Congestion Pricing in the Courts, Part 2: Questions of State Power and Process

By Christine Billy

Since I last wrote in the *Municipal Lawyer*[1] about New York's congestion pricing plan and the litigation seeking to obstruct it, the program has been making new headlines in the aftermath of Governor Hochul's June 5 announcement of an "indefinite pause" on the program.[2] The announcement came less than a month before the program's long-anticipated start date, and after the state had spent over $400 million installing the tolling infrastructure in preparation for implementation.[3] The governor's announcement prompted swift ire from a wide array of voices ranging from environmental justice advocates in Harlem[4] to the New York City Independent Budget Office (NYC IBO).[5]

The governor's decision has also spurred a new wave of litigation challenging the pause, even as many of the initial challenges to the congestion pricing program remain pending.[6] 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 (NEPA).[7] My last article focused on this lawsuit as a case study on interstate air pollution disputes, and the role of federal law and federal courts in adjudicating these disagreements.[8] By contrast, the latest group of lawsuits that challenge the governor's "pause" of the congestion pricing program focus on internal state conflicts. The new lawsuits raise themes of separation of powers and executive overreach, and sound alarms for representative democracy and the rule of law. These debates over governmental power and process, which have been recurring themes at the federal level, are now playing out on a micro-scale within New York state courts as questions of state law, all amplified by the urgent backdrop of the climate crisis.

I. Congestion Pricing Recap

In response to years of advocacy, the New York State legislature mandated the establishment of a congestion pricing program in 2019.[9] 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[10] and Stockholm,[11] among others, tout the success of their programs.[12] New York's congestion pricing program is designed to charge drivers a toll to enter the Manhattan Central Business District, which is comprised of Manhattan south of and including 60th Street, but excluding the FDR Drive, the West Side Highway, and the Hugh L. Carey Tunnel connection to West Street.[13]

In the congestion pricing law, the New York legislature sought to reduce traffic congestion, and its associated health, safety, and environmental impacts, and fund capital improvements to the Metropolitan Transportation Authority (MTA).[14] At a minimum, the tolling program must "provide for sufficient revenues . . . to fund fifteen billion dollars for capital projects" for the MTA.[15] The Legislature declared that increasing funding for the MTA and reducing congestion were critical to protect the public health and safety of New Yorkers.[16] The act directs the Triborough Bridge and Tunnel Authority (TBTA), an affiliate of the MTA, to design and establish the program, with input from the New York City Department of Transportation (NYCDOT).[17]

After completion of federal environmental review under NEPA and a determination from the Federal Highway Administration (FHWA) that the congestion pricing program would not have a significant adverse environmental impact,[18] the MTA released a planned tolling program in December 2023,[19] following recommendations from the Traffic Mobility Review Board.[20] The MTA held a series of public hearings on the proposed plan[21] and reviewed over 25,000 public comments.[22] On March 27, 2024, the MTA, acting in its capacity as the board of the TBTA, formally voted to approve the tolling plan and set implementation for June 2024.[23]

II. Governor Hochul Announces an 'Indefinite Pause' of the Congestion Pricing Program

In her official statements of the pause, Governor 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.[24] As a technical matter, the pause appears to be implemented through the state Department of Transportation's (NYSDOT) involvement in a road-tolling agreement with the Federal Highway Administration (FHWA).[25] Because the congestion pricing program would involve tolling on federally funded roadways,[26] approval and a tolling agreement with the FHWA is required under federal law.[27] NYSDOT, which reports directly to the governor, is one of the program sponsors for purposes of this agreement, and has not yet signed onto the tolling agreement.[28]

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[.]"[29] The resolution confirmed, however, that the state congestion pricing law is still in effect.[30] In public statements, MTA representatives have remained steadfast in their readiness to implement the congestion pricing program as soon as they obtain the necessary state approval. 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."[31] The MTA has also confirmed its commitment to defending the congestion pricing program in the federal lawsuits challenging the program.[32]

Neither the governor nor the MTA have announced a new timeline for implementation,[33] although the governor has indicated that a new plan could be expected by the end of the year.[34] 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."[35]

III. Potential Consequences of the Governor's Pause on Congestion Pricing

The MTA's public affirmation that the congestion pricing law is still in effect has not quelled public doubt about whether New York will ever actually implement the program.[36] The pause itself has also led to consternation about public health, environmental, and safety harms resulting from the forced delay in implementation. Civic groups, advocates for the environment and for environmental justice, and local government officials have identified a long list of potential impacts from the pause and organized public rallies in support of the program.[37]

These impacts include the persistence of acute congestion in Manhattan's Central Business District, which brings localized environmental harms resulting from vehicle tailpipe emissions that contribute to adverse public health outcomes and cumulative climate impacts from emissions of GHGs.[38] Each of these impacts was studied and disclosed in the federal environmental review that was completed earlier in 2024.[39] 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."[40]

Environmental justice advocates also raised strong concerns that the pause threatens the local mitigation measures that the MTA had committed to implementing in several environmental justice areas. These mitigation measures had been agreed to during the environmental justice community engagement that the MTA and FHWA conducted during the NEPA process. Specifically, these mitigation measures were supposed to include electrification of the highly polluting refrigeration generators at the Hunts Point Produce Market, establishment of an asthma center in the Bronx, and planting of roadside vegetation, among other measures. As the New York City Environmental Justice Alliance framed it, "[y]ears of advocacy to improve New Yorkers' health and environment may have been lost by a single gubernatorial decision, leaving the best interests of environmental justice communities in jeopardy yet again."[41] Street safety groups have also decried the continued risk to pedestrians from increased vehicle traffic,[42] and others, such as the Partnership for New York, have questioned the governor's rationale for the pause, noting that only a fraction of commuters who work in Manhattan's Central Business District drive rather than use mass transit.[43]

Various elected officials, good government groups, and members of the public have raised a sweeping set of additional concerns about the financial hole that would be created by the loss of funds that were expected to be generated by the congestion pricing program.[44] The New York City Independent Budget Office offered a bleak assessment of the financial hit to New York's budget, estimating that subway-related delays

from the deferred capital improvements to the subway system would cost subway commuters up to $390 million a year, after inflation adjustments, noting: "Congestion pricing was expected to yield $400 million in revenues this calendar year and $1 billion annually thereafter, with toll revenues legally required to finance $15 billion for capital projects – funding that has been budgeted and planned for since the program was first authorized by the State in 2019. The MTA has stated multiple times there 'is no plan B' for this funding."[45]

As the New York City comptroller, Brad Lander, noted, any amount of delay will stall release of capital funds that were earmarked to be used for updates to the subway's signaling system, station accessibility upgrades, phase two of the Second Avenue Subway line, and electrification of fleets.[46] Without an alternate source of funding, deferral of these capital improvement projects will affect people with disabilities, who currently face barriers to accessibility under the existing public transit system, and New York City bus and subway riders generally, who will experience less reliable service resulting from deferred maintenance and upgrades.[47] The delay could also have indirect climate impacts resulting from the failure to invest in zero emissions public transit. For example, the MTA has indicated that it has postponed the purchase of more than 250 electric buses and charging infrastructure at bus depots, as well as upgrades to regional rails.[48] The Regional Plan Association estimates that nearly $10 billion in federal funding to support these transit infrastructure projects is also now at risk of being lost.[49]

IV. A New Wave of Litigation

The first lawsuit to arise out of the governor's pause on the congestion pricing program was brought against the MTA by the Transit Workers Union and New York City Public Advocate.[50] The case was filed in Manhattan Supreme Court on July 17, 2024, and raised both procedural and substantive violations of the New York State Public Authorities Law related to a "shadow cut" to New York City bus service that allegedly reduced bus service on routes in Brooklyn, Manhattan and the Bronx "between 5% and 10%."[51] The plaintiffs argue that the cuts resulted from the shortfall of congestion pricing funding created by the pause to the program. The case relies on a provision of the Public Authorities Law that generally requires the MTA to provide the mayor and the city council with 30 days' notice and the opportunity for a public hearing before bus service reductions.[52] The plaintiffs also allege that any continued reductions in bus service by the MTA "would violate its statutory obligation under § 1204(15) of the Public Authorities Law to promote the 'the safety and convenience of the public.'"[53] Judge Engoron issued a temporary restraining order on July 18, the day after the lawsuit was filed, requiring the MTA and NYCTA to "maintain service that existed prior to July 12[.]"[54]

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 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 (CPLR) seeking to force the NYSDOT and its commissioner to execute the tolling agreement and enjoin them "from taking any further actions to thwart TBTA's [Triborough Bridge and Tunnel Authority] implementation and operation of the [congestion pricing plan] consistent with state law."[55] The basis for the mandamus claim is the statutory language in the state law that establishes the congestion pricing program, the Traffic Mobility Act. The plaintiffs note that the act mandates the TBTA (MTA's affiliate) to establish and implement a congestion pricing plan and provides no express role for the NYSDOT or the governor to make policy or implementation decisions for the program.[56] They also note that the MTA has confirmed that it stands ready to implement the program, but for the NYSDOT's signature on the Tolling Agreement.[57] The City Club plaintiffs characterize NYSDOT's signature on the tolling agreement as a "ministerial act," and argue that its "refusal to proceed with the Tolling Agreement and unilateral halting" of the congestion pricing program was "arbitrary and capricious" because the NYSDOT "does not have any discretion under state law to postpone, prevent, or otherwise disrupt the implementation and operation" of the congestion pricing program.[58]

In a response filed jointly by Governor Hochul and the NYSDOT and its commissioner, the state has argued that the governor's decision to direct the NYSDOT to pause the congestion pricing program is a political question that is not reviewable by courts under the "political questions doctrine."[59] The state has defended the Article 78 challenge by arguing that the pause was neither ministerial nor a final agency determination, and that the NYSDOT had no state statutory obligation to sign onto the Tolling Agreement.[60]

In the sister case filed on the same day, a group of environmental and environmental justice advocates – Riders Alliance, Sierra Club, and New York City Environmental Justice Alliance – allege that the pause violates the state Climate Leadership and Community Protection Act of 2019 (CLCPA), which sets statewide greenhouse gas emissions reduction requirements.[61] The plaintiffs argue that the pause was not consistent with the CLCPA's requirement under § 7(2) of the CLCPA that all state agencies evaluate the climate impacts of each "administrative approval and decision" to ensure that decisions will help achieve the required reductions in emissions without undermining the state's ability to meet the CLCPA emissions limits[62] or otherwise provide a "detailed statement of justification" that identifies alternatives.[63] Section 7(2) of the CLCPA has been relatively untested, and Riders Alliance's

invocation of it here is novel. The Riders Alliance plaintiffs argue that failure to implement the congestion pricing program interferes with the state's ability to achieve compliance with the required GHG emissions reduction targets, noting that the state had factored in the projected reduction in vehicle emissions from the congestion pricing program when it scoped its plan for meeting the state's overall emissions reduction requirements under the CLCPA.[64]

In response, the state challenges the standing of the Riders Alliance plaintiffs[65] and argues that the CLCPA provision is inapplicable to NYSDOT's decision-making in this case because the pause is not a final agency action.[66]

The Riders Alliance plaintiffs further allege violations of Article 1, § 19 of the New York State Constitution, which provides New Yorkers a right to "clean air and water, and a healthful environment," as ratified by New York voters in 2021, and commonly called the "Green Amendment."[67] Because vehicle miles traveled – and the resulting tailpipe emissions of local air pollutants – can be directly correlated with increased morbidity and mortality rates for New Yorkers, the plaintiffs allege that failure to move forward with the congestion pricing program will result in "unnecessary and unlawful illnesses and deaths" in violation of the Green Amendment.[68] They also reference the governor's endorsement of federal environmental assessment, performed by NYSDOT, MTA and FHWA, noting the health costs of vehicle traffic in New York City that could be abated by the immediate implementation of the congestion pricing program.[69] The Riders Alliance plaintiffs also note that the pause threatens the mitigation measures promised in the environmental justice areas that would have been affected by the congestion pricing program, which in some cases, were expected to improve air quality air above baseline rates in these environmentally over-burdened neighborhoods.[70]

In response, the state argues that the court need not reach the constitutional claim and also asserts that the Green Amendment places no affirmative obligation on the NYSDOT to sign the Tolling Agreement.[71]

The state filed a motion to dismiss the City Club and Riders Alliance claims, which Justice Engoron denied on September 30, 2024. The ruling determined that the petitioners have standing and that the case is ripe, as "there is no evidence that the alleged harm will be prevented or signficiantly ameliorated by further administrative action."[72] Justice Engoron also weighed in on the state's arguments that the governor's decision was discretionary, finding "a more than plausible argument" that NYSDOT's signature on the Tolling Agreement was "ministerial," although noting that the state will have an opportunity to respond more fully.[73]

V. Themes of Power and Process Reach New York State Courts

The new group of congestion pricing lawsuits are at relatively early stages in the New York courts. While we wait for full adjudication on the merits, a few key themes have already emerged, all centered on questions of state governance and state law: Who gets to wield power with regard to the fate of New York's congestion pricing program? What legislative, administrative, and judicial processes must be followed to ensure democratic legitimacy and good governance? And what can these questions of power and process tell us about what current governmental decision-makers owe to future generations?

A. Separation of Powers and Executive Overreach

In each of the recent lawsuits, the plaintiffs allege that the governor overstepped her authority by imposing a pause on the congestion pricing program, thereby transgressing the will of the state legislature and the people of New York.[74] The City Club plaintiffs take up this point directly by bringing an Article 78 mandamus action alleging that the governor's actions in directing the NYSDOT to withhold its signature from the federal tolling agreement exceeded the scope of the governor's and the agency's statutory authority.[75] They make a textual argument that under the Traffic Mobility Act, the legislature granted authority to the TBTA, not the governor or the NYSDOT, to implement the law, framing the NYSDOT's role in the tolling agreement as purely ministerial.[76] They argue that the legislature commanded the TBTA to collect tolls under the program and did not grant the executive branch statutory authority to override this legislative decision for political reasons. They posit: "[t]he fact that some drivers will pay tolls under the [congestion pricing program], or face the prospect of tolls and thus may decide not to drive into the Central Business District, is a core feature of the [congestion pricing law], not a rational or valid reason to 'pause' or block its implementation."[77]

The question of whether an executive administrative agency or official might be acting outside the scope of their delegated authority and veering into political questions more appropriately reserved to the legislature has become increasingly common in the context of federal administrative law. The Supreme Court has taken up this question directly in its application of the Major Questions Doctrine, among other judicial doctrines challenging federal administrative agency authority.[78]

In the congestion pricing litigation, the plaintiffs are anchoring their separation of powers challenges in New York statutory law, rather than seeking to rely on judicially crafted doctrines of interpretation. The City Club plaintiffs point to the constraints that state procedural law (i.e. Article 78 of the CPLR) places

on administrative agencies to rein in arbitrary and capricious actions and guard against executive overreach.[79]

The Riders Alliance plaintiffs raise a different sort of separation of powers argument. Mainly, they craft their claims from the affirmative obligations that the state legislature placed on administrative agencies in the CLCPA to do their part to achieve the state's greenhouse gas reductions goals.[80] They also seek to ground their claims in the Green Amendment, which is still being interpreted by state courts.[81] Although a relatively untested theory,[82] they frame the Green Amendment as placing an affirmative obligation on the state to protect New Yorkers from harmful air pollution.[83] In each of these claims, they characterize the governor and NYSDOT as failing to make good on these state promises, which, in the plaintiffs' view, were not within the power of the executive to revoke, thus resulting in violations of state law and contravening the will of the legislature and the people of New York.[84]

The clash over institutional positions within state government has also played out in the orientation of the litigation itself. Governor Hochul hired outside counsel to defend her claims challenging the pause, while the New York attorney general is still defending the congestion pricing program in the face of federal lawsuits.[85] Meanwhile, the TBTA and MTA have hired their own separate counsel in the City Club and Riders Alliance cases and have filed a separate answer stating that they are taking no position on the merits of the claims.[86]

As these cases unfold, it will be important to note which doctrines the New York state courts deploy to help them adjudicate these looming questions of separations of powers and executive overreach, which have so dominated federal administrative law discourse.[87]

B. Public Processes and Democratic Legitimacy

A second theme in the recent congestion pricing lawsuits is the role of state procedures and processes that allow for multiple voices to shape state policymaking. The plaintiffs seek to utilize processes built into New York state law that allow for participation by multiple state and local governmental entities and the public. For example, the Public Advocate and Transit Workers Union rest their claims on a procedural facet of the Public Authorities Law, which incorporates a level of local deference to New York City elected officials by granting them notice and an opportunity for a public hearing before the MTA makes critical changes to New York City transit services.[88] Similarly, the Riders Alliance plaintiffs draw upon a procedural check that the legislature embedded within the CLCPA, which requires state administrative agencies to offer a justification for pursuing actions that deviate from the state's GHG emissions targets.[89] The City Club plaintiffs rely on the private cause of action provided in the state CPLR, which offers a judicial review of governmental actions, including executive administrative agencies.[90] Each of these procedural protections that have been written into state law provide opportunities for other branches and levels of government, as well as the public, to review aspects of executive decision-making.

Underlying each of these state procedural claims is a broader theme related to democratic legitimacy. By launching allegations of arbitrary, politically motivated executive action, untethered from statutory authority, the plaintiffs paint a picture where the rule of law is at risk. Collectively they ask: if these statutory and administrative processes that were designed to include diverse voices in governmental decision-making can be overridden by a unilateral executive action, who will ensure that the rule of law is followed? The answer that the plaintiffs offer to this question is the New York state courts. By contrast, the governor argues that it was within her authority to take a discretionary action to delay – and potentially alter – a plan that had been developed through multiple public processes, including legislation and a series of administrative proceedings.[91] She also argues that this discretionary executive decision is a political question that is non-reviewable by state courts.[92] We will wait to see how the courts continue to interpret these questions and what they see as their role in answering them.

C. What Do We Owe Future Generations?

A third major theme in the latest group of congestion pricing cases is the role of the law itself in protecting future generations. The apparatus of legislation, by its very nature, has the power to bind future administrations and protect the interests of generations to come. At the same time, the apparatus of infrastructure has the power to bind the future in a different, more tangible way. Benedict Kingsbury has argued that when assessing the true impact of governmental decisions on the future, we should be "thinking infrastructurally."[93] He notes that choices about how to invest in, build, and maintain infrastructure can drive their own set of policy outcomes independent of what the law says, and lead to effects that follow a timescale that can be uncalibrated with – and longer than – timescales for political decision-making.[94] In other words, future generations must live with the infrastructure choices made by those currently in power long after they are gone.

The New York City subway system is perhaps the quintessential example of how infrastructure decisions bind future generations. Historians have noted how the story of the subway system has been interlocked with the story of New York itself.[95] Choices about when and where to lay subway lines have had a dramatic and visible influence on the height, location, and density of building development in the city.[96] Conversely, cumulative delays and maintenance deferrals have impacted the quality of subway service, leading to actual and perceived impacts on the city's safety and quality of life, with cascading consequences that outlasted the elected terms of those who had authority to make

those infrastructure choices.[97] New Yorkers who take advantage of the subway system today are benefiting from the choices and cost expenditures made by those before we were born.

This concept of "thinking infrastructurally" is a useful lens for understanding what is at stake in the recent congestion pricing cases, as the plaintiffs attempt to frame the potential long-term and lasting impacts of the governor's decision to pause the program as cognizable legal harms. Perhaps one of the most interesting aspects of these cases is the way in which the plaintiffs seek to use the infrastructure of state governance – doctrines of separation of powers and procedural safeguards against governmental overreach – to force the state to follow through with its own choices about infrastructure investments. These arguments expressly invoke the rights of future generations who will have to live under both the physical and legal realities that flow from the state's present actions.

As a backdrop to the debate over congestion pricing, concerns about the climate crisis have led to increasing attention to the question of what we owe future generations.[98] Children are bringing a growing number of cases against state, federal, and international governments, and asking courts to command them to consider the rights of future generations as the climate crisis unfolds.[99] At the same time, pragmatic solutions to the climate crisis involve complex changes to energy, buildings, and transportation systems that must be implemented over the long term.[100] This requires governments to engage in coordinated strategic planning across multiple sectors and constituencies. New York's climate plan, codified, in part, in the CLCPA, sets deadlines for governmental actions that will result in GHG emissions reductions that extend over several election cycles, and will require sustained action from multiple branches and levels of government.[101] In a meaningful sense, the actions of New York's policymakers now – both legally and infrastructurally – will dictate the state's ability to meet its own climate goals in a future that will look different than today.

It remains to be seen whether the congestion pricing plaintiffs will persuade New York courts to "think infrastructurally" when interpreting New York's laws and their allocations of power and process, and how the courts will respond to the question of what we owe to future New Yorkers.

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Endnotes

1. Christine Billy & Janet Bering, *Congestion Pricing in the Courts: NEPA as a Vehicle for Addressing Interstate Disputes*, 38 NYSBA Mun. Law. 21 (2024).
2. Press Release, Governor Kathy Hochul, *What They Are Saying: Governor Hochul Announces Pause on Congestion Pricing To Address the Rising Cost of Living in New York* (June 5, 2024), https://www.governor.ny.gov/news/what-they-are-saying-governor-hochul-announces-pause-congestion-pricing-address-rising-cost.
3. Press Release, N.Y.C. Indep. Budget Off., *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 (June 6, 2024), https://perma.cc/7AVM-5LVL ("According to the MTA's Capital Dashboard, the authority has allocated more than $427 million to plan and build out the infrastructure to implement congestion pricing so far. Looking forward, the MTA has a contract with TransCore to install, operate and maintain the tolling infrastructure for the next six years, for a total cost of $556 million (amended from an original $507 million due to delays in the implementation of congestion pricing). If the program is not enacted at a future point, MTA investments made to date will potentially be written off as bad spending. Governor Hochul's announcement to delay congestion pricing just weeks before implementation without any clear alternatives – after five years of direct financial and infrastructure planning and investments – will present a challenge to the MTA in their ability to maintain and improve the transit system that New York City's economy relies on.") [hereinafter NYC IBO Statement].
4. N.Y.C. Env't Just. All. *Community Heat and Air Mapping Project for Environmental Justice: Heat-Related Risks, Air Pollution, and Social Vulnerability in New York City* 3 (2024) [hereinafter NYC-EJA Report].
5. NYC IBO Statement, *supra* note 3.
6. *See New Jersey v. U.S. Dep't of Transp*., No. 2:23-cv-03885 (D.N.J. filed July 21, 2023); *Sokolich et al. v. U.S. Dep't of Transp*., No. 23-cv-21728 (D.N.J. filed Nov. 1, 2023); *Trucking Ass'n of N.Y. v. Metro. Transp. Auth., No*. 24-cv-4111 (S.D.N.Y. filed May 30, 2024).
7. *State of New Jersey v. U.S. Dep't of Transp*., No. 2:23-cv-03885 (D.N.J.).
8. Billy & Bering, *supra* note 1.
9. MTA Reform and Traffic Mobility Act, N.Y. S. 1509--C /A. 2009--C, Part ZZZ (2019) (codified at N.Y. Veh. & Traf. Law § 1701-1706).
10. Congestion Charge, Transport For London, https://tfl.gov.uk/modes/driving/congestion-charge.
11. Patrick Ercolano*, Study: Stockholm Traffic Tax Helps Kids in Sweden Breathe Easier*, John Hopkins Univ. (Mar. 2, 2017), https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/.
12. Stephen Nessen, *3 Global Cities Have Had Congestion Pricing for Decades. How's It Going?,* Gothamist (Aug. 17, 2023), https://gothamist.com/news/3-global-cities-have-had-congestion-pricing-for-decades-hows-it-going.
13. N.Y. Veh. & Traf. Law § 1704(2).
14. *Id.* § 1701.
15. *Id*. § 1704-a(1).
16. *Id.* § 1701.
17. *Id.* § 1704.
18. *See* U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment Figure ES-2, ES-3 (Apr. 2023) https://new.mta.info/project/CBDTP/environmental-assessment [hereinafter EA].

19. Metro. Transp. Auth., *MTA Announces Details of Congestion Pricing Public Comment Period* (Dec. 26, 2023), https://new.mta.info/press-release/mta-announces-details-of-congestion-pricing-public-comment-period.
20. Metro. Transp. Auth., Traffic Mobility Review Board, https://new.mta.info/project/CBDTP/traffic-mobility-review-board.
21. Metro. Transp. Auth., Central Business District Tolling Program, https://new.mta.info/project/CBDTP.
22. Press Release, Metro. Transp. Auth., *MTA Adopts Central Business District Toll Rates* (Mar. 27, 2024), https://new.mta.info/press-release/mta-board-adopts-central-business-district-toll-rates.
23. *Id.*
24. Governor Kathy Hochul, *supra* note 2.
25. Board Resolution, Metro. Transp. Auth., MTA Board Action Items at 6 (June 26, 2024), https://new.mta.info/document/144021 (hereinafter MTA Resolution).
26. EA, *supra* note 18 at 0-1.
27. 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/.
28. MTA Resolution, *supra* note 25 at 6.
29. *Id*.
30. *Id*.
31. Press Release, Metro. Transp. Auth., Joint Statement from MTA Chief Financial Officer Kevin Willens and MTA General Counsel Paige Graves (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."); Press Release, Metro. Transp. Auth., TRANSCRIPT: MTA Chair and CEO Lieber Meets Press to Make Announcement and Take Questions (June 10, 2024), https://new.mta.info/press-release/transcript-mta-chair-and-ceo-lieber-meets-press- make-announcement-and-take-questions.
32. Press Release, Metro. Transp. Auth., TRANSCRIPT: MTA Chair and CEO Lieber Meets Press to Make Announcement and Take Questions (June 10, 2024), https://new.mta.info/press-release/transcript-mta-chair-and-ceo-lieber-meets-press- make-announcement-and-take-questions ("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.").
33. *See* Grace Ashford, *Hochul Halts Congestion Pricing in a Stunning 11th-Hour Shift*, N.Y. Times (June 5, 2024), https://www.nytimes.com/2024/06/05/nyregion/congestion- pricing-pause-hochul.html (quoting Governor Hochul referring to her decision as an "indefinite[] pause"); Metro. Transp. Auth., *Central Business District Tolling Program*, (last visited July 30, 2024), https://new.mta.info/project/CBDTP (stating that congestion pricing "is temporarily paused pending necessary approvals").
34. Nia Prater, *Hochul Seems Set on Watered-Down Congestion Pricing*, N. Y. Mag. (Aug. 20, 2024), https://nymag.com/intelligencer/article/hochul-seems-set-on-watered-down-congestion-pricing.html.
35. *Id.*
36. *See, e.g.*, Ross Barkan, *Has NY Governor Kathy Hochul Killed Congestion Pricing For Good?*, The Nation (June 11, 2024), https://www.thenation.com/article/politics/governor-hochul-congestion-charge-pause/ ("Talk to anyone in city or state government now and you'll believe congestion pricing is dead for good, though some transportation and environmental advocates hold out hope that one day – in some vague and tentative future – tolling drivers entering Manhattan south of 60th Street will be a reality.").
37. *See, e.g.,* Stefanos Chen*, Canceling Congestion Pricing Could Kill 100,000 New York Jobs*, N. Y. Times (June 26, 2024), https://www.nytimes.com/2024/06/26/nyregion/congestion-pricing-funding-job-loss.html; Eliot Force, *Lander Says He's Ready to Take Legal Action to Save Congestion Pricing*, City & State N. Y. (June 12, 2024), https://www.cityandstateny.com/politics/2024/06/lander-says-hes-ready-take-legal-action-save-congestion-pricing/397340/.
38. EA, *supra* note 18 at ES-13.; ES-15; chapter 10; 10-33, Figure 10-12.
39. *Id*.
40. Gersh Kuntzman, *National Green Groups Condemn Hochul's Congestion Pricing 'Pause'*, Streetsblog NYC (June 18, 2024), https://nyc.streetsblog.org/2024/06/18/national-green-groups-condemn-hochuls-congestion-pricing-pause.
41. NYC-EJA Report, *supra* note 4 at 3.
42. Press Release, Families for Safe Streets, FSS Statement on Gov. Hochul's Sudden Congestion Pricing Reversal (June 7, 2024), https://perma.cc/VW9A-P8RL.
43. Greg David, *Business Leaders 'Furious' at Hochul Reversal on Manhattan Congestion Charge*, The City (June 5, 2024), https://www.thecity.nyc/2024/06/05/congestion-fee-manhattan-hochul-business/; P'ship for N.Y.C., $100 Billion Cost of Traffic Congestion in Metro New York (2018); Chen, *supra* note 37.
44. *See supra* note 37.
45. NYC IBO Statement, *supra* note 3 at 1.
46. Press Release, NYC Comptroller, *NYC Comptroller Lander & Coalition of Advocates and Litigators Announce Two New Lawsuits Challenging Gov. Hochul's Indefinite Pause of Congestion Pricing* (July 25, 2024), https://comptroller.nyc.gov/newsroom/nyc-comptroller-lander-coalition-of-advocates-and-litigators-announce-two-new-lawsuits-challenging-gov-hochuls-indefinite-pause-of-congestion-pricing/; Press Release, NYC Comptroller, *NYC Comptroller Lander & Coalition of Legal Experts and Potential Plaintiffs Announce Plan to Explore Legal Avenues to Resume Congestion Pricing* (June 12, 2024), https://comptroller.nyc.gov/newsroom/nyc-comptroller-lander-coalition-of-legal-experts-and-potential-plaintiffs-announce-plan-to-explore-legal-avenues-to-resume-congestion-pricing/.
47. *Id*.
48. Keith Collins, *See How Your Subway Service May Suffer Without Congestion Pricing*, N. Y. Times (July 11, 2024), https://www.nytimes.com/interactive/2024/07/11/nyregion/subway-cuts-congestion-pricing.html.
49. Letter from Kate Slevin, Exec. Vice Pres., Reg. Plan Ass'n, et al. to Janno Lieber, Chair and CEO of the Metro. Transp. Auth., RPA and Coalition Write to FTA: $10 Billion in Federal Transit Funds Potentially at Risk Due to Congestion Pricing Delay (June 18, 2024), https://perma.cc/66E8-N7WX.
50. Verified Class Action Petition at 7, *Williams v. Lieber*, No. 156447/2024 (N.Y. Sup. Ct. filed July 17, 2024) [hereinafter Williams Petition].
51. *Id*. at 7-8.
52. Public Authority Law § § 1204(15) and 1205(4).
53. Williams Petition, *supra* note 50 at 12.

54. Order to Show Cause and Stay at 2, *Williams v. Lieber*, No. 156447/2024 (N.Y. Sup. Ct. filed July 17, 2024). *See also*, Press Release, Jumaane D. Williams, Public Advocate, City of New York, Judge Orders Bus Service Cuts Restored Following Hearing On Public Advocate's Lawsuit (July 18, 2024), https://advocate.nyc.gov/press/judge-orders-bus-service-cuts-restored- following-hearing-on-public-advocates-lawsuit.
55. Verified Petition at 33, *City Club of New York et al v. Hochul*, No. 156696/2024 (N.Y. Sup. Ct. filed July 25, 2024) [hereinafter City Club Petition].
56. *Id*. at 3-4.
57. *Id*. at 21.
58. *Id.* at 23, 28.
59. Memorandum of Law in Support of State Respondents' Motion to Dismiss and Opposition to Petitioners' Memoranda of Law in Support of Verified Petitions at 12-16, *City Club of New York et al v. Hochul*, No. 156696/2024 and *Riders Alliance et al v. Hochul*, No. 156711/2024 (N.Y. Sup. Ct. filed Sept. 6, 2024) [hereinafter Hochul, NYSDOT Response].
60. *Id*. at 2-3.
61. Verified Petition at 4, *Riders Alliance et al v. Hochul*, No. 156711/2024 (N.Y. Sup. Ct. filed July 25, 2024) [hereinafter Riders Alliance Petition].
62. *Id.* at 15; Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 §7(2) (S. 6599).
63. Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 §7(2) (S. 6599).
64. Riders Alliance Petition, *supra* note 61 at 16; New York State Climate Action Council, New York State Climate Action Council Scoping Plan 170 (2022).
65. Hochul, NYSDOT Response *supra* note 59 at 24-25.
66. *Id*. at 27.
67. Riders Alliance Petition, *supra* note 61 at 17-18.
68. *Id*. at 4.
69. *Id*. at 19-20 (citing Press Release, Governor Kathy Hochul, *Governor Hochul Announces First-in-Nation Congestion Pricing Will Move Forward, Improving Air Quality and Reducing Traffic* (June 27, 2023), https://www.governor.ny.gov/news/governor-hochul-announces-first-nation-congestion-pricing-will-move-forward-improving-air); EA *supra* note 18.
70. *Id.* at 23.
71. Hochul, NYSDOT Response *supra* note 59 at 29-33.
72. *Riders All. v. Hochul,* 2024 N.Y. Slip Op. 33437(U).
73. *Id. at 5.*
74. *See supra* notes 50, 55, 61.
75. City Club Petition, *supra* note 55 at 5.
76. *Id*.
77. *Id*. at 31.
78. *See, e.g., W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 142 S. Ct. 2587 (2022) (applying the "major questions doctrine" to hold that Congress did not grant the Environmental Protection Agency authority under Section 111(d) of the Clean Air Act to set emissions caps for power plants by shifting electricity production from higher-emitting to lower-emitting producers); *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 143 S. Ct. 1322, 215 L. Ed. 2d 579 (2023); *Biden v. Nebraska*, 143 S. Ct. 2355, 216 L.Ed. 2d 1063 (2023).
79. City Club Petition, *supra* note 55 at 1-5.
80. Riders Alliance Petition, *supra* note 61 at 24.
81. *Id*. at 17-18.
82. Michael B. Gerrard & Edward McTiernan, New York's Green Amendment: The First Decisions, N.Y.L.J. (Mar. 8, 2023).
83. Riders Alliance Petition, *supra* note 61 at 17-18.
84. *Id*. at 25-27.
85. 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.
86. Respondents-Defendants Triborough Bridge and Tunnel Authority's and Metropolitan Transportation Authority's Answer to the Amended Petition, *City Club of New York et al v. Hochul*, No. 156696/2024 (N.Y. Sup. Ct. filed Sept. 6, 2024).
87. *See, e.g.*, Natasha Brunstein & Donald L. R. Goodson, *Unheralded and Transformative: The Test for Major Questions After West Virginia*, 47 Wm. & Mary Env't. L. & Pol'y Rev. 47 (2022); Daniel Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 Va. L. Rev. 1009 (2023); Natasha Brunstein & Richard L. Revesz, *Mangling the Major Questions Doctrine*, 74 Admin. L. Rev. 217 (2022); Jack M. Beermann, *The Anti-Innovation Supreme Court: Major Questions, Delegation, Chevron and More*, 65 Wm. & Mary L. Rev. 1265 (2024); 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).
88. Williams Petition, *supra* note 50 at 8.
89. Riders Alliance Petition, *supra* note 61 at 24.
90. City Club Petition, *supra* n. 55 at 27.
91. Hochul, NYSDOT Response *supra* note 59 at 20-24.
92. *Id.* at 12-16.
93. Benedict Kingsbury, *Infrastructure and InfraReg: on Rousing the International Law 'Wizards of Is,'* 8 Cambridge Int'l L. J. 171, 177 (2019).
94. *Id.* at 181.
95. *See, e.g.*, Clifton Hood, 722 Miles: The Building of the Subways and How They Transformed New York 17 (1993).
96. *Id*.
97. John E. Morris, Subway: The Curiosities, Secrets, and Unofficial History of the New York City Transit System 163-169 (2020).
98. *See* César Rodríguez-Garavito, *Climatizing Human Rights: Economic and Social Rights for the Anthropocene in* Oxford Handbook of Econ. & Soc. Rts. *1, *12 ("The time to cope with the climate emergency with conventional measures has passed. My generation (Generation X) was a product of globalization, and we largely wasted the thirty crucial years we had to take gradual steps against global warming, ever since scientists sounded the first audible alarm bells in the late 1980s. Today, Generation Z teenagers go on school strikes to remind us of what the IPCC has concluded: to avoid the most catastrophic climate change scenarios and the subsequent human rights crisis, urgent measures that cut carbon emissions in half by 2030 at the latest are the only way out.").
99. Jennifer Hijazi, *Youth Climate Rights Case Makes Lasting Mark Despite Near Defeat*, Bloomberg L. (July 17, 2024), https://news.bloomberglaw.com/environment-and-energy/youth-climate-rights-case-makes-lasting-mark-despite-near-defeat.
100. Intergovernmental Panel on Climate Change, Climate Change 2023 Synthesis Report (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf.
101. NY ECL § § 75-0107(1)(a)–(b), 75-0109(4)(a)–(b), (f) (requiring that by 2030 greenhouse gas emissions be reduced 40% from the level they were at in 1990, and that by 2050 emissions be reduced 85% from the 1990 level, across all sectors of the economy).