLR Article 78 pursuant to CPLR § 7804(b). This Court has jurisdiction pursuant to CPLR § 3001 to grant declaratory relief and CPLR § 6001 to grant injunctive relief.

27. Venue properly lies in this Court pursuant to CPLR § 503, CPLR § 505(a), and CPLR § 506(b), as a substantial part of the events giving rise to the claims arose in New York County, congestion pricing would be imposed on entries into New York County, the claims are

asserted against State agencies and officers with respect to facilities located in New York County, the claims concern decisions made in New York County and refusals to perform a duty in New York County, and because Petitioners reside in New York County.

NO PRIOR APPLICATION

28. No prior application for relief sought herein has been made by Petitioners in this or any other court.

FACTS

History of Congestion Pricing in New York City

29. For nearly a century, New York City administrations have considered, studied and debated ways to reduce vehicular traffic in New York City's central business districts by implementing tolls to crossings into Manhattan. Reducing traffic in the core of Manhattan and reducing air pollution to protect the environment and the health of New Yorkers were traditionally a primary goal, but today, so too are raising revenue for the City and its public transportation network.

30. Ever since tolls on New York City's bridges were installed in the late 1800s and early 1900s, and then quickly removed before the Great Depression, bridge- and road-tolling has never been an easy lift in New York politics. In 1933, in the midst of the Great Depression, New York City Comptroller Charles W. Berry tried to reinstate tolls on the Brooklyn, Manhattan, Williamsburg, and Queensboro Bridge across the East River in order to raise revenue for the City; these plans, which were wildly unpopular to say the least, were cancelled by Mayor Fiorello H. La Guardia in the face of public opposition.

31. In the late 1960s and early 1970s, Mayor John Lindsay proposed banning cars from certain areas of Manhattan and implementing tolls on the Harlem River and East River bridges. Those plans too were also abandoned—as were similar efforts by Mayor Ed Koch in

the 1980s.

32. In 2007, Mayor Michael Bloomberg—faced with choking traffic in Manhattan’s core and a need for revenue for mass transit—re-introduced road-tolling to the public discussion; he called it “congestion pricing.” His plan was to charge drivers \$8 to enter Manhattan below 86th Street. “As the city continues to grow, the costs of congestion—to our health, to our environment, and to our economy—are only going to get worse,” Mayor Bloomberg said in an Earth Day address. “. . . 95 percent of New Yorkers will benefit not only from less congestion on roads in all five boroughs and cleaner air and faster buses but also—with the revenue generated from congestion pricing—from new investments in mass transit. And that’s something we definitely need.”⁶ But in 2008, Mayor Bloomberg’s plan died in the State Legislature, a victim of concentrated opposition from certain constituencies, and a failure of political will.

33. Subsequent plans, such as a 2015 proposal by former New York City Traffic Commissioner Sam Schwartz, “Move NY,” also failed to gain traction in the Legislature.

34. In 2017, with the MTA being in dire need of funds and complaints about slow bus speeds and the subway’s delays and disrepair on the rise, Governor Andrew Cuomo again revived the idea of congestion pricing, describing it as “an idea whose time has come.”⁷ The discussion that followed—among policy-makers, legislators, experts, and the public—was robust, and two years later, the matter was finally put to a vote in the New York State Legislature.

⁶ Observer Staff, *Mayor Michael Bloomberg’s Earth Day Speech: ‘A Greener, Greater New York’*, The Observer (Apr. 23, 2007), <https://perma.cc/C6HS-6YU3>.

⁷ Marc Santora, *Cuomo Calls Manhattan Traffic Plan an Idea ‘Whose Time Has Come’*, N.Y. Times (Aug. 13, 2017), <https://perma.cc/Y4J8-R7EE>

The Traffic Mobility Act

35. On April 1, 2019, the Legislature enacted the Traffic Mobility Act. The TMA is the legal basis for congestion pricing. Formally known as the Central Business District Tolling Program, the congestion pricing program was established as part of the Fiscal Year 2020 State Budget, Chapter 50 of the Laws of 2019 (S. 1509C (Ny. 2019); A.B. 2009C (Ny. 2019)). The key elements of the CBDTP are codified in the New York State Vehicle and Traffic Law.⁸

36. In the legislative findings enshrined in the TMA, the Legislature declared that breakdowns and disrepair of 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 business and commerce in the metropolitan commuter transportation district, which is the recognized economic engine of the state of New York, and thereby have adversely affected the economy of the state of New York."⁹

37. The Legislature further "determine[d] 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."¹⁰

38. In the TMA, the Legislature also found that traffic in New York City—which "ranks second worst among cities in the United States and third worst among cities in the world" and is estimated to cost the New York metropolitan area economy more than "one hundred billion dollars over the next five years"—is "crippling and impacts the everyday lives of residents, commuters, taxi and for-hire vehicle traffic, bus transit and emergency services, and is a significant contributor to decreased air quality."¹¹

⁸ See N.Y. Vehicle & Traffic L. § 1701 *et seq.*

⁹ N.Y. Vehicle & Traffic L. § 1701.

¹⁰ *Id.*

¹¹ *Id.*

39. Finally, the Legislature concluded: “In order to ensure a safe and efficient mass transit system within the city of New York and to protect the public health and safety of New York’s residents, a program to establish tolls for vehicles entering or remaining in the most congested area of the state is found to be necessary and to be a matter of substantial state concern.”¹²

40. The TMA provides that the CBDTP “will operate in the central business district” of Manhattan, defined as the area south of and inclusive of 60th Street, but excluding FDR Drive and the West Side Highway.¹³

41. The Act tasked the TBTA with establishing and operating the CBDTP.¹⁴ The TBTA is a public benefit corporation with 17 ex-officio board members comprised of the chair and board members of the MTA, with the executive director of the MTA as its ex officio executive director.¹⁵

42. The Act further provides that the TBTA “*shall* enter into a memorandum of understanding” with the City DOT for purposes of planning, design, installation, construction, and maintenance of the CBDTP infrastructure¹⁶; that “[n]otwithstanding any law to the contrary,” the TBTA “*shall* plan, design, install, construct, and maintain the [CBDTP] tolling infrastructure”¹⁷; and “*shall* . . . plan, design, install, construct, and maintain a central business district toll collection system and implement and operate the same to collect the central business district toll.”¹⁸

43. The Act granted the TBTA the sole discretion to set the start date for the CBDTP,

¹² *Id.*

¹³ *Id.* § 1704(2).

¹⁴ N.Y. Vehicle & Traffic L. § 1704(1).

¹⁵ N.Y. Pub. Auth. L. § 552(1).

¹⁶ N.Y. Vehicle & Traffic L. § 1704(2-a) (emphasis added).

¹⁷ *Id.* § 1704(3)(a) (emphasis added).

¹⁸ *Id.* § 1704(3)(b) (emphasis added).

defining the term “operation date” to mean “the date determined by the [TBTA], which shall not be earlier than December [31, 2020], for the beginning of the operation and enforcement of the [CBDTP],” which “*shall* commence only after an initial program testing period of thirty days where no collection of any tolls, fees, or other charges shall be authorized.”¹⁹

44. The Act further mandates that all CBDTP infrastructure, including the toll collection system and customer service center, “*shall* be completed by the operation date.”²⁰

45. The TBTA originally set the start date for the beginning of 2024 before pushing it to the start of the second quarter of 2024, and ultimately set the official start date for June 30, 2024.

46. The Act did not give the State DOT any role in establishing, implementing the infrastructure for, or operating the CBDTP.

47. The Legislature’s intent in passing the Act, as reflected in its plain language, was to grant *sole authority* to the TBTA to establish, implement, and operate the CBDTP, free from interference by other state government actors. Empowering and directing a public authority, like the TBTA, to undertake the sensitive task of implementing politically-sensitive road-tolling is a time-honored way to ensure that, once a broad policy is settled on, difficult details—like when to launch the new program, how much to charge drivers, and whom to exempt—are removed from the direct control of elected officials and left in the hands of technocratic bureaucratic agencies.

48. The Legislature’s intent to de-politicize the implementation of the CBDTP echoes the history of the MTA itself. One of the MTA’s predecessor agencies, the New York City Transit Authority (the “NYC Transit Authority”), was created in 1953 specifically to transfer control over New York City’s mass transit system from the City Board of Transportation—an

¹⁹ N.Y. Vehicle & Traffic L. § 1703(8) (emphasis added).

²⁰ *Id.* § 1704(4) (emphasis added).

agency under the Mayor’s control—to an agency “independent of the other branches of government.”²¹ The explicit intent of the NYC Transit Authority’s creation was to insulate the City’s transportation system from the whims of political actors. As argued by progressive Republican lawyer Paul Windels, who spearheaded the NYC Transit Authority’s creation, leaving the City’s transportation services in the hands of a politically-controlled agency “jeopardized the public interest by putting the subways at the mercy of shortsighted politicians who played to the fickle crowd.”²² In 1968, the NYC Transit Authority was folded into the MTA.

49. Further demonstrating that intent and reflective of that tradition, the Legislature in 2019 created the Traffic Mobility Review Board (“TMRB”), tasked with holding public hearings and recommending the toll amounts to be charged under the CBDTP.²³ The TMRB was created as a mechanism to provide the public as well as state officials and agencies with transparency and an opportunity for meaningful input on congestion pricing, while insulating the CBDTP from direct control by the Executive and her agencies.

Five Years of Approval Processes and Steps Towards Implementation

50. Following the Traffic Mobility Act’s enactment, on June 17, 2019, the CBDTP plan was submitted to the FHWA for approval pursuant to the Value Pricing Pilot Program (“VPPP”). Established by Congress in 1991 as the Congestion Pricing Pilot Program, the VPPP was “intended to demonstrate whether and to what extent roadway congestion may be reduced through application of congestion pricing strategies, and the magnitude of the impact of such

²¹ Clifton Hood, *Subways, Transit Politics, and Metropolitan Spatial Expansion, in Landscape of Modernity: Essays on New York City 1900-1940* (David Ward et al. eds., 1992), <https://perma.cc/EWG5-BZKN>.

²² *Id.*

²³ S. 1509C § 533-K (Ny. 2019); A.B. 2009C § 533-K (Ny. 2019), <https://www.nysenate.gov/legislation/bills/2019/A2009>.

strategies on driver behavior, traffic volumes, transit ridership, air quality and availability of funds for transportation programs.”²⁴

51. Although Congress has not set aside any new federal funds for the VPPP for years, the FHWA continues to require applications for VPPP-related tolling projects on federal-aid highways, and requires states to execute a tolling agreement with FHWA to receive authorization to impose such tolls. In general, the FHWA requires, through its agreement with state and local agencies, that the revenues collected from tolls on Federal-aid highways be used to maintain those highways and not for other purposes.

52. In the case of the CBDTP, however, the FHWA and other signatories to the road-tolling agreement contemplated a somewhat different scheme: all understand and agree that revenues from the CBDTP will not be used to maintain Federal-aid highways—they will be used to support mass transit in New York City, *i.e.*, to pay for the repair and upgrade of the assets of the MTA.

53. The project sponsors of the CBDTP application to FHWA were the TBTA, the City DOT, and the State DOT (together, the “Project Sponsors”).

54. The State DOT was a project sponsor solely because of the need to install tolling infrastructure on the West Side Highway, Route 9A—which is not within the Central Business District Tolling area but is adjacent to it. That installation is now complete, and the infrastructure in question—the gantries that will monitor traffic and register vehicles for tolling—will be operated by the TBTA, not the State DOT. The State DOT has no practical or ongoing role in the implementation of the CBDTP, which is under the sole purview of the TBTA

²⁴ *Value Pricing Pilot Program*, U.S. Department of Transportation Federal Highway Administration, <https://perma.cc/D4NT-L5X2> (last visited July 24, 2024).

and the City DOT.

55. Once the CBDTP was submitted for FHWA approval, a lengthy review and approval process ensued over the next two years, with the Project Sponsors working closely with the FHWA so that the latter could assess the environmental impacts of the CBDTP prior to the preparation of an Environmental Assessment (“EA”) in accordance with the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*

56. Eventually, in September 2021, the Project Sponsors began preparing an EA, initiating a robust public-consultation process, engaging stakeholders in order to incorporate public input in the final EA. This process included several webinars and public hearings, which thousands of individuals attended. Ultimately, the FHWA and Project Sponsors received approximately 70,000 submissions on the draft EA in the form of hearing testimony, letters, emails, voicemails, and online comments from residents, advocacy groups, businesses, and government agencies. The results were issued in May 2023.

Governor Kathy Hochul Consistently Champions the CBDTP Following Approval

57. In May 2023, following two years of engagement with stakeholders, experts, and the public, the Project Sponsors released the Final Environmental Assessment for the Central Business District Tolling Program and a draft “Finding of No Significant Impact,” prepared by the FHWA, beginning a 30-day public notice period.²⁵

58. With that May 2023 release, Governor Kathy Hochul said: “This is a significant milestone, bringing us closer to a future where New Yorkers have cleaner air, better public transit and less traffic clogging our streets. This program is critical to New York City’s long-

²⁵ *Data Finding of No Significant Impact Central Business District (CBD) Tolling Program*, U.S. Department of Transportation Federal Highway Administration (Apr. 2023), <https://perma.cc/972B-RAUH>.

term success, ensuring our commuters and businesses are able to grow and thrive.”²⁶

59. In June 2023, Governor Hochul held a press conference announcing the FHWA’s issuance of a final Finding of No Significant Impact, marking the completion of the FHWA’s environmental review of the CBDTP. “Congestion pricing will reduce traffic in our crowded downtown, improve air quality and provide critical resources to the MTA,” Governor Hochul said. “I am proud of the thorough Environmental Assessment process we conducted, including responding to thousands of comments from community members from across the region. With the green light from the federal government, we look forward to moving ahead with the implementation of this program.”²⁷

60. At another press conference in November 2023, Governor Hochul again boasted that the CBDTP would be crucial to “protecting and cleaning up our environment, protecting the quality of air, protecting mobility on our streets and also protecting our financial stability of the MTA because without that, it all collapses.” She noted that the CBDTP “will be a model for the nation without creating an undue financial burden because we have public transportation at a very affordable cost for those families that are in need,” concluding: “We’re going to do it here, we’re going to do it successfully, and we’ll have the resources to make sure we keep investing in that lifeline of our region.”²⁸

61. In December 2023, in a joint press release with Mayor Eric Adams, Governor Hochul highlighted the “nation-leading congestion pricing program,” which would “generate

²⁶ Press Release, Governor Hochul Announces Central Business District Tolling Program Final Environmental Assessment and Draft ‘Finding of No Significant Impact’ Now Available, *supra* note 2.

²⁷ Press Release, Kathy Hochul, Governor, New York, Governor Hochul Announces First-in-Nation Congestion Pricing Will Move Forward, Improving Air Quality and Reducing Traffic (Jun. 27, 2023), <https://perma.cc/3GF4-MP7F>.

²⁸ *Unlike Mayor Adams, Gov. Hochul’s Support for Congestion Pricing Toll is Full-Throated*, Streetsblog, *supra* note 3, <https://perma.cc/3ZA8-J88N>.

billions in revenue for the MTA and improve overall regional air quality.”²⁹

62. By May 2024, and consistent with the Act, the MTA had designed, constructed, and fully installed the necessary infrastructure for the program, including toll collection gantries with automatic transponders.

63. The Governor’s championing of the CBDTP was warranted. Not only was the program primed to reduce New York’s endemic traffic gridlock and to significantly curb carbon emissions, as well as conventional air pollutants that endanger human health, but the program was also expected to add approximately \$16.5 billion to the MTA’s Capital Budget over the next three years to fund much-needed service and infrastructure upgrades for the City’s subway system. Now, countless anticipated projects are in jeopardy.

The State DOT Previously Agreed with Petitioners in Response to Legal Challenges to the CBDTP

64. Unsurprisingly, with the CBDTP on track to commence on June 30, 2024, affected constituencies—including the State of New Jersey and upstate drivers who would be subject to the toll—filed a raft of lawsuits seeking to block the program. The State DOT was named as a defendant/respondent in those cases—and, importantly, that agency’s position in those cases was nearly identical to Petitioners’ allegations herein. All agree: the State DOT has *no* legal authority under the CBDTP or role in its implementation.

65. From July 2023 through May 2024, several lawsuits were filed seeking to delay or cancel the plan. On June 20, 2024, Judge Lewis J. Liman, United States District Judge for the Southern District of New York largely dismissed three related lawsuits—*Mulgrew et al. v. U.S. Department of Transportation et al.*, No. 24-cv-1644 (S.D.N.Y.), *New Yorkers Against*

²⁹ Press Release, New York City Economic Development Corporation, Mayor Adams, Governor Hochul Announce Progress Building A More Inclusive, Prosperous “New” New York After One Year (Dec. 14, 2023), <https://perma.cc/9GNV-H2ZM>.

Congestion Pricing Tax et al. v. U.S. Department of Transportation et al., No. 24-cv-367 (S.D.N.Y.), and *Chan et al. v. U.S. Department of Transportation et al.*, No. 23-cv-10365 (S.D.N.Y.)—all of which sought to prevent the implementation of the CBDTP by bringing claims under the NEPA.³⁰

66. In seeking dismissal of those lawsuits, State DOT agreed that it has no authority under the TMA or role in the implementation of the CBDTP: “The Traffic Mobility Act does not mention the [New York State] Department [of Transportation], let alone assign any responsibilities to it. . . . As a result, the Department and its officials have no authority to set or collect any congestion tolls.”³¹

67. In response to the plaintiffs’ assertion of a violations of the United States Constitution and the Green Amendment to New York’s Constitution, the State DOT further argued that it was not the proper party to be sued: “[E]ven if there were such a violation [of the United States Constitution], it would arise from the tolls over which the Department and its chief engineer have no responsibility. . . . Even if there were such a violation [of the Green Amendment], however, it would not be the predicate for a valid claim against the Department’s chief engineer given that the Department has no role in setting or collecting the tolls.”³²

68. The State DOT doubled down the position that TBTA, not State DOT, was the sole agency with authority over congestion pricing. State DOT argued that any “violations of the federal dormant commerce clause and the right to travel that plaintiffs allege would arise only

³⁰ Other lawsuits remain pending, including two cases pending in New Jersey. *See State of New Jersey v. U.S. Dep’t of Transp.*, No. 23-cv-3885 (D.N.J.); *Sokolich, et al. v. U.S. Dep’t of Transp.*, No. 23-cv-21728 (D.N.J.); *see also Trucking Ass’n of NY v. MTA*, No. 24-cv-4111 (S.D.N.Y.).

³¹ *Chan v. U.S. Dep’t of Transp.*, 23-cv-10365, ECF No. 62 (Mot. to Dismiss) at 3 (S.D.N.Y. Apr. 1, 2024) (“*Chan MTD*”); *Mulgrew v. U.S. Dep’t of Transp.*, 24-cv-1644, ECF No. 50 (Mot. to Dismiss) at 2 (S.D.N.Y. Mar. 18, 2024) (“*Mulgrew MTD*”); *New Yorkers Against Congestion Pricing Tax v. U.S. Dep’t of Transp.*, 24-cv-367, ECF No. 60 (Mot. to Dismiss) at 2 (S.D.N.Y. Mar. 18, 2024) (“*NYACPT MTD*”).

³² *Chan MTD*, *supra* note 31 at 13–15; *Mulgrew MTD*, *supra* note 31 at 14–15; *NYACPT MTD*, *supra* note 31 at 14–15.

from the congestion tolls, which are [TBTA's] responsibility" and that State DOT did not have "any input into the tolling scenarios developed for the assessment or, more importantly, the final tolls selected, an issue that by state statute is *solely* [TBTA's] responsibility."³³

69. The State DOT further argued that it could not violate the United States Constitution because its chief engineer is "a state official with *no responsibility* for the act that purportedly violates the Constitution—here, the tolling"; that the State DOT is a department "*without any [] responsibility*" under the TMA; and that "neither the Department nor its chief engineer have *ever had responsibility* for the federal defendants' NEPA decisions or [TBTA's] tolling decisions."³⁴

70. Similarly, in disclaiming any responsibility due to its role as a Project Sponsor of the FHWA application, State DOT argued that "[w]hile the Department helped prepare the environmental assessment," the decision-making process and ultimate FONSI "are solely federal defendants' responsibility."³⁵

71. Finally, State DOT acknowledged that it has no authority to unilaterally "pause" the CBDTP. In arguing that an injunction against its chief engineer "to prevent tolling from starting" would be "neither necessary nor sufficient to stop the tolling," the State DOT noted that to stop the CBDTP's implementation, it would need to "either enjoin the federal defendants from entering into [the tolling agreement with the FHWA] authorizing the tolling or enjoin [TBTA] from beginning the tolling" and that there would be "no need or basis for an injunction against [State DOT's chief engineer] to stop the Department from allowing its roads to be used for

³³ Chan, ECF No. 80 (Reply) at 7 (Apr. 22, 2024) ("*Chan Reply*") (emphasis added); Mulgrew, ECF No. 71 (Reply) at 7 (Apr. 22, 2024) ("*Mulgrew Reply*") (emphasis added).

³⁴ Chan Reply, *supra* note 33 at 8 (emphasis added); Mulgrew Reply, *supra* note 33 at 8 (emphasis added).

³⁵ Chan Reply, *supra* note 33 at 6; Mulgrew Reply, *supra* note 33 at 6.

tolling.”³⁶

Governor Hochul’s 180-Degree Reversal

72. On June 5, 2024, less than a month before the MTA was set to implement the CBDTP, Governor Hochul reversed course and “directed the MTA to indefinitely pause congestion pricing to avoid added burdens to working- and middle-class families.”³⁷

73. The Governor’s statement and purported indefinite “pause” was a shocking reversal of the Governor’s longstanding commitment to timely implementing the CBDTP which had fully assessed the effect on all interested parties, including all groups affected by the CBDTP.

74. In her announcement, Governor Hochul did not explain any legal basis, authority, or justification—or give any other additional explanation—underlying her purported “pause” of the CBDTP. Notably, she made no mention of State DOT or the FHWA road-tolling agreement.

75. On June 10, 2024, MTA officials issued a joint press release regarding the Governor’s purported “pause” of the CBDTP, reiterating that “New York State law places an obligation on MTA to implement a congestion pricing program, and the agency stands ready to do so.”³⁸

76. The MTA’s June 10 press release noted, however, that “with the announcement of the pause, we no longer have the State’s consent,” citing “applicable federal law and regulation.”³⁹ The MTA’s announcement is an apparent reference to the VPPP’s requirement

³⁶ Chan Reply, *supra* note 33 at 12; Mulgrew Reply, *supra* note 33 at 12.

³⁷ Press Release, Kathy Hochul, Governor, New York, What They Are Saying: Support Grows as Governor Hochul Pauses Congestion Pricing to Address the Rising Cost of Living in New York (Jun 6, 2024), <https://perma.cc/4RRF-ZH7C>.

³⁸ Press Release, Kevin Willens and Paige Graves, Chief Financial Officer and General Counsel, Metropolitan Transportation Authority, Joint Statement from MTA Chief Financial Officer Kevin Willens and MTA General Counsel Paige Graves (Jun. 7, 2024), <https://perma.cc/8Q3K-7KCG>

³⁹ *Id.*

that the Project Sponsors—including State DOT—provide their signature on a tolling agreement with the other Project Sponsors and the FHWA prior to the CBDTP’s implementation (the “Tolling Agreement”).

77. On June 14, 2024, the FHWA issued a “reevaluation” of the CBDTP, “confirm[ing] that the adopted toll structure is within the analysis conducted in the Final Environmental Assessment and does not require additional analysis under the National Environmental Policy Act (NEPA). The Finding of No Significant Impact (FONSI) remains valid.”⁴⁰

78. On June 26, 2024, the MTA’s Board of Directors adopted a resolution extending the implementation of the CBDTP to a date subsequent to the signing of the Tolling Agreement (the “MTA Resolution”) and confirming that “the President of the Authority or her designee is hereby fully authorized and directed to take such steps as may be necessary or desirable to implement the CBDTP until after such time as the required final agreement has been executed.”⁴¹

79. The MTA Resolution reflects the MTA Board’s fiduciary duties and responsibilities to the MTA pursuant to Section 2824 of Public Authorities Law. MTA Board members are required to acknowledge their fiduciary duties “to exercise independent judgment on all matters before the board” and “to act in the best interests of the Authority, its mission, and the public.”⁴²

80. The FHWA’s June 14 reevaluation of the CBDTP and the June 26 MTA

⁴⁰ *Central Business District (CBS) Tolling Program*, U.S. Department of Transportation, Federal Highway Administration (Jun. 2024), ES1, <https://perma.cc/NW2L-JZN4>

⁴¹ *June 2024 MTA Board Actions Items*, Metropolitan Transportation Authority (Jun. 26, 2024), 6, <https://perma.cc/E8VK-SJP2>.

⁴² *Authorities Budget Office Police Guideline*, Authorities Budget Office (Mar. 1, 2010), <https://perma.cc/3GTJ-J73M>.

Resolution confirm that all parties whose participation is necessary for the implementation of the CBDTP—and whose participation is legally mandated by the CBDTP Statute—are ready and willing to sign the Tolling Agreement and begin the implementation of the CBDTP.

81. The infrastructure needed for implementation has been installed. The statutorily-empowered agency responsible for the implementation and operation of the CBDTP—the TBTA—is ready to carry out its duties as the Legislature assigned them.

82. The only obstacle to the CBDTP's implementation is the State DOT's refusal, at the Governor's direction, to sign the Tolling Agreement, a ministerial act.

83. The Tolling Agreement, in its unsigned form, has not been made available to the public. Upon information and belief, the Tolling agreement recites the parameters of the Central Business District Tolling sector and the location of related infrastructure; the fact that revenues from the CBDTP will be used for mass transit; and the respective roles of each of the Project Sponsors in the CBDTP.

84. Upon further information and belief, the Tolling Agreement does not impose material duties upon the State DOT.

The MTA, Community Stakeholders, and the Public Reckon with and Begin to Feel the Severe Effects of the Governor's "Pause"

85. The Governor's decision to upend years of work has caused widespread chaos, as many groups have already begun to suffer the effects and as others brace themselves for the foreseeable and inevitable consequences.

86. The Governor's "pause" was opposed by a wide spectrum of New York City stakeholders.

87. Business leaders, including from the Partnership for New York City, the Real Estate Board of New York, and the business-funded fiscal watchdog Citizens Budget

Commission all criticized the Governor's action. For example, the CEO of the Partnership criticized the Governor's purported rationale for the "pause" as to the burden on drivers, noting that a tiny fraction of commuters who work in Manhattan's central business district drive rather than use mass transit.⁴³ Further, beyond the \$16.5 billion in anticipated revenue now in jeopardy, a 2018 study by the Partnership estimated that traffic congestion costs the City's economy \$20 billion a year.⁴⁴

88. Community organizations also oppose the Governor's decision. Families for Safe Streets, an organization composed of individuals who lost a loved one to traffic violence or survived a crash, has supported congestion pricing since its inception. In a statement following the Governor's "pause," the organization's co-founder said: "... congestion pricing is our best chance to save lives. Instead, Governor Hochul is sentencing more New Yorkers to suffer like we have, and is fighting to maintain a status quo where cars and trucks kill over 250 New Yorkers every year."⁴⁵

89. Environmental groups, including Earthjustice, Evergreen Action, the Sierra Club, the Environmental Defense Fund, and the League of Conservation Voters all voiced their opposition in a letter to the Governor: "This decision will have significant consequences for New York, and it will reverberate nationally. Your proposed indefinite delay poses a significant risk to achieving New York's climate goals and the imperative to both reduce traffic congestion and ensure sustainable funding for more affordable and reliable transportation."⁴⁶

⁴³ Greg David, *Business Leaders 'Furious' at Hochul Reversal on Manhattan Congestion Charge*, The City (Jun. 5, 2024), <https://perma.cc/6S44-NZUX>.

⁴⁴ *\$100 Billion Cost of Traffic Congestion in Metro New York*, Partnership for New York City (Jan. 2018), <https://perma.cc/M8F2-HPHK>.

⁴⁵ *Congestion pricing is our best chance to save lives. Instead, Gov. Hochul is sentencing more New Yorkers to suffer like we have': FSS Statement on Gov. Hochul's Sudden Congestion Pricing Reversal*, Transportation Alternatives (Jun. 7, 2024), <https://perma.cc/VW9A-P8RL>.

⁴⁶ Lena Moffitt et al., *6/18 Gov. Hochul Letter*, Evergreen Action (Jun. 18, 2024), <https://perma.cc/G6UN-6R5Q>.

90. The financial implications of the Governor's decision also cannot be overstated. The MTA has already invested significant funds and entered into costly contracts to implement the CBDTP, now in jeopardy of being wasted entirely. For example, the MTA has already entered into a \$556 million contract regarding the operation and maintenance of tolling infrastructure for the next six years; watchdog group Reinvent Albany estimates that the amount to implement the project may be closer to \$1 billion, given the staff time dedicated to the project. The City's Independent Budget Office noted that "[i]f the program is not enacted at a future point, MTA investments made to date will potentially be written off as bad spending."⁴⁷

91. In fact, when the Governor announced her purported "pause," the MTA was forced to halt almost all aspects of its current capital program, which is already having significant deleterious effects. As a result, the cuts resulting from the Governor's unlawful "pause" on congestion pricing have already spawned litigation. Additional litigation is expected.

92. For example, as alleged in a lawsuit filed on July 17, 2024 on behalf of Public Advocate Jumaane D. Williams and the Transport Workers Union of America, the MTA was forced to direct the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, and by MTA Bus Company to cut their operating budgets, institute a hiring freeze, and cut between 5–10% of bus routes, leading to an increase of approximately 300–400% in bus routes without the requisite bus drivers, in order to save money on bus driver pay.⁴⁸ Upon information and belief, this has already led to greater waiting times for bus riders and more crowded buses overall, which are expected to only get worse if a hiring freeze continues with

⁴⁷ Press Release, The 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 Improvement* (Jun. 6, 2024), <https://perma.cc/7AVM-5LVL>.

⁴⁸ *Williams v. Lieber*, Ind. No. 156447/2024, NYSCEF Doc. No. 1 at 6-8 (Petition) (N.Y. Sup. Ct., N.Y. Cnty., July 17, 2024).

normal attrition rates. On June 18, 2024, Justice Arthur F. Engoron of the New York Supreme Court issued a temporary restraining order, enjoining the MTA from “continuing cuts in bus runs and trips” and “from eliminating bus runs and trips.”⁴⁹

93. Further, the MTA has been forced to cut \$16.5 billion worth of planned upgrades to the City’s transit network. Cuts to the subway system alone include but not limited to: suspending the extension of the Second Avenue subway into Harlem; suspending work on the B/D/F/M subway lines to repair the decades-old signals that regularly cause delays, as well as similar repairs and signal upgrades on the A/C subway line; suspending the planned purchasing of hundreds of new subway cars to replace older models on the 1/3 and 6 subway lines; suspending improvements at nearly 100 subway stations, including new elevator and ramp installations that would make subway stations accessible for people with disabilities, as well as platform replacements and upgrades to public announcement systems.

94. Similarly, outside the subway system, the MTA has postponed the purchase of more than 250 electric buses and charging infrastructure at bus depots, as well as upgrades to regional rails and a ramp reconstruction on the Verrazano-Narrows Bridge.

95. Federal funding for transit-improvement projects is also in jeopardy as a result of the Governor’s unlawful “pause.” The Regional Plan Association, an independent non-profit civic organization that conducts research on the environment, land use, and good governance, estimates that nearly \$10 billion in federal funding is now at risk of being lost.⁵⁰ That funding was earmarked to support nearly 100 projects, including, for example, the extension of the

⁴⁹ *Williams v. Lieber*, Ind. No. 156447/2024, NYSCEF Doc. No. 32 at 2 (Order to Show Cause) (N.Y. Sup. Ct., N.Y. Cnty., July 18, 2024).

⁵⁰ Kate Slevin et al., *RPA and Coalition Write to FTA: \$10 Billion in Federal Transit Funds Potentially at Risk Due to Congestion Pricing Delay*, Regional Plan Association (Jun. 18, 2024), <https://perma.cc/66E8-N7WX>.

Second Avenue Subway.⁵¹

96. The financial effects of the loss of congestion pricing also include the significant environmental costs that communities will bear from the continuation of combustion engine gridlock, as well as the severe economic harm caused by transportation delays—as the Independent Budget Office estimates, rush-hour subway delays cost riders as much as \$390 million a year.⁵²

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Mandamus — CPLR §§ 7803(2), 7806

(Against Respondents-Defendants State DOT and Commissioner Dominguez)

97. Petitioners repeat and reallege the allegations set forth in the preceding paragraphs as if set forth herein.

98. Pursuant to the plain language of the Traffic Mobility Act, the TBTA—and only the TBTA—has authority to act on behalf of the State and is mandated to design, implement, construct, and operate the CBDTP. *See* N.Y. Vehicle & Traffic L. § 1704(2-a) (the TBTA “shall enter into a memorandum of understanding” with the City Department of Transportation for purposes of planning, design, installation, construction, and maintenance of the CBDTP infrastructure”) (emphasis added), § 1704(3)(a) (“Notwithstanding any law to the contrary,” the TBTA “shall plan, design, install, construct, and maintain the [CBDTP] tolling infrastructure”) (emphasis added), § 1704(3)(b) (“Notwithstanding any law to the contrary,” the TBTA “shall . . . plan, design, install, construct, and maintain a central business district toll collection system and implement and operate the same to collect the central business district toll.”) (emphasis added).

⁵¹ *FTA Projects NYS STIP 2023-2026*, <https://perma.cc/H966-XD98>.

⁵² Press Release, *Cancelling Congestion Pricing Removes Largest Source of Funding For Transit Capital Plan Without Long-term Alternative to Fund Crucial Repairs and Improvement*, *supra* note 47.

99. Pursuant to the plain language of the Traffic Mobility Act, therefore, the State DOT has no discretion with regards to the CBDTP's implementation. *See People v. Kisina*, 14 N.Y.3d 153, 158 (2010) (in determining whether a statute gives an agency discretion to act in particular circumstances, courts look to "the language of [the] statute" and, if it is "clear and unambiguous, courts must give effect to its plain meaning.") (quoting *Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 91 (2001)); *see also Matter of Korn v. Gulotta*, 72 N.Y.2d 363, 373 (1988) (granting mandamus and finding that use of "shall" in Nassau County charter made the provision mandatory, not discretionary); *Riverkeeper, Inc. v. N.Y.C. Dep't of Env't Prot.*, 82 Misc. 3d 234, 264 (N.Y. Sup. Ct., Queens Cnty. Nov. 24, 2023) (granting mandamus and finding that the use of "shall" in state environmental law mandated NYS Department of Environmental Protection to provide notice of sewage discharge).

100. Under state law, the TBTA has sole discretion to set the start date for the CBDTP. *See* N.Y. Vehicle & Traffic L. § 1703(8).

101. TBTA determined that the CBDTP start date would be June 30, 2024.

102. On June 5, 2024, Governor Hochul announced that State DOT would not sign the Tolling Agreement with the FHWA, thereby indefinitely halting the implementation and operation of the CBDTP.

103. Respondent-Defendant State DOT is a co-sponsor of the Tolling Agreement with the FHWA but does not have any discretion under state law to postpone, prevent, or otherwise disrupt the implementation and operation of the CBDTP.

104. Rather, Respondent-Defendant State DOT's execution of the Tolling Agreement is a ministerial duty enjoined by law. *See N.Y. Civ. Liberties Union v. State of N.Y.*, 4 N.Y.3d

175, 184 (2005) (“Mandamus is available . . . to enforce a clear legal right where the public official has failed to perform a duty enjoined by law.”); *see also* CPLR § 7803(1).

105. In the June 26 MTA Resolution, the MTA and the TBTA resolved to implement the CBDTP pursuant to their sole statutory authority as soon as the Tolling Agreement is executed.

106. By refusing to execute the Tolling Agreement, Respondents-Defendants State DOT and Commissioner Dominguez thwarted the will of the State Legislature and unilaterally prevented TBTA from carrying out its statutorily mandated duty to implement and operate the CBDTP.

107. By refusing to execute the Tolling Agreement, Respondents-Defendants State DOT and Commissioner Dominguez “proceeded” and are “proceeding . . . without or in excess of jurisdiction.” CPLR § 7803(2).

108. Pursuant to the Legislature’s grant of authority under the TMA, the State DOT has no discretion to refuse to sign the Tolling Agreement, and mandamus is thus appropriate. *See Matter of Korn*, 72 N.Y.2d at 370 (“Mandamus will lie to compel acts that public officials are duty bound to perform regardless of how they may exercise their discretion in doing so.”).

109. Petitioners are therefore entitled to a judgment under CPLR § 7806 ordering Respondents-Defendants State DOT and Commissioner Dominguez to fulfil their ministerial duty and execute the Tolling Agreement.

SECOND CAUSE OF ACTION

Mandamus — CPLR §§ 7803(3), 7806

(Against Respondents-Defendants State DOT and Commissioner Dominguez)

110. Petitioners repeat and reallege the allegations set forth in the preceding paragraphs as if set forth herein.

111. Alongside the TBTA and the City DOT, Respondent-Defendant State DOT is a co-sponsor of the Tolling Agreement with the FHWA regarding the CBDTP.

112. Since the CBDTP's inception in 2019, State DOT has co-sponsored and supported the CBDTP.

113. On June 5, 2024, after three years of supporting the CBDTP, Respondent-Defendant Governor Hochul, using Respondent-Defendant State DOT to carry out her decision, abruptly reversed course and decided to "indefinitely pause" the CBDTP.

114. In the June 26 MTA Resolution, the MTA and the TBTA resolved to implement the CBDTP pursuant to their sole statutory authority as soon as the Tolling Agreement is executed.

115. Under state law, when a state agency—such as State DOT—determines to alter its prior stated course, it must provide a valid explanation for its decision to do so. Absent such an explanation, failure to conform to agency precedent requires reversal on the law as arbitrary and capricious. *See Matter of Charles A. Field Delivery Serv. (Roberts)*, 66 N.Y.2d 516, 520 (1985) (“[w]hen an agency determines to alter its prior stated course it must set forth its reasons for doing so” and may only “change[] its prior interpretation of the law for valid reasons,” or else “failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary.”); *Matter of Tall Trees Const. Corp.*, 97 N.Y.2d at 93 (“A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious.”) (cleaned up); *Knight v. Amelkin*, 68 N.Y.2d 975, 977 (1986) (same).

116. The CBDTP is a tolling program. It exists to toll drivers who drive in the Central Business District and thereby decrease congestion in the Central Business District and raise stable and reliable funding to repair and revitalize public transit in New York City.

117. In short, the CBDTP, by the Legislature's design, functions by charging tolls on drivers in the Central Business District.

118. Respondents-Defendants Governor Hochul and State DOT did not provide a valid explanation for their decision to halt the CBDTP. The fact that some drivers will pay tolls under the CBDTP, or face the prospect of tolls and thus may decide not to drive into the Central Business District, is a core feature of the CBDTP, not a rational or valid reason to "pause" or block its implementation.

119. "[A] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious." *Matter of Tall Trees Const. Corp.*, 97 N.Y.2d at 93.

120. Accordingly, Petitioners are entitled to a judgment under CPLR § 7806 declaring Respondents-Defendants State DOT and Commissioner Dominguez's refusal to proceed with the Tolling Agreement and unilateral halting of the CBDTP arbitrary and capricious, and ordering Respondents-Defendants State DOT and Commissioner Dominguez to execute the Tolling Agreement.

THIRD CAUSE OF ACTION

Declaratory Judgment — CPLR § 3001

(Against Respondents-Defendants Governor Hochul, State DOT, and Commissioner Dominguez)

121. Petitioners repeat and reallege the allegations set forth in the preceding paragraphs as if set forth herein.

122. Petitioners repeat and reallege the allegations set forth in the preceding paragraphs as if set forth herein.

123. Pursuant to the CBDTP statute, TBTA—and only TBTA—has authority to act on behalf of the State and is mandated to design, implement, construct, and operate the CBDTP.

124. Under state law, TBTA has sole discretion to set the start date for the CBDTP.

125. TBTA determined that the CBDTP start date would be June 30, 2024.

126. On June 5, 2024, Respondent-Defendant Governor Hochul announced that Respondent-Defendant State DOT would not execute the Tolling Agreement with the FHWA, thereby indefinitely halting the implementation and operation of the CBDTP.

127. In the June 26 MTA Resolution, the MTA and the TBTA resolved to implement the CBDTP pursuant to their sole statutory authority as soon as the Tolling Agreement is executed.

128. Respondent-Defendant State DOT's signing of the Tolling Agreement is a ministerial duty enjoined by law.

129. By refusing to execute the Tolling Agreement, Respondents-Defendants State DOT and Commissioner Dominguez have thwarted the will of the State Legislature and have unilaterally prevented TBTA from carrying out its statutorily-mandated duty to implement and operate the CBDTP.

130. Petitioners are therefore entitled to a declaration pursuant to CPLR § 3001 that Respondents-Defendants Governor Hochul, State DOT, and Commissioner Dominguez's unilateral halting of the CBDTP and usurpation of TBTA's sole statutory role in the implementation and operation of the CBDTP is illegal, null, and void.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court:

- a) Pursuant to CPLR § 7806, enter judgment in favor of Petitioners and order Respondents-Defendants State DOT and Commissioner Dominguez to execute the Tolling Agreement;
- b) Pursuant to CPLR § 3001, declare that Respondents-Defendants Governor Hochul, State DOT, and Commissioner Dominguez's unilateral halting of the CBDTP and usurpation of the TBTA's sole statutory role in the implementation and operation of the CBDTP is illegal, null, and void;
- c) Pursuant to CPLR § 7806, enjoin Respondents-Defendants State DOT and Commissioner Dominguez from taking any further actions to thwart TBTA's implementation and operation of the CBDTP consistent with state law;
- 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 25, 2024
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

/s/

Andrew G. Celli, Jr. and Richard D.
Emery
Nick Bourland
Eric Abrams

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

remery@ecbawm.com
acelli@ecbawm.com
nbourland@ecbawm.com
eabrams@ecbawm.com

Attorneys for Petitioners

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

THE CITY CLUB OF NEW YORK, CHRISTINE
BERTHET, KATHLEEN TREAT

Index No.

Petitioners-Plaintiffs,

-against-

VERIFICATION

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, TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY,
METROPOLITAN TRANSPORTATION
AUTHORITY,

Respondents-Defendants.

State of New York)
) ss:
County of New York)

CHRISTINE BERTHET, duly sworn, deposes and says:

I am one of the Petitioners in this action/proceeding. I have read the attached Verified Petition and hereby affirm that the facts set forth in the Verified Petition pertaining to me are true to the best of my knowledge, and as to facts not specifically pertaining to me, I believe them to be true. Pursuant to CPLR § 2106, I affirm this 24th day of July, 2024, 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.

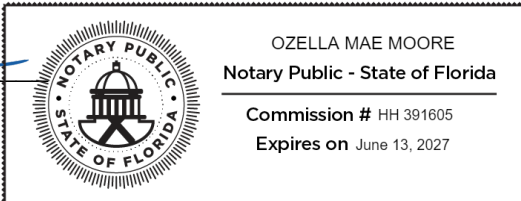
Christine M. Berthet

CHRISTINE BERTHET

State Florida County Okaloosa

Sworn to before me this July 24, 2024
by Christine M. Berthet provided NY State DL for ID

Ozella Mae Moore
NOTARY PUBLIC
OZELLA MAE MOORE



OZELLA MAE MOORE
Notary Public - State of Florida
Commission # HH 391605
Expires on June 13, 2027

Notarized remotely online using communication technology via Proof.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

THE CITY CLUB OF NEW YORK, CHRISTINE
BERTHET, KATHLEEN TREAT

Index No.

Petitioners-Plaintiffs,

-against-

VERIFICATION

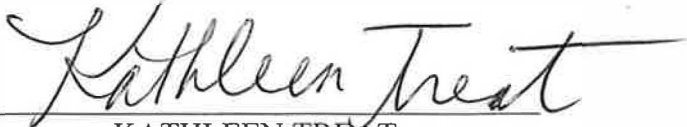
KATHY HOCHUL, as Governor of the State of New
York, NEW YORK STATE DEPARTMENT OF
TRANSPORTATION, MARIE THERESE
DOMINGUEZ, as Commissioner of the New York
State Department of Transportation, TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY,
METROPOLITAN TRANSPORTATION
AUTHORITY,

Respondents-Defendants.

State of New York)
) ss:
County of New York)

KATHLEEN TREAT, duly sworn, deposes and says:

I am one of the Petitioners in this action/proceeding. I have read the attached Verified Petition and hereby affirm that the facts set forth in the Verified Petition pertaining to me are true to the best of my knowledge, and as to facts not specifically pertaining to me, I believe them to be true. Pursuant to CPLR § 2106, I affirm this 24th day of July, 2024 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.


KATHLEEN TREAT

Sworn to before me this July 24 2024



NOTARY PUBLIC



SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

THE CITY CLUB OF NEW YORK, CHRISTINE
BERTHET, KATHLEEN TREAT

Index No.

Petitioners-Plaintiffs,

-against-

VERIFICATION

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, TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY,
METROPOLITAN TRANSPORTATION
AUTHORITY,

Respondents-Defendants.

State of New York)
) ss:
County of New York)

LAYLA LAW-GISIKO, duly sworn, deposes and says:

I am the President of The City Club of New York (the “City Club”), one of the
Petitioners in this action/proceeding. I have read the attached Verified Petition and hereby
affirm that the facts set forth in the Verified Petition pertaining to the City Club are true to the
best of my knowledge, and as to facts not specifically pertaining to the City Club, I believe them
to be true. Pursuant to CPLR § 2106, I affirm this 24th day of July, 2024, 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.

Layla Law-Gisiko
Layla Law-Gisiko (Jul 24, 2024 13:42 EDT)

LAYLA LAW-GISIKO

Sworn to before me this

24th day of July 2024

Dymond Wells

NOTARY PUBLIC

DYMOND V. WELLS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01WE6390652
Qualified in New York County
My Commission Expires 04-22-2027

Digitally signed by
DYMOND WELLS
Date: 2024.07.24
13:55:20 -04'00'
Adobe Acrobat
version: 2024.002.20893

DYMOND V. WELLS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01WE6390652
Qualified in New York County
My Commission Expires 04-22-2027

*This electronic notarial act
involved a remote online
appearance involving the use
of communication technology*