Congestion Pricing: A Case Study on Interstate Air Pollution Disputes

By Christine Billy

New York's congestion pricing program was set to take effect on June 30, notwithstanding multiple pending legal challenges.[1] Then on June 5, 2024, Gov. Kathy Hochul announced that she was directing the Metropolitan Transportation Authority – which is charged with implementing the program – to put the congestion pricing program on "indefinite pause."[2] This announcement roiled the program's proponents and left an apparent $15 billion hole in the MTA's budget.[3] The governor's decision has also spurred a new wave of litigation challenging the pause,[4] even as many of the initial challenges to the congestion pricing program remain pending.[5]

One of the still-pending lawsuits was brought by New Jersey, which alleges that the air quality impacts on New Jersey were not adequately studied and disclosed as required under the federal National Environmental Policy Act, among other claims.[6] This case raises interesting questions about the role of the law in evaluating interstate disputes and how courts should respond to cross-state environmental impacts. While we await the ultimate future of the congestion pricing program, the New Jersey litigation remains a useful case study on interstate air quality disputes under modern federal environmental law.

How Did We Get Here? The Path to New York Congestion Pricing Legislation

In New York City, the effects of traffic congestion have long contributed to public health and other quality of life problems.[7] Pre-COVID-19 pandemic, 7.7 million people entered Manhattan's Central Business District each day.[8] In the most congested part of Midtown Manhattan, the average vehicular speed is a sluggish 4.7 miles per hour.[9] Vehicular traffic results in greenhouse gas emissions as well as localized air pollution.[10] In certain areas of Manhattan, concentrated levels of particulate matter and ozone are exceedingly high[11] and contribute to increased deaths and serious illnesses, such as heart and lung diseases.[12]

In response to years of advocacy, the New York State Legislature mandated the establishment of a congestion pricing program in 2019.[13] Congestion pricing programs aim to reduce traffic in heavily congested urban areas through the use of tolling or other pricing signals to deter vehicles from driving in the area designated under the program. London[14] and Stockholm,[15] among others, tout the success of their programs. For example, in London, congestion pricing has reduced traffic by 30% and greenhouse gas emissions by 12%, while increasing transit ridership significantly.[16] If the MTA were to move forward with its proposal, New York would be the first jurisdiction in the United States to implement a zone-based congestion pricing model.[17]

New York's program is intended to reduce acute traffic congestion in Manhattan and fund critical capital improvements to the MTA.[18] The state law governing the congestion pricing program directs an entity entitled the Triborough Bridge and Tunnel Authority, which is a component unit of the MTA, to design and establish the program with input from the New York City Department of Transportation.[19] Specifically, the agency is required to "plan, design, install, construct, and maintain the central business district tolling infrastructure" as well as "implement and operate the same to collect the central business district toll."[20] Pursuant to these legal requirements, the MTA released a plan to charge drivers a toll to enter the Manhattan Central Business District, which comprises Manhattan south of and including 60th Street, but excluding FDR Drive, the West Side Highway and the Hugh L. Carey Tunnel connection to West Street.[21]

Because implementation of New York's congestion pricing program required approval by the Federal Highway Administration for tolling on federally funded roadways, the project fell within the scope of the National Environmental Policy Act and required federal environmental review.[22] This federal law is a process statute that requires federal agencies to assess significant environmental impacts before taking major federal actions.[23]

After completing its environmental review in July 2023, the Federal Highway Administration determined that New York's proposed congestion pricing program would not have a significant adverse environmental impact and that further environmental review would not be needed.[24] Specifically, it found that the program would result in significant decreases in vehicles entering Manhattan, minor decreases in regional vehicles miles traveled and a minor increase in traffic in certain neighborhoods in New York and New Jersey.[25] These overall traffic reductions would yield significant benefits for local and regional air quality.[26]

The MTA released a planned tolling program in December 2023[27] following extensive administrative review and analysis.[28] The MTA held a series of public hearings on the proposed plan[29] and reviewed over 25,000 public comments.[30] On March 27, 2024, the MTA formally voted to approve the tolling plan and set implementation for June 2024.[31]

Then on June 5, Gov. Hochul announced that she was directing the MTA "to indefinitely pause congestion pricing to avoid added burdens to working- and middle-class families," citing affordability and cost of living concerns.[32] As a technical matter, the pause appears to be implemented through the state Department of Transportation's involvement in a road-tolling agreement

with the Federal Highway Administration.[33] The state Department of Transportation, which reports directly to the governor, is one of the program sponsors for purposes of this agreement and had not yet signed onto the tolling agreement.[34]

In its June 2024 meeting, the MTA board reversed its earlier resolution implementing congestion pricing by the end of June and further resolved that "the date of implementation of [congestion pricing] is hereby extended from in or about June 2024 until after such time as the execution of the legally-required tolling agreement among the Project Sponsors – New York State Department of Transportation, New York City Department of Transportation, and Triborough Bridge and Tunnel Authority – and also by the Federal Highway Administration[.]"[35] The resolution confirmed, however, that the state congestion pricing law is still in effect.[36] An MTA press release with a joint statement by the MTA chief financial officer and general counsel affirmed, "New York State law places an obligation on MTA to implement a congestion pricing program, and the agency stands ready to do so."[37] The MTA has also confirmed its commitment to defending the congestion pricing program in the federal lawsuits challenging the program.[38]

Neither the governor nor the MTA have announced a new timeline for implementation,[39] although the governor has indicated that a new plan could be expected by the end of the year.[40] As of the time of this writing, the MTA's congestion pricing website reads: "The Central Business District Tolling Program is temporarily paused pending necessary approvals. The Congestion Relief Zone will launch at a later date. Check back for updates."[41]

The Litigation Landscape Surrounding New York's Congestion Pricing Program

The first wave of lawsuits challenging New York's congestion pricing scheme began as soon as the Federal Highway Administration concluded its environmental review. In July 2023, New Jersey filed a suit alleging that it did not adequately consider New Jersey in its environmental analysis.[42] New Jersey also challenged the federal agency's analysis of air quality impacts in New Jersey under the federal Clean Air Act's "conformity" provisions, which require federal agencies to consider how a federal action impacts a state's ability to conform with federal air quality standards.[43]

In November 2023, Mark Sokolich, mayor of Fort Lee, New Jersey, and a group of constituents filed a similar complaint, focusing on the specific impacts to Fort Lee, which sits at the base of the George Washington Bridge.[44] Fort Lee raised concerns about how traffic that would be diverted around the Central Business District could potentially impact local air quality.[45]

Several other cases were later brought by various plaintiffs, including lower Manhattan community groups and residents,[46] a coalition of unions, including the United Federation of Teachers, and a group of local, state and federal elected officials from New York City and surrounding New York counties, including the Staten Island borough president.[47] Each of these suits alleged violations of the National Environmental Policy Act, claiming that the Federal Highway Administration failed to adequately analyze and mitigate impacts to environmental justice communities in New York City and surrounding areas, among other claims. In late March 2024, on the day before the MTA gave final approval to the congestion pricing tolling plan, Rockland County, New York, filed a further lawsuit alleging that the tolls would constitute an unauthorized tax in violation of state and federal constitutional provisions.[48] In late May, the Trucking Association of New York filed a lawsuit seeking to further delay the program, claiming violations under the dormant commerce clause, the federal constitutional right to travel and preemption under the Federal Aviation Authorization Act.[49]

On June 20, 2024, Judge Lewis J. Liman, United States district judge for the Southern District of New York, dismissed the National Environmental Procedure Act claims in three of these lawsuits, which had been consolidated: *Mulgrew et al. v. U.S. Department of Transportation et al.*, *New Yorkers Against Congestion Pricing Tax et al. v. U.S. Department of Transportation et al.* and *Chan et al. v. U.S. Department of Transportation et al.*[50] Specifically, Judge Liman wrote: "According to Plaintiffs, the NEPA review process here–which spanned four years and yielded an administrative record of more than 45,000 pages–did not amount to a 'hard look' at the environmental implications of Congestion Pricing. In light of Defendants' meticulous analysis, the Court cannot agree."[51] The other congestion pricing lawsuits remain pending. Notably, these include two cases pending in New Jersey District Court, which will be discussed in more detail below.[52]

In summer 2024, the governor's announced pause of the congestion pricing program spurred a new wave of litigation, led by the Transit Workers Union and the New York City Public Advocate.[53] The first case was filed in Manhattan Supreme Court on July 17, 2024, and claimed both procedural and substantive violations of the New York State Public Authorities Law related to cuts to New York City bus service that were allegedly caused by the congestion pricing pause.[54] Judge Engoron issued a temporary restraining order the following day, requiring the MTA and New York City Transit Authority to maintain prior bus service.[55] One week later, a new pair of

cases was filed in Manhattan Supreme Court by advocacy groups and New York City residents seeking to directly challenge the validity of the pause and to force the MTA to move forward with implementing the congestion pricing program. In one case, the City Club of New York and residents of the Manhattan Central Business District brought a mandamus action under Article 78 of the New York Civil Practice Law and Rules seeking to force the New York State Department of Transportation to execute the tolling agreement and begin implementing the program.[56] In the sister case filed on the same day, a group of environmental advocates alleged that the pause violates the state Climate Leadership and Community Protection Act of 2019, which sets statewide greenhouse gas emissions reduction requirements,[57] and Article 1, Section 19 of the New York State Constitution, which provides New Yorkers a right to "clean air and water, and a healthful environment."[58]

It remains to be seen how these two different waves of litigation – those seeking to challenge the congestion program and those seeking to force the state to implement it faster – will progress and whether their outcomes will impact each other. The governor has sought outside counsel to defend the most recent cases challenging the pause of the program.[59] Meanwhile, New York Attorney General Letitia James continues to defend the congestion pricing program in the federal litigation brought by New Jersey, which will be discussed in more detail below.

The National Environmental Policy Act as a Vehicle for Addressing Interstate Disputes

Although the National Environmental Policy Act was designed as a process statute that imposes disclosure obligations on federal agencies, New Jersey is seeking to utilize the federal law as a sword to challenge New York's policy decisions in designing the state's congestion pricing scheme. In this regard, this particular case raises interesting questions about the role of this law as a means of evaluating interstate disputes.

New Jersey raised both procedural and substantive claims challenging the adequacy of the Federal Highway Administration's review of out-of-state environmental impacts. New Jersey argued that the agency failed to "meaningfully engage" New Jersey and its state agencies.[60] New Jersey separately claimed that it failed to properly analyze how traffic diversions resulting from the toll structure could impact air quality in New Jersey generally and in local New Jersey environmental justice communities specifically.[61]

The Federal Highway Administration responded to these allegations by pointing to its findings that the project would result in no more than a 0.2% change in vehicle miles traveled in New Jersey as a whole, with minimal impacts on air quality.[62] The agency noted that it held multiple meetings and outreach in New Jersey[63] and convened an Environmental Justice Stakeholder Working Group and an Environmental Justice Technical Advisory Group.[64] The agency's environmental assessment identified particular neighborhoods that could be adversely affected, including areas in Lower Manhattan, Brooklyn and the Bronx in New York, and Orange, East Orange, Newark and Fort Lee in New Jersey.[65] To address potential increases in pollution in those neighborhoods, the agency proposed targeted mitigation measures, such as roadside vegetation, parks and greenspace and air filtration in schools.[66]

The Federal Highway Administration's attention to potential mitigation measures to address impacts on environmental justice communities in New Jersey was driven, in part, by participation by the Environmental Protection Agency. EPA submitted a letter asking for a more detailed environmental justice analysis of air quality impacts in the Bronx, Staten Island and Bergen County, New Jersey.[67] EPA urged more community engagement on environmental justice impacts and more attention to potential mitigation measures.[68] In the final environmental assessment, the Federal Highway Administration conducted additional study of such potential impacts, along with a more detailed discussion of mitigation measures.[69]

In this regard, the federal process appears to have served as a procedural vehicle for federal consideration of how a program operating in one state can impact the environmental health of residents in a neighboring state. This is meaningful, as it is unclear whether the MTA would have had any reason on its own to consider the health of New Jersey residents when setting up a tolling structure within the jurisdictional boundaries of New York City.[70]

New Jersey's claims also raise important questions about who speaks for the state when engaging in interstate disputes. Two local government units within New Jersey chose to participate in the litigation. Bergen County filed a separate amicus brief in support of New Jersey's case, and the mayor of Fort Lee and a contingent of New Jersey residents filed a separate case bringing similar claims.[71] Each of these governmental entities purport to speak for the state or a subdivision within it.

The public engagement process built into the National Environmental Policy Act also allowed other voices to come forward and speak on behalf of New Jersey's interests. Several New Jersey-based entities filed comments on the draft environmental assessment, providing their own perspective on how the congestion pricing program would impact New Jersey residents.[72] Later, when New Jersey brought suit challenging the environmental analysis, a coalition of 34 New Jersey local community-based organizations representing environmental, transportation

and equity-based interests filed an amicus brief heralding the benefits of congestion pricing for New Jersey and defending the National Environmental Policy Act's public engagement process.[73] In a set of pointed arguments, the local groups identified a dissonance between New Jersey's position in this case and the state's choice to pursue a less rigorous review for the state's New Jersey Turnpike expansion project.[74]

One consequence of a participatory democracy is that when administrative or judicial proceedings afford multiple opportunities for public input, this can lead to complex, and at times fractured, definitions of local representation. In the case of congestion pricing, multiple parties were able to speak on behalf of the people of New Jersey, and each was offered an opportunity to be heard. Whether this will shape the ultimate outcome remains to be seen.

The Road Forward: What Will Interstate Disputes Over Air Quality Look Like in the Future?

The congestion pricing litigation follows a long history of interstate disputes regarding cross-jurisdictional pollution, dating back to some of the earliest environmental law cases heard by the Supreme Court.[75] For example, in *Georgia v. Tenn. Copper Co.*, the court, acting in its original jurisdiction, reviewed a 1907 challenge brought by the state of Georgia against a group of Tennessee copper companies whose operations released a noxious gas that harmed forests and agricultural crops in Georgia.[76] The court held that Georgia, which had first sought relief from the state of Tennessee, had sovereign standing to prevent harms to its citizens' property.[77] This case and its progeny predated the birth of modern environmental law and the series of federal environmental protection statutes enacted in the late 1960s and 1970s, including the National Environmental Policy Act and the Clean Air Act.

Over a century later, another set of interstate air quality disputes have garnered the court's attention. On June 27, the Supreme Court granted an emergency stay of the EPA's "Good Neighbor" rules addressing interstate ozone pollution.[78] The litigation arose after the EPA determined that 23 upwind states failed to submit adequate plans to limit their emission of ozone-forming pollutants that travel into downwind states. For each of those upwind states, the EPA issued rules to protect downwind states and their residents – including children and the elderly, in particular – from high levels of cross-state ozone pollution, which can cause major health problems at high levels. The rules were promulgated pursuant to the "Good Neighbor" provision of the Clean Air Act, which instructs upwind states to reduce emissions that impact the air quality in downwind states.[79] Three states – Ohio, Indiana and Virginia, along with a group of companies and trade associations – have challenged the EPA's rules.[80]

In the "Good Neighbor" litigation, New York and New Jersey teamed up as part of a coalition of downwind states and local governments that have joined the proceeding in defense of the EPA's rule, noting the harmful health effects of ozone-forming emissions in downwind jurisdictions.[81] However, a majority of the Supreme Court was not convinced that the risks posed to downwind states justified continued application of the EPA's rule pending full adjudication in the D.C. Circuit below and ultimately concluded that the EPA was not likely to succeed on the merits.[82] Justice Amy Coney Barrett led the dissent, criticizing the majority for leaving "large swaths of upwind States free to keep contributing significantly to their downwind neighbors' ozone problems for the next several years."[83]

The stakes of this litigation are potentially higher than the congestion pricing litigation, insofar as the upwind states are challenging the EPA's authority to directly regulate pollution within those upwind states. The National Environmental Policy Act plays an important role in governmental decision-making and can lead to mitigation measures, but it does not extend authority to federal agencies to directly regulate state conduct.

This Supreme Court's skepticism toward the EPA's position in the Good Neighbor case appears in the context of an overall willingness by the court to constrain federal agency administrative actions, particularly with regard to environmental protection.[84] It is unclear what this precarity surrounding the EPA's authority will ultimately mean for downwind states like New York and New Jersey and what protections they will receive in the future.

This backdrop of uncertainty regarding the authority of federal agencies to directly regulate interstate air pollution offers an additional gloss to the congestion pricing litigation. Politics, like pollution, are affected by changing winds. Depending on the goals of the next presidential administration, state efforts to address local air quality and greenhouse gas emissions may take on increasing significance. The congestion pricing litigation illustrates that the National Environmental Policy Act can be one vehicle for examining how a state's policies may affect local air pollution outside the state. The law's built-in opportunities for broad public engagement could play an ongoing role in bringing forth multiple perspectives on how extraterritorial interests might be implicated in state policies.

On this front, one case to watch closely next term is *Seven County Infrastructure Coalition v. Eagle County*, where the Supreme Court will consider how far the National Environmental Policy Act can reach when assessing environmental impacts.[85] The case involves a challenge to

the federal Surface Transportation Board's environmental review of a new railway line in the Uinta Basin in Utah, which was challenged by Eagle County, Colorado and several environmental organizations. The D.C. Circuit partially granted Eagle County's petition, holding that the federal agency's analysis under the National Environmental Policy Act should have considered the upstream environmental effects of increased oil development and the downstream effects of refining that oil, including the out-of-state impacts caused by increased rail traffic in the Colorado county.[86]

Proponents of the railway successfully sought Supreme Court review of the D.C. Circuit's interpretation of National Environmental Policy Act precedent in this case.[87] They seek a narrower reading of the statute in which agencies are not required to study environmental impacts "beyond the proximate effects of the action over which the agency has regulatory authority."[88] We will stay tuned for whether the court adopts the petitioners' more constrained reading of the law's scope, which could potentially preclude or restrict consideration of out-of-state air pollution impacts in the future. In the meantime, New Yorkers and New Jerseyans are left to wonder whether and when the nation's first comprehensive congestion pricing scheme will ever get moving.

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Endnotes

1. Compl., *New Jersey v. Dep't of Transportation,* No. 2:23-cv-03885 (D.N.J. July 21, 2023); Compl., *Sokolich v. Dep't of Transportation, MTA et al.*, No. 2:2023-cv-21728 (D.N.J. Nov. 1, 2023); Compl., *Chan v. Dep't of Transportation*, No. 23-cv-10365 (S.D.N.Y. Nov. 22, 2023); Compl., *Mulgrew v. Dep't of Transportation, MTA*, No. 24-cv-81 (E.D.N.Y. Jan. 4, 2024); Compl., *New Yorkers Against Congestion Pricing Tax v. Dep't of Transportation*, No. 1:24-cv-00367 (S.D.N.Y. Jan. 18, 2024); Compl., *County of Rockland et al. v. Triborough Bridge and Tunnel Authority and MTA*, No. 7:24-cv-02285 (S.D.N.Y. Mar. 27, 2024); Compl., *Town of Hempstead et al v. Triborough Bridge and Tunnel Authority et al,* Docket No. 2:24-cv-03263 (E.D.N.Y. May 01, 2024); Compl. *Neuhaus v. Triborough Bridge and Tunnel Authority,* Docket No. 7:24-cv-03983 (S.D.N.Y. May 23, 2024); Compl., *Trucking Association of New York v. Dep't of Transportation*, No. 1:24-cv-04111 (S.D.N.Y. May 30, 2024).

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3. 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* at 1-2 (Jun. 6, 2024), https://perma.cc/7AVM-5LVL.

4. Verified Class Action Petition at 7, *Williams v. Lieber*, No. 156447/2024 (N.Y. Sup. Ct. filed July 17, 2024); Verified Petition at 33, *City Club of New York et al v. Hochul*, No. 156696/2024 (N.Y. Sup. Ct. filed July 25, 2024); Verified Petition at 4, *Riders Alliance et al v. Hochul*, No. 156696/2024 (N.Y. Sup. Ct. filed July 25, 2024).

5. *See* Compl., *New Jersey v. Dep't of Transportation,* No. 2:23-cv-03885, *supra* note 1 (still pending). *See also* Compl., *Sokolich v. Dep't of Transportation, MTA*, *supra*, note 1 (still pending); Compl., *Trucking Ass'n of NY v. MTA*, No. 24-cv-4111, *supra* note 1 (still pending).

6. Compl., *New Jersey v. Dep't of Transportation,* No. 2:23-cv-03885, *supra* note 1 (supported by an amicus brief from Bergen County). *See also* Compl., *Sokolich v. Dep't of Transportation, MTA*, *supra*, note 1 (brought by the Mayor of Fort Lee); National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq*.

7. Chad Hughes, *Congestion Pricing and the Opportunity To Confront New York City's Air Quality Emergency*, 45 Wm. & Mary Envtl. L. & Pol'y Rev. 859, 860 (2021) (arguing that congestion pricing should be set, in part, based on local air quality standards); Michael B. Gerrard & Edward McTiernan, *New York's New Congestion Pricing Law*, 261(89) N.Y.L.J. (May 9, 2019).

8. *See* U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment ES-3, fig. ES-2 (April 2023), https://new.mta.info/project/CBDTP/environmental-assessment (hereinafter "EA").

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11. *See* EA, *supra* note 8, at 10-4, tbl.10-2.

12. *Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone*, New York City Department of Health and Mental Hygiene, https://www.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf.

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

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19. N.Y. Veh. & Traf. Law § 1704.

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22. EA, *supra* note 8, at 0-1. *See* Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240 § 1012-B, 105 Stat. 1914), as amended by the Transportation Equity Act for the 21st Century (TEA–21) (Public Law No. 105–178 § 1216(a), 112 Stat. 107 (1998)); https://ops.fhwa.dot.gov/congestionpricing/value_pricing/.

23. 42 U.S.C. § 4331(c); 40 C.F.R. § 1508.18.

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25. EA, *supra* note 8, at ES-13.

26. *Id.* at ES-15, ch. 10.

27. *MTA Announces Details of Congestion Pricing Public Comment Period*, MTA (Dec. 26, 2023), https://new.mta.info/press-release/mta-announces-details-of-congestion-pricing-public-comment-period.

28. See, e.g., Congestion Pricing in New York: A toll structure recommendation from the Traffic Mobility Review Board, Traffic Mobility Review Board (Nov. 2023), https://new.mta.info/document/127761.

29. *MTA Announces Details of Congestion Pricing Public Comment Period, supra* note 27; *Central Business Tolling Program*, MTA, https://new.mta.info/project/CBDTP.

30. *MTA Adopts Central Business District Toll Rates*, MTA, Mar. 27, 2024, https://new.mta.info/press-release/mta-board-adopts-central-business-district-toll-rates.

31. *Id.*

32. Press Release, Governor Kathy Hochul, *supra* note 2.

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34. *Id*.

35. *Id*.

36. *Id*.

37. *Joint Statement from MTA Chief Financial Officer Kevin Willens and MTA General Counsel Paige Graves*, MTA (June 7, 2024), https://new.mta.info/press-release/joint-statement-mta-chief-financial-officer-kevin-willens-and-mta-general-counsel. *See also* Winnie Hu & Ana Ley, *Federal Judge Rebuffs a Central Argument of Congestion Pricing Lawsuits*, N.Y. Times (June 21, 2024), https://www.nytimes.com/2024/06/21/nyregion/congestion-pricing-lawsuits.html ("'We stand ready to relieve congestion and improve transit service for millions of riders,' Paige Graves, the M.T.A.'s general counsel, wrote in a prepared statement."); *Transcript: MTA Chair and CEO Lieber Meets Press To Make Announcement and Take Questions*, MTA (June 10, 2024), https://new.mta.info/press-release/transcript-mta-chair-and-ceo-lieber-meets-press-make-announcement-and-take-questions.

38. *Id*.("I have to emphasize we are going to continue to defend the federal lawsuits against the FONSI, the federal approval that was given to us in 2023. And also, we're going to continue to defend all the other claims that have been set forth in the various lawsuits. And we're going to make sure that we keep moving forward on the details of the congestion pricing program because there's always some more software to be worked on. But otherwise, to make sure that we're ready if and when we get the green light.").

39. *See* Ashford, *supra* note 2 (quoting Governor Hochul referring to her decision as an "indefinite[] pause"); *Central Business District Tolling Program*, MTA, https://new.mta.info/project/CBDTP.

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41. *Central Business District Tolling Program*, MTA, https://new.mta.info/project/CBDTP (last visited Sept. 3, 2024).

42. Compl., *New Jersey v. Dep't of Transportation*, No. 2:23-cv-03885, *supra* note 1.

43. *Id*. *See* Clean Air Act (CAA), 42 U.S.C. § 7506(c)(1) (preventing federal agencies from, among other things, approving any activity that "does not conform to an implementation plan after it has been approved or promulgated" under the Clean Air Act and requiring agencies to conduct a "conformity analysis" to assess whether a federal action will interfere with a state's plan for "eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards.").

44. Compl., *Sokolich v. Dep't of Transportation*, *MTA*, No. 2:2023-cv-21728, *supra* note 1.

45. *Id*.

46. Compl., *New Yorkers Against Congestion Pricing Tax v. Dep't of Transportation*, No. 1:24-cv-00367, *supra* note 1; Compl., *Chan v. Dep't of Transportation*, No. 23-cv-10365, *supra* note 1.

47. Compl., *Mulgrew v. Dep't of Transportation*, MTA, No. 24-cv-81 (E.D.N.Y. Jan. 4, 2024).

48. Compl., *County of Rockland et al. v. Triborough Bridge and Tunnel Authority and MTA*, No. 7:24-cv-02285, *supra* note 1.

49. Compl., *Trucking Association of New York v. Dep't of Transportation*, No. 1:24-cv-04111, *supra* note 1.

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51. *Id. See also* Winnie Hu & Ana Ley, *Federal Judge Rebuffs a Central Argument of Congestion Pricing Lawsuits*, N.Y. Times (June 21, 2024), https://www.nytimes.com/2024/06/21/nyregion/congestion-pricing-lawsuits.html.

52. *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.).

53. Verified Class Action Petition at 7, *Williams v. Lieber*, No. 156447/2024 (N.Y. Sup. Ct. filed July 17, 2024).

54. *Id*. at 7-8.

55. Order to Show Cause and Stay at 2, Williams v. Lieber, No. 156447/2024 (N.Y. Sup. Ct. July 18, 2024). See also, Press Release, Jumaane D. Williams, *Judge Orders Bus Service Cuts Restored Following Hearing On Public Advocate's Lawsuit*, Public Advocate, City of New York (July 18, 2024),https://advocate.nyc.gov/press/judge-orders-bus-service-cuts-restored-following-hearing-on-public-advocates-lawsuit.

56. Verified Petition at 33, *City Club of New York et al v. Hochul*, No. 156696/2024 (N.Y. Sup. Ct. filed July 25, 2024).

57. Verified Petition at 4, *Riders Alliance et al v. Hochul*, No. __ (N.Y. Sup. Ct. filed July 25, 2024).

58. *Id*. at 17; N.Y. Const. Art I, §19.

59. Bernadette Hogan, *N.Y. Attorney General Won't Defend Hochul in New Congestion Pricing Lawsuits*, Spectrum News NY1, Aug. 7, 2024, https://ny1.com/nyc/all-boroughs/politics/2024/08/07/ny-attorney-general-won-t-defend-hochul-in-new-congestion-pricing-lawsuits.

60. Plaintiff's Motion for Summary Judgment at 39, *New Jersey v. Dep't of Transportation*, No. 2:23-cv-03885 (D.N.J., Nov. 10, 2023).

61. *Id*. at 3.

62. Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment at 30-32, *New Jersey v. Dep't of Transportation*, No. 2:23-cv-03885, (D.N.J. Dec. 15, 2023).

63. *Id*. at 39.

64. EA *supra* note 8, at 0-1.

65. *Id.* at ES-38.

66. *Id*. at ES-22, ES-50 n.32.

67. *See* Letter from Lisa F. Garcia, Environmental Protection Agency Region 2 (Sept. 23, 2022); EA, *supra* note 8, at Appendix 18C-467.

68. *Id.*

69. EA, *supra* note 8, at 0-3; Dave Colon, *EPA Endorsed Congestion Pricing After MTA Resolved Initial Concerns*, StreetsBlogNYC, Feb. 13, 2024, https://nyc.streetsblog.org/2024/02/13/exclusive-epa-endorsed-congestion-pricing-after-mta-resolved-initial-concerns.

70. *But c.f. National Pork Producers Council v. Ross*, 598 U.S. 356, 381-82 (2023) (Gorsuch, J.) (giving credence to the idea that states may consider the social policy implications of conduct outside their territorial boundaries in some contexts).

71. *See supra* note 6.

72. EA, *supra* note 8, at Appendix 18C.

73. *See* Brief of Amici Curiae EmpowerNJ, et al., in Support of Defendants' Cross Motion for Summary Judgment, *New Jersey v. Dep't of Transportation*, No. 2:23-cv-03885 (D.N.J. Dec. 15, 2023).

74. *Id.* at 23.

75. Noah Hall, *Political Externalities, Federalism, and a Proposal for an Interstate Environmental Impact Assessment Policy*, 32 Harv. Env't L. Rev. 50, 62-70 (2008). *See also, e.g.*, Richard L. Revesz, *Federalism and Interstate Environmental Externalities*, 144 U. Pa. L. Rev. 2341 (1996); Jonathan H. Adler, *Jurisdictional Mismatch in Environmental Federalism*, 14 N.Y.U. Envtl. L.J. 130, (2005); Thomas W. Merrill, *Golden Rules for Transboundary Pollution*, 46 Duke L.J. 931, 932 (1997).

76. *Georgia v. Tenn. Copper Co*., 206 U.S. 230, 237 (1907).

77. *Id.* at 238.

78. *See Ohio v. EPA*, 144 S. Ct. 2040, 2058 (2024).

79. EPA, *Federal "Good Neighbor Plan" for the 2015 National Ambient Air Quality Standards*, 88 Fed. Reg. 36654 (June 5, 2023).

80. *Ohio v. EPA,* 144 S. Ct. at 2040.

81. Brief for States of New York, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Jersey, Pennsylvania, and Wisconsin, and the District of Columbia, the City of New York, and Harris County, Texas, Respondents in Opposition to Applications for Stays 4 *Ohio v. EPA*, Sup. Ct. Case No. 23-1183 (Oct. 30, 2023).

82. *Ohio v. EPA*, 144 S. Ct. at 2070.

83. *Id.*

84. *See, e.g.*, *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022); *Sackett v. EPA*, 598 U.S. 651 (2023); *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (overruling *Chevron v. Natural Resources Defense Council* and holding that the Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and that courts may not defer to an agency interpretation of the law simply because a statute is ambiguous). *See also* Jody Freeman & Matthew Stephenson, *The Anti-Democratic Major Questions Doctrine*, Sup. Ct. Rev. 1 (2023) (describing the Supreme Court's narrowing of federal agency authority to address pressing environmental issues through the Major Questions Doctrine).

85. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty*., No. 23-975, 2024 U.S. LEXIS 2764, 2024 WL 3089539 (June 24, 2024).

86. *Eagle County, Colorado v. Surface Transp. Board*, 82 F.4th 1152, 1177 (D.C. Cir. 2023).

87. Pet. for Writ of Cert., *Seven Cnty. Infrastructure Coal. v. Eagle Cnty*, 23-975 (Mar. 4, 2024).

88. *Id*. at 23.