

# Congestion Pricing in the Courts, Part III: Federal vs. State Power and the Ongoing Role of NEPA Review

By Christine Billy



## I. Congestion Pricing Arrives

Congestion pricing is back in court, and this time the Metropolitan Transportation Authority is seeking to stave off a federal attempt to terminate the program.<sup>1</sup> Leading up to this moment, Judge Gordon in the District Court of New Jersey denied the majority of New Jersey's National Environmental Policy Act claims seeking to halt the program and held that the program could move forward.<sup>2</sup> The tolls were turned on with much public fanfare on Jan. 5, 2025.<sup>3</sup>

After over five years of review and delay including extensive litigation,<sup>4</sup> the newly unveiled program has generated a constant buzz of press coverage and sidewalk chatter. The MTA has announced that the program has generated over \$159 million in revenue in its first three months<sup>5</sup> and has led to significant reductions in travel times and vehicle congestion in bridges, tunnels and major arteries.<sup>6</sup>

But on Feb. 19, 2025, the U.S. Secretary of Transportation issued a letter to Governor Hochul informing her that the Federal Highway Administration was revoking its approval of the program.<sup>7</sup> This then triggered a new lawsuit by the MTA challenging that agency's attempt to quash the program.<sup>8</sup> The media and social media narratives surrounding this latest federal-state clash have taken on a life of their own.<sup>9</sup> This article will focus on the legal developments and the broader policy and legal context in which they arise.

The case of congestion pricing is generative of many complex legal and policy questions, and there is a continu-

ing need for lawyers, legal commentators, and voices from multiple disciplines and perspectives to weigh in. Taking a narrower focus, this article will discuss the role of the National Environmental Policy Act in the latest case brought by the MTA, and then explore what is at stake in the present moment. Over the next year, New York will demonstrate whether the first congestion pricing program in the country can be successful or learn what happens when the federal government forces state promises to be broken.

## II. Federal Intervention to Halt Congestion Pricing and the Role of NEPA in Assessing Changes in Federal Policy

### A. The Trump Administration Withdraws Approval and New York Responds

The Trump administration's current attempt to halt the congestion pricing program has centered on withdrawal of an approval that was issued in November 2024 under the Biden administration.<sup>10</sup>

Because some roadways within the Manhattan Central Business District (the congestion zone) have been improved with federal funding, New York needed approval from the Federal Highway Administration in order to toll these roads, due to a generalized prohibition on charging tolls on federally funded highways.<sup>11</sup> As a result, New York sought coverage under one of the statutorily authorized exemptions: congestion pricing approved under the federal Value Pricing Pilot Program.<sup>12</sup> This program was established by Congress

in the 1990s “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 strategies on driver behavior, traffic volumes, transit ridership, air quality and availability of funds for transportation programs.”<sup>13</sup>

After a lengthy and dynamic National Environmental Policy Act review process and a six-month interim pause to the program from Governor Hochul, the administration signed onto an agreement with the state approving operation of New York’s congestion pricing program under the Value Pricing Pilot Program. The agreement authorizes the Triborough Bridge and Tunnel Authority (an MTA affiliate) to charge tolls, specifies the tolling rates and use of revenues, requires the state to conduct audits and report results to the Federal Highway Administration, and allows it to retain audit authority.<sup>14</sup>

Then in February 2025, shortly after President Trump took office, the U.S. Secretary of Transportation Sean Duffy issued a letter to Governor Hochul stating that after review, the Federal Highway Administration determined that New York’s congestion pricing program does not meet the statutory requirements of the Value Pricing Pilot Program and that the approval was being withdrawn.<sup>15</sup> Secretary Duffy cited two primary reasons for this withdrawal. First, that programs allowable under the pilot program must include a toll-free option (e.g., express toll lanes), which would exclude “cordon pricing” schemes where tolls are charged to enter a zone, such as New York’s congestion pricing program.<sup>16</sup> The secretary took this position, notwithstanding the fact that prior reports and online materials describe “cordon pricing” programs as allowable programs under the program.<sup>17</sup> Second, the secretary’s letter stated that the fact that the toll rates were based, in part, on revenue-generating targets for the MTA disqualified the program.<sup>18</sup> The letter does not cite to a source of law expressly stating either of these restrictions, and does not appear to have been accompanied by an analysis that engages with any of the prior administration’s policy positions for granting the approval, such as its prior determination that funding for the MTA was an appropriate transportation purpose.<sup>19</sup>

On the same day that the letter was issued, the MTA filed a claim challenging the validity of Secretary Duffy’s withdrawal of approval.<sup>20</sup> The MTA claims that the Federal Highway Administration lacks legal authority to withdraw approval for the program under either the operable statute, the Intermodal Surface Transportation Efficiency Act of 1991, or the program agreement.<sup>21</sup> The MTA notes that while the act grants the administration authority to enter into agreements to establish new programs, it does not include an express process for withdrawing such approvals, and the pricing pi-

lot program agreement provides no such mechanism for the agency to withdraw its signature.<sup>22</sup> The MTA characterizes the Federal Highway Administration’s action as *ultra vires* and outside the scope of the agency’s authority under law.<sup>23</sup>

In the complaint, the MTA also challenges the agency’s rationale for revoking the approval, citing the federal Administrative Procedure Act requirement that agency actions must have legal authority rooted in federal law and must be justified by a reasoned analysis that is not arbitrary and capricious.<sup>24</sup> The MTA argues that the secretary did not meet this burden because the letter does not adequately explain the agency’s reasoning for rescinding the approval and fails to consider alternative approaches.<sup>25</sup>

The MTA has raised additional claims rooted in the fact that the congestion pricing program is already underway. MTA argues that the state now has a reliance interest in the original decision and a property interest in the pilot program agreement and the authority granted therein to implement tolls, protected under the Takings Clause of the Fifth Amendment.<sup>26</sup>

Finally, the MTA notes that the administration did not appear to conduct any environmental review before issuing the letter.<sup>27</sup> The MTA argues that this action seeking to effectively terminate the congestion pricing program triggered the National Environmental Policy Act’s requirements to assess potential adverse environmental impacts.<sup>28</sup>

The case has been assigned to Judge Liman in the Southern District of New York, who has heard previous congestion pricing cases and who ruled last June that the administration’s environmental review of the program was sufficient.<sup>29</sup> As of this writing, the federal administration has not yet had a chance to formally respond to these legal claims.<sup>30</sup>

In conjunction with the MTA’s latest lawsuit, the governor and the MTA chair have made emphatic public statements to the effect that the Federal Highway Administration and the secretary lack the legal authority to withdraw the approval, and accordingly that New York is not planning to follow the agency’s directives.<sup>31</sup> In the governor’s words, “the cameras are staying on.”<sup>32</sup>

The Trump administration has also sought to convey its position through multiple channels. Following Secretary Duffy’s letter to the MTA, the executive director of the Federal Highway Administration wrote a subsequent letter reiterating the agency’s position and providing a deadline of March 21, 2025 to terminate the program, which was later twice extended.<sup>33</sup> When the governor did not alter her position, Secretary Duffy sent a further letter on April 21, 2025 directing the New York State Department of Transportation “to show cause, no later than May 21, 2025,” why the Fed-

eral Highway Administration should not take enforcement action against New York State and threatened to withhold federal funding for unrelated transportation projects in the state.<sup>34</sup> These official statements have been accompanied by a battalion of statements made by President Trump and Secretary Duffy attacking the program and threatening to revoke federal funding to New York.<sup>35</sup> Some commentators have noted that the secretary's overt threats to cut funding and "kill" cornerstone state programs are at odds with past practice for the office; predecessors have traditionally maintained a public face of enabling, rather than thwarting state transportation projects.<sup>36</sup>

President Trump's statements indicate a range of motivations for quashing the program, many of which are now being used by the MTA to buttress an argument that the highway administration's withdrawal was not based on any reasoned analysis of the program's legal legitimacy, but rather, was a purely political attempt to assert power over New York.<sup>37</sup> It remains to be seen whether the agency will successfully dispel the appearance of pretextual political motivation.<sup>38</sup>

## **B. The Ongoing Role of NEPA in the Congestion Pricing Story**

In a previous *Municipal Lawyer* article, Janet Bering and I explored the role of the National Environmental Policy Act in adjudicating interstate disputes, focusing on the litigation between New Jersey and New York.<sup>39</sup> We explored how NEPA was being used by New Jersey as a sword to attack the program. In the latest legal development, NEPA is being invoked by the MTA as a lifeboat to keep the program alive by challenging the Federal Highway Administration's reversal of its position after a change in presidential administration.

It is common for incoming presidential administrations to change policy positions, but there are legal procedures that apply regardless of the administration. In addition to the Administrative Procedure Act's general requirements to act in accordance with the law, the National Environmental Policy Act requires that federal agencies study potentially adverse environmental impacts before taking major federal actions.<sup>40</sup> Under NEPA, potential impacts are measured alongside current conditions and compared against a "no action" alternative.<sup>41</sup> As the congestion pricing program is now currently in effect, any federal action that would terminate the program could potentially increase congestion and associated air and noise pollution. The secretary's letter does not indicate that any review of such potentially adverse impacts was conducted before the letter was issued.

It is important to reiterate that NEPA is generally viewed as a process statute, rather than an action forcing one, although the process itself can shift project details and outcomes.<sup>42</sup> The cure for a NEPA violation would likely be for

the administration to conduct an analysis of the environmental impacts of revoking approval for the program and possible alternatives and mitigation measures. However, as NEPA review takes time and can invite litigation along the way, a court ruling remanding the case to the Federal Highway Administration for NEPA review would invariably push back the timeframe for stopping the program.

The ghosts of NEPA reviews prior may also haunt the administration as this case moves forward. The two federal judges to weigh in substantively on the previous NEPA lawsuits brought by plaintiffs seeking to stall the congestion pricing program both emphasized the robust, iterative, and exhaustive nature of the NEPA review that the Biden administration performed before issuing approval for the congestion pricing program.<sup>43</sup> As noted in previous writings, the NEPA process and the litigation it generated only served to lengthen and expand the final NEPA analysis supporting administrative approval.<sup>44</sup>

It remains to be seen what role the prior NEPA analysis will play in the court's review of the newest claim or surrounding claims challenging the rationality of the administration's reversal. However, in adjudicating the NEPA claims brought by plaintiffs seeking the challenge the congestion pricing program, Judge Liman was presented with an administrative record of over 45,000 pages documenting the anticipated environmental benefits of the program, and most recently, issued a 98-page decision further upholding the congestion pricing NEPA review in April 2025.<sup>45</sup> At a minimum, this provides notable context for the case.

## **III. The Future of Congestion Pricing: What's at Stake and What Lies Ahead**

The amount of commentary on the congestion pricing program in the press, on social media, in workplaces, on the subway, and on the streets has been palpable.<sup>46</sup> In many ways, the commentary has evolved as the program has come to life. Proponents have touted its newly visible benefits,<sup>47</sup> opponents have gone to new lengths to offer criticism,<sup>48</sup> and day-to-day residents, commuters, and local business owners have relished in sharing their own personal experiences, which have been reported to be largely positive.<sup>49</sup> In the most basic sense, congestion pricing has broken through from the theoretical, something to be studied, modeled, and debated – to the real, something to observe and experience firsthand as a part of daily urban life. This metamorphosis will inevitably impact the program's future both in the courts and in the day-to-day relationships between the government and the people affected by the program.

## A. What Happens When Governmental Promises Are Broken After Robust Public Engagement Under NEPA?

The National Environmental Policy Act requires analysis and disclosure of environmental impacts *prior to* taking governmental action.<sup>50</sup> In most cases, these assessments are projections of a future that hasn't yet come into being. NEPA's public engagement processes offer an opportunity for the affected public to weigh in on the project before the government takes a final action toward implementation and possibly shape some of the project's contours or mitigation measures.

One aspect of NEPA that has been less studied is what happens to public trust if the federal government engages in a rigorous public engagement process for a project that ultimately gets revoked. In the case of congestion pricing, the Federal Highway Administration followed a notably robust public engagement process, including an early public outreach period, resulting in 10 virtual public outreach meetings and nine environmental justice webinar sessions.<sup>51</sup> The agency then released a draft environmental assessment and conducted six virtual public hearings with over 1,800 combined attendees.<sup>52</sup> In response to public input, the agency extended the deadline for written comments, and ultimately received and considered nearly 70,000 public submissions before issuing the final assessment.<sup>53</sup> In order to respond to specific concerns relating to environmental justice, the administration convened an Environmental Justice Stakeholder Working Group and an Environmental Justice Technical Advisory Group and made changes to the final project to include mitigation measures identified during the NEPA process.<sup>54</sup> In this way, the NEPA process helped shape the final version of the congestion pricing program.<sup>55</sup>

Because congestion pricing was projected to reduce air and noise pollution and generate revenue that would fund notable public projects such as disability upgrades to public transit systems, the NEPA process was also a major channel for the government to engage with the public about the benefits of the project.<sup>56</sup> Each individual and group who participated in the NEPA process took time to offer feedback on the expectation that the government meant what it said when talking about implementing the program.

What happens if the project gets terminated now? Whiplash (physical or political) is not just disorienting. It can cause systemic damage that takes a long time to heal. At a time when public trust between government and the public is in peril across the political spectrum,<sup>57</sup> what would it mean to terminate a program after spending five years engaging the public in a NEPA process to promote it?

The public reaction to Governor Hochul's pause of the congestion pricing program last June offered a preview of what might happen to public trust if the program were to be terminated now.<sup>58</sup> Advocates, community groups, and local government officials vociferously called out a long list of potential harms from canceling the program.<sup>59</sup> Concerns ranged from acute congestion and associated air pollution,<sup>60</sup> to impacts on street safety<sup>61</sup> and harms resulting from the deferred capital improvements to the subway system that would cost subway commuters up to \$390 million a year.<sup>62</sup> In particular, environmental justice advocates raised strong alarms about the MTA's commitment to implementing mitigation measures in several environmental justice areas.<sup>63</sup> These 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.<sup>64</sup> Now that the project is underway, the state and the city have taken affirmative steps toward the program's commitments to invest in environmental justice neighborhoods, and many of the public benefits have begun to be felt.<sup>65</sup>

The MTA articulated many of the state's reliance interests when formulating its due process claim in *MTA v. Duffy* challenging the withdrawal letter.<sup>66</sup> Bondholders, investors, workers, and many different public stakeholder constituencies have set expectations that the congestion pricing program will continue and would be harmed by its termination.

In addition to any legally cognizable reliance interests in the congestion pricing program, there are deeper considerations that cut to the core of democratic legitimacy when the government actively solicits public input to shape a program and then changes its mind. If the federal courts allow a federal agency to reverse course and derail New York's legislative commitments to its own residents, what will this do to public trust in government more broadly? If there is no mechanism to force the federal government to follow through on a program it actively sought the public to help shape under the NEPA process, what are the ripple effects for participatory democracy?

## B. In Praise of the Mundane

As noted above, the National Environmental Policy Act requires federal agencies to assess the impacts of federal actions measured against baseline conditions. This means that the success of the program in court in *MTA v. Duffy*, will turn, in part, on the program's successful implementation in practice. One outgrowth of the robust public engagement process that was conducted under NEPA is that there is now a highly engaged public with a stake in the congestion pricing program. In addition to the data that the MTA reports, outside groups are tracking changes in traffic and air quality and weighing in on what they are seeing on the ground.<sup>67</sup>

Effective implementation of the nation's first congestion pricing program will depend on the city and state bureaucracies running smoothly. Behind the scenes, public employees at a range of administrative agencies must ensure that tolls are working properly, enforce against scammers, administer discounts and exemptions timely and fairly, account for revenues, upload data, implement mitigation measures, and deploy the mechanisms to transfer funds to ensure that public transit expenditures can be made. In order for the program to function, these government employees must do their jobs, and local residents, commuters, and community groups must demand accountability, fairness, and transparency. The state must be forthcoming about any adverse impacts caused by the program and seek to address them.

It is possible that amidst the media frenzy created by outspoken leaders clamoring to get stuff done or break up bureaucratic inaction by sheer force, a quieter story of impact may be unfolding. We may find that the true agents of change are the mundane bureaucrats going about their work to implement the congestion pricing program, and the residents, commuters, and local businesses giving the program life. In a nod to governmental efficiency, initial numbers suggest that the costs of administering the congestion pricing program are significantly lower than projected and revenue yields are high.<sup>68</sup> As we have learned with various examples, such as smoke-free restaurants, a successful “proof of concept” in New York can set trends for the nation and the globe. This source of power even the president cannot own. Congestion pricing is again in the courts, but it's also in the streets. It may be its success in the latter that ultimately carries the day.

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## Endnotes

1. This article has been updated as of April 30, 2025. Any developments after such date have not been included.
2. *State of New Jersey v. U.S. Dep't of Transp.*, No. 2:23-cv-03885, at \*69-70 (D.N.J. 2004). (denying the majority of NJ's claims but remanding with regard to the FHWA's explanation of certain mitigation measures, finding that “the Final EA and FONSI fail to provide a rational connection between the general mitigation commitments outlined and the specific resolution of any and all significant impacts that may result from the Program, whether those impacts are in New York or New Jersey”). The FHWA has since provided this explanation. See Federal Defendants' Notice of Compliance With Court's Remand Order and Explanation of Supplemental Memorandum, *NJ v. United States DOT*, No. 2:23-cv-03885 (Jan. 17, 2025).
3. See, e.g., Winnie Hu & Ana Ley, *New York City Welcomes Congestion Pricing With Fanfare and Complaints*, The New York Times (Jan. 5, 2025), <https://www.nytimes.com/2025/01/05/nyregion/nyc-congestion-pricing-tolls.html>; John Towfighi, *NYC Is the first US City With Congestion Pricing. Surviving 2025 Is the Key Test*, CNN (Jan. 12, 2025), <https://www.cnn.com/2025/01/12/business/nyc-congestion-pricing-2025/index.html>.
4. For a re-cap of the litigation, see Christine Billy, *Congestion Pricing in the Courts, Part 2: Questions of State Power and Process*, 38 NYSBA Mun. Law. 21 (2024).
5. MTA Finance Committee, Financial Performance Report 8 (Apr. 28, 2025), <https://www.mta.info/document/170771>; Michelle Kaske, *NYC's Congestion Toll Raised \$159 Million in the First Quarter*, Bloomberg (Apr. 28, 2025), <https://www.bloomberg.com/news/articles/2025-04-28/nyc-s-congestion-toll-raised-159-million-in-the-first-quarter>. See also Ramsey Khalif, *MTA Sees Green With Congestion Pricing, as Tolls Bring in \$100M During First 2 Months*, Gothamist (Mar. 24, 2025), <https://gothamist.com/news/mta-sees-green-with-congestion-pricing-as-tolls-bring-in-100m-during-first-2-months>; Stefanos Chen & Winnie Hu, *Congestion Pricing Reduced Traffic. Now It's Hitting Revenue Goals*, The N.Y. Times (Feb. 24, 2025), <https://www.nytimes.com/2025/02/24/nyregion/nyc-congestion-pricing-revenue-mta.html>.
6. MTA, *The Most Detailed View of Traffic (So Far)* (updated Jan. 30, 2025), <https://www.mta.info/article/most-detailed-view-of-nyc-traffic-so-far>; Andrew Siff, *MTA Calls Congestion Pricing 'Transformative' on Commutes. Here's the Impact So Far*, NBC N.Y. (Jan. 29, 2025), <https://www.nbcnewyork.com/new-york-city/mta-congestion-pricing-transformative-commute-impact/6126670/>.
7. Letter from Sean. P. Duffy, Secretary of Transportation to Governor Kathy Hochul (Feb. 19, 2025), <https://www.nytimes.com/interactive/2025/02/19/nyregion/congestion-pricing-termination-letter.html> [hereinafter “Duffy Feb. 19 2025 letter”].
8. Compl., *MTA v. Duffy*, 1:25-cv-1413 (S.D.N.Y.) (Feb. 19, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.nysd.637159/gov.uscourts.nysd.637159.1.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.nysd.637159/gov.uscourts.nysd.637159.1.0_2.pdf).
9. See, e.g., John McWhorter, *Trump Can Pry Congestion Pricing From My Cold, Dead Hands*, The N.Y. Times (Feb. 27, 2025), <https://www.nytimes.com/2025/02/27/opinion/trump-congestion-pricing-new-york.html>; *Trump Calls Himself 'King' After DOT Strikes Down NYC's Controversial Congestion Pricing Program*, ABC 7 Eyewitness News (Feb. 20, 2025), <https://abc7ny.com/post/trump-calls-himself-king-social-media-post-dot-moves-end-nycs-controversial-congestion-pricing-toll-program/15936527/>; Sophia Lebowitz, *Hochul Finally Finds Her Voice in Defending Congestion Pricing From 'King' Trump*, StreetsBlogNYC (Feb. 20, 2025), <https://nyc.streetsblog.org/2025/02/20/hochul-slams-trump-congestion-pricing>; Levine, Vaughn Golden and Chris Nesi, *NYC Congestion Pricing Axed as Trump's DOT Pulls Approval of Hated Toll*, N.Y. Post (Feb. 19, 2025), <https://nypost.com/2025/02/19/us-news/nyc-congestion-pricing-axed-as-trump-pulls-approval-of-hated-toll/>.
10. FHWA, US DOT, NYSDOT, TBTA, and NYCDOT Agreement Regarding Value Pricing Pilot Program (Nov. 21, 2024), <https://www.mta.info/document/158201> [“hereinafter VPPP Agreement”].
11. *Id.*



12. 23 U.S.C. §§ 129, 301. Section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, as amended by section 1216(a) of the Transportation Equity Act for the 21st Century (TEA-21), and Section 1604 (a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005) establishes the Value Pricing Pilot Program, and permits the FHWA to allow the collection of tolls as part of the value pricing pilot program established under Section 1012(b).
13. *Value Pricing Pilot Program*, Federal Highway Administration, [https://ops.fhwa.dot.gov/congestionpricing/value\\_pricing/](https://ops.fhwa.dot.gov/congestionpricing/value_pricing/) (last visited Mar. 2, 2025).
14. VPPP Agreement, *supra* note 10, at 2–4.
15. Duffy Feb. 19, 2025 letter, *supra* note 7.
16. *Id.* at 3.
17. See *Value Pricing Pilot Program*, *supra* note 13. The FHWA previously approved a Value Pricing Pilot Program project, or VPPP project, for “cordon pricing” in Fort Meyers Beach, Florida in 2002. See Press Release, FHWA 31-02, *U.S. Transportation Secretary Mineta Announces \$56.3 Million for States in Highway Discretionary Funds* (July 12, 2002), 2002 WL 1487104. It has also been noted that congestion pricing programs have been identified as a federal cost-saving measure for reducing traffic, when compared with the costs of alternative approaches, such as adding highway lanes. See Allison Parshall, *Widening Highways Doesn’t Fix Traffic. Here’s What Can*, Scientific American (Feb. 25, 2025), <https://www.scientificamerican.com/article/why-widening-highways-doesnt-fix-traffic-but-congestion-pricing-can/>.
18. Duffy Feb. 19, 2025 letter, *supra* note 7, at 3; N.Y. Veh. & Traf. Law § 1704-a(1) (requiring that the congestion pricing program generate 15 million dollars for the MTA).
19. See VPPP Agreement, *supra* note 10 at 2.
20. *MTA v. Duffy*, *supra* note 8.
21. *Id.* at 39–41; Pub. L. 102-240 (Dec. 18, 1991).
22. *MTA v. Duffy*, *supra* note 8 at 40 (citing ISTEA § 1012(b) and VPPP Agreement, *supra* note 10).
23. *MTA v. Duffy*, *supra* note 8 at 41.
24. *MTA v. Duffy*, *supra* note 8, at 42–43; 45–58 (citing 5 U.S.C. §706; *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983)).
25. *Id.*
26. *Id.* at 44. See also *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (noting that when an agency changes course, “it must be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account’”) (cleaned up).
27. *Id.* at 48–50.
28. *Id.*
29. *Mulgrew v. Dep’t of Transportation*, 2024 U.S. Dist. LEXIS 110041 (S.D.N.Y. June 20, 2024). ); see also *Chan v. U.S. Dep’t of Transp.*, No. 23 Civ. 10365 (S.D.N.Y. Apr. 17, 2025); *Mulgrew v. U.S. Dep’t of Transp.*, No. 24 Civ. 1644 (S.D.N.Y. Apr. 17, 2025); *New Yorkers Against Congestion Pricing Tax v. U.S. Dep’t of Transp.*, No. 24 Civ. 367 (S.D.N.Y. Apr. 17, 2025); *Trucking Ass’n of N.Y. v. Metro. Transp. Auth.*, No. 24 Civ. 4111 (S.D.N.Y. Apr. 17, 2025) (granting summary judgment in favor of defendants on NEPA and other state and federal constitutional claims).
30. It has been widely reported in media outlets that attorneys from the U.S. Attorney’s Office for the Southern District mistakenly filed and then withdrew a confidential memo from the U.S. Attorney’s Office to the U.S. Department of Transportation in federal district court. The memo noted the “considerable litigation risk in defending Secretary Duffy’s Feb. 19, 2025 decision against plaintiffs’ claims under the Administrative Procedure Act, that the decision was contrary to law, pretextual, procedurally arbitrary and capricious, and violated due process” and explained at length why “it is unlikely that Judge Liman or further courts of review will accept the argument that the CBDTP was not a statutorily authorized ‘value pricing’ pilot under the Value Pricing Pilot Program.” Letter from Dominika Tarczynska, et. al, United States Attorneys to Erin Hendrixson, U.S. Department of Transportation, (Apr. 11, 2025), <https://lede-admin.nyc.streetsblog.org/wp-content/uploads/sites/48/2025/04/US-DOT-strategy.pdf>; see, e.g., Stefanos Chen and Benjamin Weiser, *U.S. Sidelines Lawyers Who Doubted Their Own Case on Congestion Pricing*, The N.Y. Times (Apr. 24, 2025), <https://www.nytimes.com/2025/04/24/nyregion/nyc-congestion-pricing-duffy-lawyers.html>.
31. See, e.g., *Video, Audio, Photos & Rush Transcript: Governor Hochul Updates New Yorkers on Congestion Pricing*, Gov N.Y. (Feb. 19, 2025), <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-updates-new-yorkers-congestion-pricing>; *Governor Hochul and MTA Chair and CEO Lieber Update New Yorkers on Congestion Relief*, MTA (Feb. 19, 2025), <https://www.mta.info/press-release/transcript-governor-hochul-and-mta-chair-and-ceo-lieber-update-new-yorkers-congestion>.
32. *Governor Hochul Updates*, *supra* note 31.
33. Letter from Gloria M. Shepard, Executive Director, FHWA to Commissioner Dominguez (NYS DOT), Commissioner Rodriguez (NYC DOT), and President Sheridan (MTA) (Feb. 20, 2025) ); Philip Marcelo, *Trump Extends Deadline for New York To End Congestion Toll for Manhattan Drivers*, The Washington Post (Mar. 20, 2025).
34. Letter from Sean P. Duffy, Secretary of Transportation, to Governor Kathy Hochul (April 21, 2025), [https://www.transportation.gov/sites/dot.gov/files/2025-04/Gov.%20Hochul%20Cordon%20Letter\\_4.21.25\\_Signed.pdf](https://www.transportation.gov/sites/dot.gov/files/2025-04/Gov.%20Hochul%20Cordon%20Letter_4.21.25_Signed.pdf).
35. See, e.g., *MTA v. Duffy*, *supra* note 8 at 32–22 (describing President Trump’s comments about congestion pricing on social media); Marcelo, *supra* note 33.
36. Claire Brown, *Trump’s Transportation Dept. Targets Blue State Priorities*, The N. Y. Times (Feb. 25, 2025) (“‘Here’s the thing: Most Secretaries of Transportation go around the country announcing investments in improving infrastructure,’ said Yonah Freemark, who researches land use and transportation at the Urban Institute, a research organization. Freemark said that Pete Buttigieg and Elaine Chao – the secretaries of the department under the Biden and the first Trump administration – followed this playbook. ‘What Duffy is doing right now is just killing things. It’s a very different approach,’ Freemark said.”), <https://www.nytimes.com/2025/02/25/climate/trump-high-speed-rail-congestion-pricing.html>.
37. *Id.*
38. See, e.g., *DOC v. New York*, 588 U.S. 752, 784 (2019) (finding that President Trump’s secretary of commerce abused discretion under Administrative Procedure Act provision by providing a rationale that seemed to have been contrived).
39. Christine Billy & Janet Bering, *Congestion Pricing in the Courts: NEPA as a Vehicle for Addressing Interstate Disputes*, 38 NYSBA Mun. Law. 21 (2024).
40. 42 U.S.C. § 4331(c); 40 C.F.R. § 1508.18.

41. 40 C.F.R. § 1502.16(a).
42. NEPA requires federal agencies to “take a hard look” at the “environmental consequences” of their decision-making. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). The statute “does not mandate particular results.” *Id.* NEPA instead “prescribes the necessary process” that agencies must follow to identify and evaluate “adverse environmental effects of the proposed action.” *Id.* Such effects may be direct, indirect, or cumulative. 40 C.F.R. § 1502.16.
43. See *NJ v. DOT*, *supra* note 2 and *Mulgrew v. DOT*, *supra* note 29, at 24.
44. See Billy & Bering, *supra* note 39 (discussing how EPA’s comments to FHWA in the NEPA process prompted further review and analysis of mitigation measures in certain neighborhoods in New York and New Jersey); see also *NJ v. DOT*, *supra* note 2 (requiring further explanation from FHWA regarding mitigation measures).
45. *Mulgrew v. DOT*, *supra* note 29 (referring to FHWA’s NEPA analysis as “meticulous”); U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment Figure ES-15; chapter 10 (April 2023) <https://new.mta.info/project/CBDTP/environmental-assessment> [hereinafter EA].
46. See, e.g. *supra* note 10.
47. See, e.g., Dave Colon, *Memo to the President: Manhattan Economy Improving, Thanks to Congestion Pricing*, Streetsblog NYC (Feb. 27, 2025), <https://nyc.streetsblog.org/2025/02/27/memo-to-the-president-manhattan-economy-improving-thanks-to-congestion-pricing>; Louisa Chafee et. al, *Op-ed: Congestion Pricing Will Be a Boon for New York*, PFNYC.ORG (Nov. 14, 2014), <https://pfnyc.org/news/op-ed-congestion-pricing-will-be-a-boon-for-new-york/>; Ry Rivard & Nick Reisman, *New York’s Business Boosters Push Trump To Keep Manhattan Tolls*, Politico (Feb. 11, 2025), <https://www.politico.com/news/2025/02/11/new-york-trump-congestion-pricing-00203540>.
48. Emily Crane, *Hochul Ruthlessly Dismisses Garden State’s Congestion Pricing Concerns: ‘What Do We Care What New Jersey Thinks?’* N.Y. Post (Feb. 27, 2025), <https://nypost.com/2025/02/27/us-news/hochul-rips-nj-over-congestion-pricing-what-do-we-care/>; David Shepardson, *New Jersey Governor Urges Trump To Review New York City’s Congestion Pricing Plan*, Reuters (Jan. 20, 2025), <https://www.reuters.com/world/us/new-jersey-governor-urges-trump-review-new-york-city-congestion-pricing-plan-2025-01-20/>.
49. Caroline Spivack, *Business Foot Traffic Is Up Within the Congestion Pricing Zone*, CRAIN’S N.Y. Bus. (Feb. 5, 2025), <https://www.crainsnewyork.com/transportation/congestion-pricing-zone-business-foot-traffic>; Arun Venugopal, *Vehicle Traffic Is Down in Manhattan, but Pedestrian Traffic Is Up, Data Says*, Gothamist (Feb. 13, 2025), <https://gothamist.com/news/vehicle-traffic-is-down-in-manhattan-but-pedestrian-traffic-is-up-datasays>; Gersh Kuntzman, *Wind in Their Sales: Congestion Pricing Is No ‘Toll’ on the Broadway Box Office*, Streetsblog NYC (Feb. 5, 2025), <https://nyc.streetsblog.org/2025/02/05/wind-in-their-sales-congestion-pricing-is-no-toll-on-thebroadway-box-office>; Alecia Reid, *6 in 10 Say They Want NYC Congestion Pricing To Continue, New Poll Finds*, CBS News (Feb. 5, 2025), <https://www.cbsnews.com/amp/newyork/news/new-york-city-congestion-pricing-morning-consult-poll/>.
50. 42 U.S.C. § 4331(c); 40 C.F.R. § 1508.18.
51. EA, *supra* note 45, at 18–21.
52. *Id.* at 18-3.
53. *Id.* at Appendix 18-A-18-C.
54. *Id.* at 0–1.
55. Billy & Bering, *supra* note 39, at 24.
56. EA, *supra* note 45.
57. Public Trust in Government: 1958-2024, Pew Research Center (Jun. 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/>.
58. See Christine Billy, *Congestion Pricing in the Courts, Part 2: Questions of State Power and Process*, 38 Mun. Law. 12, 13-4 (2024) (detailing potential consequences of Governor Hochul’s pause on congestion pricing).
59. See, e.g., Stefanos Chen, *Canceled 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/landersays-hes-ready-take-legal-action-save-congestion-pricing/397340/>.
60. EA, *supra* note 45 at ES-13.; ES-15; chapter 10; 10-33, Figure 10-12.
61. Press Release, Families for Safe Streets, FSS Statement on Gov. Hochul’s Sudden Congestion Pricing Reversal (June 7, 2024), <https://perma.cc/VW9A-P8RL>.
62. 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), available at <https://perma.cc/7AVM5LVL>.
63. Heat and Air Mapping Project for Environmental Justice: Heat-Related Risks, Air Pollution, and Social Vulnerability in New York City 3 (N.Y.C. Env’t Just. All. Community) (2024), [https://nyc-eja.org/wp-content/uploads/2024/06/NYC\\_CHAMPEJ\\_Report.pdf](https://nyc-eja.org/wp-content/uploads/2024/06/NYC_CHAMPEJ_Report.pdf).
64. *Id.*; *Congestion Pricing Provides \$330M in Mitigation*, MTA (last updated Dec 13, 2024), <https://www.mta.info/project/cbdtp/mitigation> (detailing the status of committed mitigation measures).
65. *Congestion Pricing Provides \$330M in Mitigation*, MTA (last updated Dec 13, 2024), *supra* note 64.
66. *MTA v. Duffy*, *supra* note 8, at 44.
67. See, e.g., Congestion Pricing Tracker, <https://www.congestion-pricing-tracker.com/>.
68. Evan Simko-Bednarski, *NYC Congestion Pricing Revenue in February Higher Than Expected: MTA*, Daily News (Mar. 24, 2025), <https://www.nydailynews.com/2025/03/24/nyc-congestion-pricing-revenue-february-higher-than-expected-mta/>.

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