THE YALE LAW JOURNAL FORUM
JANUARY 20, 2026

Transportation Law's Congestion Problem

Sara C. Bronin

ABSTRACT. Transportation law has a congestion problem: our federalist system of government allows federal and state actors to stymie innovative, locally driven projects that aim to reduce driving. This problem is illustrated by the decades-long legal battle over New York City's plan to impose "congestion pricing" on toll drivers entering certain parts of Manhattan. Overcoming grandstanding elected officials, lawsuits resting on state and federal supremacy, and even a federal legislative override, congestion pricing was finally launched in January 2025. New Yorkers and suburbanites alike almost immediately started benefiting from cleaner air, faster commutes, safer roads, and increased economic activity and productivity—plus boatloads of money for transit improvements. But six weeks later, Secretary of Transportation Sean Duffy announced he was unilaterally rescinding federal approval for the program, once again throwing congestion pricing into legal limbo.

This Essay uses congestion pricing to examine the relatively limited power of local and regional authorities to advance innovative transportation initiatives through the federal and state permitting gauntlet. Part I traces the congestion-pricing backstory in New York City from its origins in the late nineteenth century, to federal and state officials' unwelcome intervention at key points, to its long-awaited approval in 2024. Part II covers the latest attempt to roll back congestion pricing and the pending case of *Metropolitan Transportation Authority v. Duffy*, a federal lawsuit filed against Secretary Duffy by the regional body that operates the New York City congestion pricing program. Part III argues that new legal approaches to safeguard local interests are necessary. It identifies several judicial and congressional measures that may afford local governments more latitude to plan and carry out their transportation priorities and that may offer innovative, decarbonizing projects higher permitting priority.

INTRODUCTION

On January 5, 2025, one of the most contested transportation initiatives in recent memory—the imposition of tolls on drivers entering certain parts of Manhattan during peak periods, a type of "congestion pricing"—finally became operational. Just six weeks later, the Trump Administration's new Secretary of the Department of Transportation (DOT), Sean Duffy, issued a letter to the Democratic Governor of New York, announcing he was rescinding the Biden

Administration's approval of the project in 2024.[1] A high-profile legal standoff between the DOT, politicians (including the President of the United States), state agencies, public-benefit corporations, and local authorities has ensued, culminating in an ongoing lawsuit brought by the regional transit authorities and New York agencies implementing congestion pricing against Duffy, the DOT, and other federal entities.[2] Amidst the legal battle, the congestion-pricing program has remained operational, its success stunning detractors and illuminating what is at stake: cleaner air, faster commutes, safer roads, and increased economic activity and productivity—plus boatloads of money for transit improvements, all benefiting New Yorkers and suburbanites alike.[3]

The disputes over this initiative to reduce congestion reveal that the process for implementing certain transportation projects can itself be highly congested, at least for innovative, locally driven projects that aim to reduce driving. This Essay argues that to meet our own stated transportation-policy goals—including the creation of a safe, efficient transportation system that supports economic growth[4]—we must make it easier for these types of projects to move from concept to reality.

Innovation in our transportation system can be difficult to achieve. One explanation may be that the system is already very complex, with elements physically interconnected across many different modes (vehicular transportation, active transportation like walking, biking, or public transit, and freight movement among them) and media (land, water, and air). Coordination among transportation authorities about where one road stops and another begins, where one transit operator functions and another does not, who paves which sidewalks, and who maintains which bike and bus lanes, is already hard enough. Integrating

1. Letter from Sean P. Duffy, U.S. Sec'y of Transp., to Kathy Hochul, Governor of N.Y. (Feb. 19, 2025), https://ops.fhwa.dot.gov/memorandum/VPPPletter_termination_021925.pdf [https://perma.cc/Z9Y5-V8WL].

2. *See* Metro. Transp. Auth. v. Duffy, 784 F. Supp. 3d 624 (S.D.N.Y. 2025). The other plaintiffs include the Triborough Bridge and Tunnel Authority and the New York State and City Departments of Transportation. The other two defendants are the Federal Highway Administration (an operating administration of the Department of Transportation (DOT)) and its executive director.

3. Proposed Amicus Curiae Brief by Regional Plan Association, Inc. at 7-15, Metro. Transp. Auth. v. Duffy, No. 25-cv-1413 (S.D.N.Y. June 30, 2025) (describing how the benefits of congestion pricing during its first six months "go beyond . . . merely reducing traffic" and have "also created safer streets, increased productivity, and granted more time to everyday people with shorter commutes").

4. *See* 49 U.S.C. § 101(a) (2024) (declaring a national policy of providing "fast, safe, efficient, and convenient transportation at the lowest cost . . . including the efficient use and conservation of the resources of the United States"). States have adopted similar provisions in their statutes. *See, e.g.*, N.Y. TRANSP. LAW § 10 (McKinney 2024) (declaring a state policy to provide "adequate, safe and efficient transportation facilities and services at reasonable cost").

something as novel as congestion pricing into this system may face resistance because doing so challenges established dynamics. In the United States, only a handful of jurisdictions have deployed congestion pricing,[5] most at a small scale.[6] Only New York City has chosen the particular type of congestion pricing known as cordon pricing, which charges drivers fees when they enter certain areas (in this case, below 60th Street in Manhattan).[7] The significant hurdles the city faced in implementing this cordon-pricing system may well have resulted from embedded resistance in our laws and practices to innovative ideas.

In addition to being novel, the congestion-pricing proposal was driven by local leaders, not state or federal officials, which put it at a disadvantage on its path to implementation. State and federal officials often have legal authority to permit or approve system elements, which gives them significant control over local actors and local projects.[8] In the case of congestion pricing, this dynamic was clearly at play. For decades, hostile federal and state officials pulled various political and legal levers to stall congestion pricing—undermining investments made by New York City and the regional transportation authority, and destabilizing expectations.[9] Within the current structure of transportation law, local officials had little power or recourse.

Another aspect of congestion pricing is worth noting: its aim of reducing driving puts the policy at odds with a broader regulatory framework that promotes and subsidizes driving. Scholars have observed that our policy of subsidizing driving comes at the expense of the environment and the safety of nondrivers (such as pedestrians and bikers).[10] Within this framework, federal and

5. *See* Erica Veitch & Ekaterina Rhodes, *A Cross-Country Comparative Analysis of Congestion Pricing Systems: Lessons for Decarbonizing Transportation*, 15 CASE STUD. ON TRANSP. POL'Y art. no. 101128, at 5-6, 12-16 (2024). London, Stockholm, Milan, Lisbon, and Paris have successfully launched congestion-pricing programs in Europe. *Id.*

6. *See* Fed. Highway Admin., *Congestion Pricing: A Primer: Overview*, U.S. DEP'T OF TRANSP. 10 (2008), https://ops.fhwa.dot.gov/publications/fhwahop08039/fhwahop08039.pdf [https://perma.cc/6Z4K-86YE] (discussing examples of congestion pricing in San Diego and Orange County in California, Lee County in Florida, and Oregon).

7. *Id.* at 4 (defining "[z]one-based" or "cordon" pricing as "[e]ither variable or fixed charges to drive within or into a congested area within a city").

8. And they are not the only gatekeepers. Other transportation authorities, quasi-governmental entities, public-private partnerships, submunicipal service providers, wholly private operators, and interest groups may also intervene, whether formally or through the political process, to create delays.

9. *See infra* Part I.

10. *See* Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 502-05 (2020) (outlining the many ways that law subsidizes drivers, roads, and automobile use); *see also* PETER NORTON, FIGHTING TRAFFIC: THE DAWN OF THE MOTOR AGE IN THE AMERICAN CITY

state projects to build highways or expand roads often sail through the permitting process, without either elected officials or subfederal transportation authorities gumming up the works.[11] It is rare to see political or legal battles over such projects, even when they have significant negative impacts on local communities. By contrast, projects that aim to reduce driving, either through active transportation or use-reduction strategies (for example, congestion pricing), seem to be particularly vulnerable to delays, including those caused by bad-faith and politically motivated legal arguments. As I have written elsewhere, the automobile lobby has helped influence this outcome, as it consolidates and wields power in a way that proponents of a specific project, especially a project with diffuse benefits, cannot.[12] Indeed, the automobile lobby has served as one of the strongest and most consistent voices of opposition to tolls generally, and congestion pricing specifically.[13]

Through the lens of congestion pricing and its unique characteristics, this Essay illustrates the relatively limited power of local and regional authorities to advance innovative transportation initiatives through the federal and state permitting gauntlet. Part I relates the congestion-pricing backstory in New York City from its origins in the late nineteenth century, to federal and state officials' unwelcome intervention at key points in the ensuing decades, to its approval last year. Part II covers the latest attempt to roll back congestion pricing — DOT Secretary Duffy's purported rescission of federal approval — and the pending case of *Metropolitan Transportation Authority v. Duffy*, which challenges Duffy's action. Together, the rescission and the lawsuit demonstrate why new legal approaches that safeguard local interests are necessary. Part III identifies several judicial and congressional measures that may afford local governments more latitude to plan

162, 166 (2008) (describing, among other examples, decisions by city planners in Los Angeles to "subordinate traffic control to a new effort to make room for automobiles in the city's streets" and a broader trend towards policies that expand roads to meet rising demand rather than attempting to control demand).

11. Certain road projects are even exempted from federal environmental reviews. For example, the Advisory Council on Historic Preservation (ACHP) used its regulatory powers pursuant to 36 C.F.R. § 800.14(c) (2025) to exempt nearly all elements of the interstate highway system, as defined in 23 U.S.C. § 103(c) (2024), from historic-property status. 70 Fed. Reg. 11928, 11931 (Mar. 10, 2005). This means that federal agencies need not take into the account the effects of their undertakings on the interstate highway system, as would otherwise be required by the National Historic Preservation Act. 54 U.S.C. § 306108 (2024). In addition, according to the author's survey, conducted while she served as chair of the ACHP, a large number of programmatic agreements created pursuant to 36 C.F.R. § 800.14(b) (2025) and subject to the Department of Transportation and various state historic-preservation offices are exempt from review or streamline reviews for a wide variety of road-related improvements.

12. *See, e.g.*, Sara C. Bronin, *Rules of the Road: The Struggle for Safety and the Unmet Promise of Federalism*, 106 IOWA L. REV. 2153, 2164 (2021).

13. *See infra* Section I.A.

and carry out their transportation priorities and that may offer innovative, decarbonizing projects a higher priority in permitting.

I. THE CONGESTION-PRICING BACKSTORY

Congestion pricing promises to benefit many different constituencies: drivers, who suffer most directly from traffic; residents, who experience the exhaust and noise of too many cars; transportation authorities, who deploy revenues toward infrastructure maintenance and operational costs; and nature lovers, who decry air pollution and contaminated runoff. For New York City, which along with Chicago experiences the most traffic delays of any American city[14] and is in a metropolitan area with the highest percentage of daily transit commuters in the country,[15] congestion pricing is a rational way to contribute to a better-functioning transportation system overall. The additional fact that the city's budget is larger than that of forty-five states also suggests it should, arguably, be afforded some deference in sorting its affairs.[16] Yet at every turn, as this Part will show, local leaders trying to further tolling and congestion-pricing proposals were beaten back by grandstanding elected officials, lawsuits resting on state and federal supremacy, and even a federal legislative override.

The path to congestion pricing in Manhattan began more than a century ago. Starting in the late 1800s, several New York City mayors imposed tolls on drivers using city infrastructure, initially through fixed fees. In 1911, a mayor seeking to unite the boroughs rescinded those tolls. Fifty years later, as cars began choking the city and air pollution worsened, mayoral support for tolling was revived. Tolling proposals from several mayors in the 1960s through 1980s aimed to devote collected funds to maintain tolled infrastructure as well as enhance public-transit systems that could reduce driving, and in turn reduce air pollution.[17]

---

14. *2024 Global Traffic Scorecard*, INRIX, https://inrix.com/scorecard [https://perma.cc/2CBX-W53W] (ranking New York City as having the second-highest delay times, after only Istanbul and tied with Chicago, of over nine hundred global cities).

15. *Geographic Comparison Tables: Percent of Workers 16 Years and Over Who Traveled to Work by Public Transportation (Excluding Taxicab), GCT0804*, U.S. CENSUS BUREAU, https://www.census.gov/acs/www/data/data-tables-and-tools/geographic-comparison-tables [https://perma.cc/L374-7A8H].

16. The fiscal-year 2025 budget for the City of New York is $115 billion. Finance Div., *Fiscal 2025-2028 November Plan*, N.Y.C. COUNCIL (Dec. 2024), https://council.nyc.gov/budget/wp-content/uploads/sites/54/2024/12/Fall-2024-November-Plan-Final-Merged.pdf [https://perma.cc/P9JQ-D6YW]. For fiscal year 2023, only five states had larger expenditures: Florida, Illinois, Texas, New York, and California. *Total State Expenditures: SFY 2023*, KAISER FAM. FOUND., https://www.kff.org/other/state-indicator/total-state-spending/?currentTimeframe [https://perma.cc/GT88-7QNK].

17. *See infra* Section I.A.

Bruised by conflicts with federal and state authorities, city-based tolling proponents routinely turned silent. But they did not give up.

The turning point came in 2007. Michael Bloomberg, an influential technocratic mayor, resurfaced a congestion-pricing proposal as part of a broad agenda for reform to make the city more resilient to climate risk, improve air and water quality, build new housing, and create a "greener, greater New York."[18] From then onward, congestion pricing appeared in policy conversations taking place at the local and state levels, gaining momentum at each step. Congestion pricing ultimately received approvals from the state legislature, Governor Kathy Hochul, and federal officials. Perhaps the most dramatic political moment came in June 2024, when Hochul shocked the public by "pausing" the activation of the gantries days before they were scheduled to collect their first tolls.[19] Five months later, however, she boomeranged, allowing the project to proceed. This Part moves through each of these stages of congestion pricing in New York City, painting a picture of conflict and legal maneuvering between multiple levels of government.

A. From Fixed Tolls to Congestion Pricing

Around the turn of the twentieth century, the power of New York City to levy charges on drivers was not in dispute. In 1883, the city imposed one of its first tolls: a penny demanded of pedestrians and ten cents of carriages on the city-owned Brooklyn Bridge.[20] Fixed tolls differ from congestion-pricing systems, which charge variable prices depending on the time of day, vehicle occupancy, or traffic volume. Nonetheless, fixed tolls and congestion pricing share the same basic mechanism: imposing costs on those who use infrastructure. In the decades that followed, fixed tolls became a common way for public entities to pay for infrastructure development. The City of New York designed two other bridge projects — the Williamsburg Bridge, which opened in 1903, and the Manhattan Bridge, which opened in 1909 — to incorporate and be financed in part by tolls. And as various noncity entities built bridges and tunnels to Manhattan

18. Michael R. Bloomberg, *PlaNYC: A Greener, Greater New York*, CITY OF N.Y. 3 (2007), https://www.nyc.gov/html/planyc/downloads/pdf/publications/full_report_2007.pdf [https://perma.cc/3LHD-FNRA]; *see also infra* Section I.B (discussing Mayor Bloomberg's inclusion of congestion pricing in his comprehensive city plan).

19. *See infra* Section I.C.

20. DAVID MCCULLOUGH, THE GREAT BRIDGE: THE EPIC STORY OF THE BUILDING OF THE BROOKLYN BRIDGE 472 (2012); Sam Schwartz, Gerard Soffian, Jee Mee Kim & Annie Weinstock, *A Comprehensive Transportation Policy for the 21st Century: A Case Study of Congestion Pricing in New York City*, 17 N.Y.U. ENV'T L.J. 580, 590 (2008).

from outer boroughs and New Jersey, they imposed tolls as well.[21] In 1909, however, the city built the Queensboro Bridge without imposing tolls, reasoning that free passage between Manhattan and Queens could open up undeveloped areas in Queens to new residential development.[22] In 1911, then-Mayor William Jay Gaynor rescinded tolls on the other three city-owned bridges.[23] The mayor, who had campaigned on a platform of cross-borough unity, asserted that "the tolls are oppressive to many people, and inconvenient and irksome to everyone."[24]

Five decades of relative public silence on tolls might have led some to believe that city-imposed tolls had permanently died in 1911. But by the 1960s, the city's chronic air pollution and traffic problems had reached a tipping point. In 1966, then-Mayor John Lindsay proposed reinstituting tolls on the four East River bridges in an attempt to raise revenues, curb pollution, and reduce vehicle use.[25] Many powerful people and institutions denounced the idea. A membership organization and lobbying group representing motorists, the Automobile Club of New York, became one of the strongest opponents of Lindsay's plan, establishing itself as a key voice against what it considered to be an unnecessary and costly imposition on motorists.[26]

---

21. Schwartz, Soffian, Kim & Weinstock, *supra* note 20, at 590. For example, a predecessor of Metropolitan Transportation Authority Bridges and Tunnels built the Robert F. Kennedy Bridge in 1936, imposing tolls, while the Port Authority of New York and New Jersey built the George Washington Bridge in 1931. *Robert F. Kennedy Bridge*, MTA (Aug. 20, 2024), https://www.mta.info/agency/bridges-and-tunnels/rfk-bridge [https://perma.cc/7MAA-Y3N5]; *History of the George Washington Bridge*, PORT AUTH. N.Y. N.J., https://www.panynj.gov/bridges-tunnels/en/george-washington-bridge/history.html [https://perma.cc/HL4S-6WL7].

22. KEVIN WALSH & THE GREATER ASTORIA HISTORICAL SOCIETY, FORGOTTEN QUEENS 7 (2013) ("The Queensboro Bridge of 1909 was a product of the golden age of bridges. This span was more than just a transportation artery, for it linked two centuries . . . . It was Queens that beckoned with the torch of the new 20th century and a bright promise for those who dared to pioneer into its urban wilderness.").

23. Schwartz, Soffian, Kim & Weinstock, *supra* note 20, at 590.

24. Sam Roberts, *July 19, 1911: The Day East River Tolls Melted Away*, N.Y. TIMES (July 19, 2011), https://archive.nytimes.com/cityroom.blogs.nytimes.com/2011/07/19/july-19-1911-the-day-east-river-tolls-melted-away [https://perma.cc/6FAB-U53M].

25. Joseph C. Ingraham, *Bridge Toll Plan Explored by City*, N.Y. TIMES (Apr. 22, 1966), https://www.nytimes.com/1966/04/22/archives/bridge-toll-plan-explored-by-city-auto-club-denounces-idea-for-4.html [https://perma.cc/YC48-5QSH].

26. *Id.* The Automobile Club of New York, an organization that was one of the founding members of the American Automobile Association (AAA), was described in a tax case as follows: "Petitioner is a membership corporation which functions as an automobile club. In return for the dues and fees it receives, petitioner provides emergency road service, travel assistance, personal accident policies, bail bonds and other similar and related services to its members. In addition to an initiation fee, members pay annual dues of fifteen dollars." Auto. Club of N.Y.

As this debate took place at the local level, Congress addressed widespread calls from environmental groups to reduce air pollution by enacting the Clean Air Act in 1970. Among other things, the Act required states to adopt implementation plans that identified strategies—like inventorying emissions, monitoring air pollution, establishing permitting processes for sources of air pollution, creating incentives for clean energy, and curbing transportation-related emissions—to reduce air pollution.[27] New York's plan would have to be reviewed and submitted by then-Governor Nelson Rockefeller, perceived to strongly support environmental causes. Sensing an opportunity, in 1971 Mayor Lindsay launched a feasibility study on tolling. This study paved the way for the incorporation of tolling as one of thirty-two actions in New York's 1973 state implementation plan.[28] The plan called for charging cars at least fifty cents to cross any of the East River and Harlem River bridges.[29] While recognizing likely opposition from residents of Brooklyn and Queens, as well as from the Automobile Club of New York, the plan recognized "that auto users are an extreme minority (representing less than 20 percent of the City) and that the City's majority transit riders will benefit most from this strategy."[30] By ensuring that tolling was incorporated into the state implementation plan, Lindsay's approach was a tactical innovation: he engaged all three levels of government within the American federalist system to use a new *federal* process established under the Clean Air Act to focus *state* power on supporting *local* action. The effect of tolling's inclusion in the state implementation plan was to turn a local priority into a federal mandate.

Almost immediately, opposition resurfaced—as did questions about the city's authority to enact tolls without legislative approval. In 1973, the *New York Times* jumped into the fray, publishing an opinion piece supporting moves to decrease congestion in Manhattan and to clean its "exhaust-fouled air" but

v. Comm'r, 304 F.2d 781, 782 (2d Cir. 1962); *see also* NORTON, *supra* note 10, at 170 (describing the rise of the AAA from a "jumble of local, state, and national clubs"). As Norton notes, the AAA "attacked automotive excises in general as a 'scramble for the money of the motorist,'" and was joined by other groups, such as the National Automobile Chamber of Commerce, in its opposition to automotive excises. NORTON, *supra* note 10, at 199, 205-06.

27. 42 U.S.C. § 7410(a) (2024).

28. N.Y. DEP'T OF ENV'T CONSERVATION, NEW YORK CITY METROPOLITAN AREA AIR QUALITY IMPLEMENTATION PLAN TRANSPORTATION CONTROLS 7-4 (1973). The strategy, labeled B-8, involved tolling all East River and Harlem River bridges, was evaluated as having "favorable" economic feasibility, *id.*, and was further described as "provid[ing] a significant net surplus almost immediately since annual operating costs would be very low and debt service would be covered within the first year." *Id.* at 7-19; *see also* David Bird, *Governor Offers a Clean-Air Plan*, N.Y. TIMES (Apr. 18, 1973), https://www.nytimes.com/1973/04/18/archives/governor-offers-a-cleanair-plan-waives-privatecar-device-as-not.html [https://perma.cc/K3Z4-7FPN] (describing the Governor's announcement of the plan).

29. N.Y. DEP'T OF ENV'T CONSERVATION, *supra* note 28, at 7-19.

30. *Id.* at 8-7.

stating that "[t]he imposition of East River tolls requires state action . . . only the Legislature can" take.[31] Momentum for implementing tolling stalled, and the state legislature took no action to clarify the city's powers.

With tolling in limbo, various environmental groups and residents[32] sued in federal court to force the city and state to execute the tolling scheme and other elements of the state implementation plan.[33] These plaintiffs brought the lawsuit under a provision in the Clean Air Act that allowed any person to sue to enforce state implementation plans created pursuant to the statute.[34] The Clean Air Act was one of several federal environmental statutes adopted in the 1970s that granted express rights of enforcement to private parties, which also corresponded with judicial decisions recognizing implied rights of enforcement.[35] Here, the plaintiffs argued that the city and state could not continue to stall implementation by claiming that they were continuing to negotiate and revise the state implementation plan.[36] In 1976, the Second Circuit directed the district court to order the state to proceed with implementation, holding that "a plan, once adopted by a state and approved by the EPA, becomes controlling and must be carried out by the state."[37] Further, the court opined that "Congress made clear that citizen groups are not to be treated as nuisances or troublemakers but rather as welcomed participants in the vindication of environmental interests."[38] Overall, the court's holding was consistent with the shift in Congress's approach to remedying air pollution: after fifteen years of urging states to voluntarily

---

31. *Tolling the Bridges*, N.Y. TIMES (July 31, 1973), https://www.nytimes.com/1973/07/31/archives/tolling-the-bridges.html [https://perma.cc/6PQA-WM5P].

32. A list of plaintiffs is available in Michael D. Doubleday, Friends of the Earth v. Carey*: Enforcing the Clean Air Act*, 9 TRANSP. L.J. 411, 414 n.25 (1977).

33. The court included tolling in a list of "four of the most important strategies" of which the city and state "remained in explicit violation." Friends of the Earth v. Carey, 535 F.2d 165, 171 n.7 (2d Cir. 1976).

34. 42 U.S.C. § 1857h-2 (1976) (current version at 42 U.S.C. § 7604(a)).

35. *See* William H. Timbers & David A. Wirth, *Private Rights of Action and Judicial Review in Federal Environmental Law*, 70 CORN. L. REV. 403, 404-07, 404 n.5 (1985) (noting that "[p]romoting the purpose of a statute through citizen initiative is an important policy goal behind a private right of action" and including *Friends of the Earth v. Carey* as an example of a private-enforcement case).

36. *See Friends of the Earth*, 535 F.2d at 170-71. The Second Circuit required the district court to make further findings and conduct hearings to assess whether the city was complying with the implementation plan. *Id.* at 180.

37. *Id.* at 169.

38. *Id.* at 172. The appellate panel recognized the importance of citizen participants in enforcing Clean Air Act obligations, noting that the statute "seeks to encourage citizen participation rather than to treat it as a curiosity or a theoretical remedy." *Id.*

reduce pollution, the Clean Air Act mandated action.[39] The *Friends of the Earth v. Carey* decision essentially interpreted the implementation of tolling to be required as a matter of federal law.

The *Friends of the Earth* victory was short lived. Senator Daniel Patrick Moynihan, representing New York, and Congresswoman Elizabeth Holtzman, primarily representing Westchester County (a suburban county adjacent to New York City), took an interest in congestion pricing—and set out to kill it with federal legislation. To that end, in 1977, Moynihan and Holtzman successfully advanced legislation that required New York State, or any other state with a similar plan, to remove tolls from its Transportation Control Plan and to find other ways to satisfy its obligations under the Clean Air Act.[40] On the floor of the Senate, Moynihan claimed, without evidence, that tolling would "not reduce traffic; it will simply cause great inconvenience and increase the pollution of the air in Brooklyn, in Queens, and in the Bronx where cars will line up to go through toll booths which have never existed and which would seem wholly unrelated to a commitment the city and State have made to clean up the air of New York City."[41] The passage of the Moynihan-Holtzman proposal foreclosed the use of the Clean Air Act to implement local congestion-pricing priorities.

The rationale for congestion pricing did not disappear, though: traffic congestion and air pollution continued to impair quality of life in New York City.[42] In 1980, then-Mayor Ed Koch began to promote tolls as a strategy to reduce traffic and pollution, drawing more attention to the idea in the midst of a transit workers' strike that challenged the ability of residents and visitors to move

39. Doubleday, *supra* note 32, at 420 ("A program of compelled state action thus replaced the previously unchallenged voluntary approach and terminated a fifteen-year period of congressional nudging that failed to produce consistent or comprehensive state programs to deal with air pollution." (footnote omitted)).

40. 49 U.S.C. § 110(c)(2)(F) (1977) ("Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan . . . ."). This provision survived recodification and now sits at 42 U.S.C. § 7410(c)(5)(a) (2024).

41. 123 CONG. REC. 18120 (1977).

42. *See, e.g.*, Off. of Air Quality Plan. & Standards, *Monitoring and Air Quality Trends Report, 1973*, ENV'T PROT. AGENCY 114 (1974), https://www.epa.gov/sites/default/files/2017-11/documents/trends_report_1973.pdf [https://perma.cc/3JZN-VZYX]. In 1973, the EPA surveyed carbon-monoxide data from the three sites—Canal Street, 45th Street, and the 59th street bridge—and found that increases in carbon-monoxide levels were tied to traffic congestion. *Id.* Over fifty years later, traffic-related pollution in these three areas is the focus of New York's 2025 congestion pricing system.

around the city.[43] He proposed using either bans or tolls for single-occupancy vehicles driving on the East River bridges during peak times. Again, the Automobile Club of New York helped to lead opposition—not only in the public eye, but also in the courtroom. The Automobile Club filed a lawsuit in state court against the mayor, alleging among other things that the city needed state approval to proceed with Koch's plan.[44] The resulting 1981 *Automobile Club of New York v. City of New York* decision has haunted congestion-pricing proponents ever since: the court held that the state legislature did, in fact, need to provide express authorization to the city before it could proceed.[45] The court cited to caselaw establishing that the "streets are subject exclusively to regulation and control by the State, except to the extent that the Legislature delegates power over them to municipalities."[46] It also noted that the legislature had provided several express delegations of authority to local governments to take certain actions, such as to install parking meters and road signs and to adopt "such additional reasonable" measures consistent with state law.[47] According to the court, the city's proposal to force single-occupant vehicles to pay a toll or be banned from using the bridges was not "sufficiently reasonable to fall within such legislative grant."[48]

With no foreseeable chance of the state legislature expressly granting New York City the right to toll, the proposal remained stagnant until 1986, when Koch again proposed a "menu" of programs to reduce congestion, including

---

43. Robert McG. Thomas, Jr., *Koch Proposes New Toll Rates to Cut Traffic*, N.Y. TIMES, Apr. 4, 1980, at B3 ("'We're going to be looking at a number of ways to reduce traffic after the [transit] strike,' declared the Mayor, who cited the possibility of charging variable tolls keyed to the number of riders, in an effort to cut the number of cars entering Manhattan. This would alleviate pollution, he said.").

44. Auto. Club of N.Y., Inc. v. City of New York, 1981 N.Y. Misc. LEXIS 3518, at *5-6 (N.Y. Sup. Ct. May 4, 1981). Specifically, the lawsuit focused on the proposed ban on automobiles from the bridges, with the plaintiffs arguing that prohibiting free passage of vehicles on these bridges was inconsistent with Section 300 of the state's Vehicle and Traffic Law, which preempted local governments from enacting any law that would infringe on the free use of public highways.

45. *Id.* at *11. For later echoes of the decision in New York policymaking, see Letter from Mark Gimpel, Deputy Solic. General, to Stephen J. Powers, Assistant Cnty. Att'y for the Cnty. of Rockland 4-5 (Jan. 16, 2001), https://ag.ny.gov/sites/default/files/opinions/I_2001-1_pw.pdf [https://perma.cc/3SJ5-AU7R].

46. *Auto. Club of N.Y.*, 1981 N.Y. Misc. LEXIS 3518, at *5-6 (citing People v. Grant, 117 N.E. 2d 542 (N.Y. 1954)).

47. *Id.* at *8.

48. *Id.*

cordon pricing in parts of Manhattan.[49] Backlash from parking-garage workers, unions, hospitality professionals, and elected officials killed the idea—for two decades.[50] But not forever.

B. From Bloomberg to a Change in Albany

The more recent phase of congestion pricing's evolution, leading to its enactment in early 2025, has had a different character. It started with a mayoral proposal in 2007, followed by several defeats in Albany before the state legislature, and finally emerged with the support of the last two New York governors. During this phase, federal actors were relatively quiet: Congress passed no new laws that could help New York City bypass state opposition, nor did the state's U.S. Senators weigh in. Rather, this phase focused on the power struggle between New York City and its regional transportation authority on the one hand, and regional and state elected officials on the other. Once state authorities acquiesced to congestion pricing, the federal government shepherded the program through the environmental-review process, as further described below. Overall, however, this phase of the project of congestion pricing again underscored the relative powerlessness of a city that had to navigate political and process barriers to implement its own environmental- and transportation-related priorities and, in turn, to advance *federal* policy supporting cleaner air.

In 2007, the administration of Mayor Michael Bloomberg included congestion pricing in a comprehensive city plan.[51] The plan, initiated by the mayor to coordinate two dozen city agencies to advance various growth and sustainability priorities, asserted:

> The time has come for New York to try congestion pricing: a carefully-designed charge for drivers in part of Manhattan during business hours. This solution is bold. It is also proven. Cities around the world have shown that congestion pricing can reduce congestion and speed travel times with no significant negative impact on economic activity.[52]

---

49. Suzanne Daley, *City Study Urges 'Dramatic' Steps to Limit Traffic*, N.Y. TIMES (Sep. 9, 1986), https://www.nytimes.com/1986/09/09/nyregion/city-study-urges-dramatic-steps-to-limit-traffic.html [https://perma.cc/G7BR-YKDS].

50. Schwartz, Soffian, Kim & Weinstock, *supra* note 20, at 593.

51. Bloomberg, *supra* note 18, at 13, 77-78, 88-91. Note that in 2006, the New York City Citizens Budget Commission suggested congestion pricing in a report about the budget of the MTA, but this gained less attention. *Danger Ahead! How to Balance the MTA's Budget*, CITIZENS BUDGET COMM'N 11 (June 2006), https://cbcny.org/sites/default/files/reportsummary_mta_06272006.pdf [https://perma.cc/HZM7-XAVQ].

52. Bloomberg, *supra* note 18, at 77.

Acknowledging the need to convince the state legislature to grant the city authority to move forward, the mayor attempted to cultivate support among legislative leaders and the governor in Albany.[53] In public appearances, Bloomberg tried to communicate the urgency of curbing gridlock in Manhattan, arguing that "the cost of congestion to our health, to our economy and to our environment are only going to get worse."[54] Despite the mayor's campaign, the opposition of two influential Democratic politicians—Assembly Speaker Sheldon Silver and Governor David Paterson—doomed the proposal.[55] As firmly enshrined in the holding of *Automobile Club of New York v. City of New York*, their power to veto was supreme, and Mayor Bloomberg and other New York City advocates for congestion pricing were powerless when persuasion failed.

It would take a decade for Albany to reverse course. Shortly after Bloomberg's legislative effort died, a state commission reviewing the Metropolitan Transportation Authority (MTA) recommended to Governor Paterson that there be a "fully coordinated tolling strategy, including the implementation of variable pricing and one-way tolling, on the region's crossings" with the incorporation of technologies that would enable the free flow of traffic.[56] In 2018, an advisory panel convened by then-Governor Andrew Cuomo issued a "Fix NYC" report that called for cordon pricing for tolls on cars inbound to Manhattan below 60th Street.[57] Citing successes in London, Singapore, and Stockholm, the report noted that fees during peak hours (highest during the morning rush hour) could generate hundreds of millions of dollars that could support transit improvements.[58] Key business leaders and the Speaker of the House Carl Heastie subsequently expressed enthusiasm for congestion pricing, and Governor Cuomo

---

53. This effort was widely reported. *See, e.g.*, *Bloomberg Pushes Congestion Pricing Plan*, CBS NEWS (July 16, 2007), https://www.cbsnews.com/news/bloomberg-pushes-congestion-pricing-plan [https://perma.cc/CEH8-BHCS]; *Day of Decision for Congestion Pricing*, N.Y. TIMES (July 16, 2007), https://archive.nytimes.com/cityroom.blogs.nytimes.com/2007/07/16/day-of-decision-arrives-for-congestion-pricing [https://perma.cc/H479-CSQX].

54. Maria Newman, *Mayor Proposes a Fee for Driving into Manhattan*, N.Y. TIMES (Apr. 22, 2007), https://www.nytimes.com/2007/04/22/nyregion/23mayorcnd.html [https://perma.cc/7ZY7-ECMZ].

55. Diane Cardwell, *Governor Is Another Obstacle for the Mayor's Congestion Pricing Plan*, N.Y. TIMES (Mar. 20, 2008), https://www.nytimes.com/2008/03/20/nyregion/20congestion.html [https://perma.cc/VF4P-JR3A].

56. *Report to Governor David A. Paterson*, COMM'N ON METRO. TRANSP. AUTH. FIN. 9-10 (2008), https://www.tstc.org/reports/Ravitch_Report.pdf [https://perma.cc/26N4-LCBM].

57. *Fix NYC Advisory Panel Report*, FIX NYC ADVISORY PANEL 13-14 (2018), https://www.komanoff.net/cars_II/Fix-NYC-Panel-Report.pdf [https://perma.cc/7JX5-NAMW].

58. *Id.* at 12-14.

became one of its most important champions.[59] Spurred on by his support, the state legislature finally acquiesced to the city's requests for explicit authority to enact a congestion-pricing program.[60]

The Traffic Mobility Act of 2019 became the mechanism for doing so.[61] It authorized the Triborough Bridge and Tunnel Authority (TBTA), the entity responsible for collecting tolls on bridges and tunnels to and through New York City, to implement congestion pricing.[62] The TBTA is an affiliate of the MTA, which oversees all public transportation in the New York City metropolitan area and beyond. The MTA is responsible for the subways through its affiliate MTA New York City Transit and for rail between New York City, Connecticut, and Long Island through its affiliates MTA Long Island Railroad and MTA Metro-North Railroad.[63] The MTA and all of its authorities are creatures of state law, with their powers articulated by state legislation. As confirmed by *Automobile Club of New York v. City of New York*, the legislature alone has authority to determine whether the TBTA could initiate congestion pricing. With key legislative leaders on board, the Traffic Mobility Act tasked the TBTA with the "planning, design, installation, construction, and maintenance" of the system.[64] The TBTA was also required to consider discounts or exemptions for certain users, including taxis and ride-share drivers.[65] The legislature set the start date of the program as June 30, 2024.

State legislative approval was just the first step. The next step involved approval from the Federal Highway Administration (FHWA), housed within DOT. Ordinarily, Congress prohibits the tolling of federally funded

59. Jesse McKinley & Winnie Hu, *Congestion Pricing in Manhattan, First Such Plan in U.S., Is Close to Approval*, N.Y. TIMES (Mar. 25, 2019), https://www.nytimes.com/2019/03/25/nyregion/congestion-pricing-nyc.html [https://perma.cc/N5V5-F3XM].

60. N.Y. VEH. & TRAF. LAW §§ 1701-1706 (McKinney 2025) (defining and authorizing the "central business district tolling program").

61. MTA Reform and Traffic Mobility Act, ch. 59, 2019 N.Y. LAWS 743 (codified at N.Y. VEH. & TRAF. Law §§ 1701-1706).

62. The TBTA now operates under the public name "MTA Bridges and Tunnels." *See* James Baron, *R.F.K. Bridge May Meet Fate of Ave. of the Americas*, N.Y. TIMES (June 6, 2008), https://www.nytimes.com/2008/06/06/nyregion/06bridge.html [https://perma.cc/E5MS-GXPB].

63. *About the MTA*, METRO. TRANSP. AUTH., https://www.mta.info/about [https://perma.cc/P7S4-5Z9A].

64. N.Y. VEH. & TRAF. LAW § 1704(2-a) (McKinney 2025) (requiring the TBTA to enter into an agreement with the city's Department of Transportation).

65. N.Y. VEH. & TRAF. LAW § 1704-A (McKinney 2025).

infrastructure.[66] After all, excessive tolling might hinder the free passage of vehicles across jurisdictional boundaries and make driving more costly. However, Congress allows limited exceptions to the tolling prohibition, including the FHWA's Value Pricing Pilot Program (VPPP), through which Congress authorizes the FHWA to approve tolling for up to fifteen state, regional, and local transportation projects.[67] The fact that FHWA had to approve each VPPP project was an important trigger for process-related reviews. Under the terms of all of the key environmental-review statutes, agency approvals will require the agency to initiate the environmental-review process, even if no federal funding is involved.[68] In the case of congestion pricing, the FHWA served as the lead federal agency for most such reviews, including those conducted pursuant to the National Environmental Policy Act (NEPA),[69] Section 106 of the National Historic Preservation Act,[70] Section 4(f) of the Department of Transportation Act,[71] and the Clean Air Act.[72] The scope of FHWA review was far reaching. For example, FHWA's environmental assessment, required by NEPA, took 4,000 pages to chronicle comprehensively the likely consequences of the program, from broad effects, such as cleaner air citywide, to effects as narrow as changes in escalator

66. *See* 23 U.S.C. § 301 (2024) ("Except as provided in section 129 of this title with respect to certain toll bridges and toll tunnels, all highways constructed under the provisions of this title shall be free from tolls of all kinds.").

67. *See* Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, § 1012(b), 105 Stat. 1914, 1938 (allowing up to five projects to proceed with tolling under "congestion pricing pilot projects"); Transportation Equity Act of the 21st Century of 1998, Pub. L. No. 105-178, § 1216(a), 112 Stat. 211, 211-12 (increasing the number of eligible projects to fifteen and renaming the program the "value pricing pilot program"); *see also* Off. of Innovative Program Delivery, *Value Pricing Pilot Program*, FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/ipd/pdfs/tolling_and_pricing/vppp_faqs.pdf [https://perma.cc/T5NR-32R3] (summarizing eligibility and application requirements). In addition to establishing the Value Pricing Pilot Program (VPPP), Congress granted public authorities administering high-occupancy vehicle lanes the authority to toll. 23 U.S.C. § 166(b)(4) (2024). In addition, Congress created the Interstate System Reconstruction and Rehabilitation Pilot Program to enable three states to convert a portion of an interstate highway to collect funds required for the highway's rehabilitation. Transportation Equity Act for the 21st Century of 1998 § 1216(b); Fixing America's Surface Transportation, Pub. L. No. 114-94, § 1411(c), 129 Stat. 1312, 1412-16 (2015).

68. Notice of Final Federal Agency Actions on the Central Business District Tolling Program, New York, New York, 88 Fed. Reg. 41998, 41998-99 (June 28, 2023) (listing many of the federal laws for which environmental reviews of the congestion-pricing proposal were required).

69. 42 U.S.C. §§ 4321-4347 (2024).

70. 54 U.S.C. § 306108 (2024).

71. 49 U.S.C. § 303 (2024).

72. 42 U.S.C. §§ 7401-7671 (2024).

use in a single MTA station.[73] Ultimately finding "no significant impact," the environmental assessment is both well substantiated and thorough.[74] Efforts to engage the public about the program were similarly exhaustive: the MTA conducted at least fifty public meetings, receiving 25,000 comments.[75] The administrative record totaled more than 45,000 pages.[76]

Based on the evidence before it, the FHWA officially greenlit the project in June 2023.[77] The MTA board gave its approval in March 2024.[78] The MTA then started final preparations: entering into a $556 million contract for cameras and other technology, investing $33 million in a call center, and hiring more than 100 employees to staff the new program.[79] Predictably, opposition continued to be loud in the suburbs, especially from elected officials in New Jersey and Long

---

73. *Finding of No Significant Impact (FONSI)*, METRO. TRANSP. AUTH. (June 2023), https://www.mta.info/project/CBDTP/environmental-assessment [https://perma.cc/9D7Z-H2SR]; *Finding of No Significant Impact: Central Business District (CBD) Tolling Program*, FED. HIGHWAY ADMIN. 10-11, 18 (June 2023), https://www.mta.info/document/114186 [https://perma.cc/N9D5-HXCA].

74. FED. HIGHWAY ADMIN, *supra* note 73.

75. Dave Colon, *The Toll of History: MTA Board Approves $15 Congestion Pricing Fee*, STREETSBLOGNYC (Mar. 28, 2024, 12:05 AM EDT), https://nyc.streetsblog.org/2024/03/28/the-toll-of-history-mta-board-approves-15-congestion-pricing-fee [https://perma.cc/6EWC-N6TL] (quoting MTA Chairman and CEO Janno Lieber who cited these numbers); *see also* Complaint-in-Intervention of Riders Alliance et al. at 15, 16, Metro. Transp. Auth. v. Duffy, No. 25-cv-1413 (S.D.N.Y. Mar. 4, 2025) (citing 14,000 individual submissions to the FHWA and 22,000 individual submissions to the TBTA, for a total of 36,000).

76. Ana Ley, *Up to $1 Billion May Go to Waste After Hochul's Congestion Pricing Halt*, N.Y. TIMES (July 16, 2024), https://www.nytimes.com/2024/07/16/nyregion/congestion-pricing-cost-hochul.html [https://perma.cc/N5JX-3TNL]. For context, this number of pages is not necessarily out of the norm. According to a group representing transportation officials that creates guidance incorporated into transportation laws and policies at all levels of government, administrative records of decision can be anywhere from tens of thousands to hundreds of thousands of pages for large-scale transportation projects. Ctr. for Env't Excellence, *Practitioner's Handbook*, AM. ASS'N STATE HIGHWAY & TRANSP. OFFS. 1 (Aug. 2016), https://environment.transportation.org/wp-content/uploads/2021/05/ph01-2.pdf [https://perma.cc/A9V6-PF9Z].

77. *Supra* note 66.

78. Meeting Minutes, MTA Bd. Meeting 8-9, 16 (Apr. 30, 2024), https://www.mta.info/document/138616 [https://perma.cc/92VB-WEWZ] (describing the board meeting dated March 27, 2024 and recognizing the 11-1 vote in favor of a resolution that adopted the toll schedule, authorized the president of the TBTA to implement it, and finalize the program).

79. *See* Ley, *supra* note 76. The $556 million contract was with a private company called TransCore; in October 2023, the original $507 million was increased due to delays. *See* Meeting Minutes, MTA Bd. Meeting 20, 57-58 (Oct. 25, 2023), https://www.mta.info/document/124731 [https://perma.cc/V9B6-ZGTE].

Island.[80] Lawsuits challenging the implementation of congestion pricing were filed but largely dismissed.[81] As the planned start date of June 30, 2024, approached, everything seemed in order.

C. Governor Hochul's Boomerang

Not necessarily. On June 5, 2024, Governor Hochul announced she had directed the MTA to "indefinitely pause" the implementation of the program, citing the need for additional deliberation to ensure its affordability.[82]

The Riders Alliance and other advocacy groups quickly filed a lawsuit. They asked a state court to declare the Governor's actions illegal because (1) the Traffic Mobility Act did not contain any provision empowering her to "indefinitely pause" the congestion-pricing program, (2) the state's involvement in the congestion-pricing plan was ministerial and thus the governor had no discretion to modify it, and (3) New Yorkers held a state-constitutional right to a healthy environment.[83] The City Club of New York, a civic organization, filed a separate lawsuit, arguing that "[a]s powerful as a governor is, this Governor has no legal authority—none—to 'direct' the [MTA] to 'pause'" the congestion-pricing program.[84] Both lawsuits noted the significant expenditures made in reliance on the program moving forward on schedule, with the potential costs of the Governor's decision pegged at up to one billion dollars.[85] Both lawsuits also cited studies and reports estimating losses to the MTA, which would lack funds to replace diesel buses with zero-emission electric buses, improve the frequency and

---

80. Letter from Phil Murphy, Governor of N.J., to Paul L. Friman, Gen. Couns., Triborough Bridge & Tunnel Auth. 1 (Mar. 4, 2024), [https://perma.cc/US3J-FDTF] (alleging "severe flaws" in the development of congestion pricing, "a failed environmental analysis," and potential violations of NEPA, the Clean Air Act, and state law, among other problems).

81. *See*, *e.g.*, Mulgrew v. Dep't of Transp., 750 F. Supp. 3d 171 (S.D.N.Y. 2024); New Yorkers Against Congestion Pricing Tax v. Dep't of Transp., No. 24-cv-367 (S.D.N.Y. Jan. 18, 2024); Chan v. Dep't of Transp., U.S. Dist. LEXIS 231658 (S.D.N.Y. Dec. 23, 2024). These cases were all consolidated and dismissed in *Chan v. Department of Transportation*, 782 F. Supp. 3d 39, 108 (S.D.N.Y. 2025).

82. GOVERNOR KATHY HOCHUL, *Pausing Congestion Pricing to Address Affordability and the Cost of Living in New York*, at 2:11 (YouTube, June 5, 2024), https://www.youtube.com/watch?v=zrTboCirDGM [https://perma.cc/8B6W-FHEH].

83. Verified Petition at 14-15, 21, Riders All. v. Hochul, No. 156711/2024 (N.Y. Sup. Ct. July 25, 2024), 2024 WL 3543157.

84. Verified Petition at 3, City Club of N.Y., v. Hochul, No. 156696/2024 (N.Y. Sup. Ct. July 25, 2024), 2024 WL 3543159.

85. *Id.* at 25; Verified Petition, *supra* note 83, at 25 (citing an estimate from Reinvent Albany).

reliability of public transportation, or hire bus drivers and transit operators.[86] And they argued that the inability to develop tolling infrastructure would mean continued traffic, air pollution, and rush-hour delays, at a cost of billions to the economy and to public health.[87] An amicus brief filed in one of the cases by numerous transit, housing, and environmental groups, along with several elected officials, decried the state of the transit system and the quality of the city's air (which failed to satisfy national air-quality standards in several respects), arguing that "[c]ongestion pricing is the heart of the solution" to both.[88] The groups filing the lawsuits normally hold governments engaging in large-scale transportation-construction projects accountable by using process complaints and allegations of deficient environmental reviews to stall projects. Here, amici curiae saluted the "extensive environmental analysis and public input" that informed the evaluation of congestion pricing to support the policy.[89] In doing so, they validated both the process and the results and tried to use the legal system to force the launch of the project when the local authorities (the MTA and the city) likely felt they could not engage in a direct attack on the Governor's actions.

The lawsuits seemed to be on strong legal footing with respect to statutory interpretation, state common law, and even potentially state constitutional grounds. From a statutory-interpretation standpoint, as the plaintiffs argued, the Traffic Mobility Act does not offer any discretion to the TBTA as to whether congestion pricing must be implemented by June 30, 2024.[90] Nor does any provision in the Traffic Mobility Act grant authority to the governor to intervene, or to the state to exercise discretion in carrying out its obligations under the tolling agreement it entered into with TBTA. Because the Act provided no express or implied grant of discretion, the Governor's purported pause and the state Department of Transportation's failure to proceed were legally suspect. Second, state common law requires agencies to offer a rational explanation for altering

86. Verified Petition, *supra* note 83, at 23-25 (discussing the need for the MTA to delay "planned purchases of electric buses"); Verified Petition, *supra* note 84, at 23-27 (describing delays to MTA's purchases of electric buses, "greater waiting times for bus riders," and a hiring freeze on drivers).

87. Verified Petition, *supra* note 83, at 22-24 (detailing environmental impacts and costs); Verified Petition, *supra* note 84, at 22-27 (describing "significant environmental costs" and costly "rush-hour subway delays").

88. Brief of Amici Curiae Environmental Defense Fund et al. in Support of Petitioners-Plaintiffs' Verified Petition at 1-2, 12, *City Club of N.Y.*, No. 156696/2024.

89. *Id*. at 10.

90. N.Y. VEH. & TRAF. LAW §§ 1704(2)(a), 1704(3)(a)-(b) (McKinney 2025) (stating the TBTA "shall enter into a memorandum of understanding" with the city to implement congestion pricing, and "shall" install, maintain, and operate the tolling infrastructure).

an established course.[91] Governor Hochul's rationale—to further study cost impacts—rang hollow given the extent of the years-long FHWA and MTA analysis, including the analysis of cost impacts on individuals, businesses, and the environment. Third was the constitutional challenge, based on a 2021 state constitutional amendment guaranteeing every person "a right to clean air and water, and a healthful environment."[92] This challenge may have been the most tenuous. While all evidence clearly demonstrated that the implementation of congestion pricing would support the protected right, the amendment had only been the subject of judicial review a handful of times. To date, New York state courts have affirmed that private parties may assert their constitutional rights to a clean environment, but have limited mandamus relief only to those situations where the sought-after relief would be ministerial, not discretionary, in nature.[93] Had the court agreed with the plaintiffs' (and my) view that the Traffic Mobility Act foreclosed state discretion, a decision in the Riders Alliance lawsuit could have been among the first to result in an order for the state to act in a manner that safeguarded this recently created constitutional right.

But the lawsuits were never considered on the merits, as they were rendered moot before they could make it very far through the judicial system.[94] On November 14, 2024, Governor Hochul announced she was lifting the pause on the plan.[95] Some speculated that the Governor was willing to weather the lawsuits and political backlash because she believed that voters in the suburbs of New York City would hold the implementation of congestion pricing against Democrats in the November elections.[96] Whatever her rationale, the TBTA promptly adopted a revised fee schedule that would phase in the daily charge over several

---

91. *See*, *e.g.*, *In re* Charles A. Field Delivery Serv., 488 N.E.2d 1223, 1227 (N.Y. 1985) (requiring an agency to "set forth its reasons" in order to "alter its prior stated course").

92. N.Y. CONST. art. I, § 19.

93. Seneca Lake Guardian, Inc. v. Seneca Meadows, Inc., 236 N.Y.S.3d 519, 541-42 (Sup. Ct. 2025); Fresh Air for the Eastside, Inc. v. State, 217 N.Y.S.3d 381, 385-86 (App. Div. 2024).

94. Riders Alliance and the City Club had only filed memoranda of law and requests for oral argument prior to Governor Hochul's announcement in November 2024; no action had been taken by the court.

95. Press Release, Kathy Hochul, N.Y. Governor, What They Are Saying: Elected and Community Leaders Support Governor Hochul's Plan to Fund Transit and Put Commuters First (Nov. 14, 2024), https://www.governor.ny.gov/news/what-they-are-saying-elected-and-community-leaders-support-governor-hochuls-plan-fund-transit [https://perma.cc/W8RA-Q67D].

96. *See* William Finnegan, *The Politics that Derailed Congestion Pricing in New York*, NEW YORKER (June 24, 2024), https://www.newyorker.com/news/daily-comment/the-politics-that-derailed-congestion-pricing-in-new-york [https://perma.cc/4PHW-Z3B8]; Jared Brey, *Hochul's Reversal on Congestion Pricing Draws Blowback*, GOVERNING (June 13, 2024), https://www.governing.com/transportation/hochuls-reversal-on-congestion-pricing-draws-blowback [https://perma.cc/R6CK-3SSW].

years, to start on January 5, 2025.[97] And the final agreement securing federal funds and setting performance metrics was signed by the FHWA, TBTA, and New York City DOT in November 2024.[98] With the project free to advance, the Riders Alliance and the City Club (and their fellow plaintiffs) came to an agreement with the Governor, the state DOT, and the TBTA to settle their lawsuits.[99]

Project opponents, many from surrounding suburbs, continued to litigate their grievances[100] — again, to little avail. The state of New Jersey filed a federal lawsuit in January 2024, alleging, among other things, that the FHWA's NEPA review was arbitrary and capricious under the Administrative Procedure Act because the agency had failed to analyze the pricing program correctly, to review adequately the adverse impacts on low-income people in New Jersey, and to mitigate "significant" environmental impacts in New Jersey.[101] By December, a federal judge had scoured the record, including the NEPA analysis, and while he ordered the defendants to explain their mitigation approach and reserved judgment on the plaintiff's challenge that the defendants failed to take into account certain alternatives, he rejected New Jersey's other claims.[102]

Similarly, in March 2024, the county of Rockland, north of Manhattan, also sued the MTA. The county argued, among other claims, that there was "no rational relationship between the charge made against the driver and the service provided by the government" and that the congestion-pricing program violated the equal-protection clauses of the state and federal constitutions because it

97. Meeting Minutes, MTA Bd. Meeting 6 (Nov. 18, 2024), https://www.mta.info/document/157771 [https://perma.cc/PNP8-BDAM] (noting the positive vote by the board for a "Phase In feature" revising the tolling schedule).

98. *CBD Tolling Program Agreement*, METRO. TRANSP. AUTH. (Nov. 21, 2024), https://www.mta.info/document/158201 [https://perma.cc/7RKM-6LX9].

99. Press Release, Brad Lander, N.Y. City Comptroller, Comptroller Lander, Advocate & Litigator Coalition Cheer Lawsuit Settlement & Signed Agreement to Begin Congestion Pricing on January 5 (Nov. 22, 2024), https://comptroller.nyc.gov/newsroom/nyc-comptroller-lander-advocate-litigator-coalition-cheer-lawsuit-settlement-signed-agreement-to-begin-congestion-pricing-on-january-5 [https://perma.cc/5XGR-HGWR]; *In Comprehensive Settlement, State Department of Transportation Agrees to Binding Obligation to Start Congestion Pricing on January 5*, EARTHJUSTICE (Nov. 21, 2024), https://earthjustice.org/press/2024/in-comprehensive-settlement-state-department-of-transportation-agrees-to-binding-obligation-to-start-congestion-pricing-on-january-5 [https://perma.cc/G7G7-CX37].

100. *See* Sam Bowden Akbari, *The Status of New York Congestion Pricing Litigation*, RPA LAB (Sep. 10, 2024), https://rpa.org/news/lab/status-of-new-york-congestion-pricing-litigation [https://perma.cc/V9R4-Q62G] (counting twelve lawsuits as of September 2024).

101. Memorandum of Law at 17-20, 22, 31, New Jersey v. Dep't of Transp., 761 F. Supp. 3d 729 (D.N.J. Jan. 12, 2024) (No. 2:23-cv-03885).

102. New Jersey v. Dep't of Transp., 761 F. Supp. 3d 729, 761-62 (D.N.J. Dec. 30, 2024).

discriminated against residents of the county.[103] On the latter point, the county argued that "[t]here is no rational basis for discriminating in favor of the group of people garaging vehicles in the CBD [central business district] versus the group of people who garage their vehicles outside the CBD."[104] In January 2025, a federal district court denied the county's motion to stay the implementation of the congestion-pricing program.[105] Six months later, the court wholly rejected the county's claims, finding that "reducing congestion and pollution in the CBD and raising revenue for the MTA's mass transit projects are legitimate government interests" and that the MTA's different treatment for different drivers is rational.[106] The case is on appeal. In addition, the Town of Hempstead, on Long Island, sued the governor in state court, alleging that her actions were ultra vires and unconstitutional under state law.[107] In June 2025, the judge tossed the town's suit on the merits,[108] but only after the town attorneys failed to show up for a hearing on time, and then complained that traffic from Long Island to Manhattan would delay their arrival to a rescheduled hearing.[109]

The backstory of congestion pricing underscores its particular political and legal challenges relative to conventional transportation projects, like road construction: local governments generally do not have to obtain state permission to build their own local roads, much less obtain federal approvals. The story also reveals how higher-level officials—especially governors and state legislators—became central to whether congestion pricing proceeded at all. All the while, the locality that stood most to benefit from the program, New York City, had the

---

103. Complaint at 2, County of Rockland v. Metro. Transp. Auth., No. 24-CV-2285, 2025 WL 100901 (S.D.N.Y. Mar. 27, 2024).

104. *Id.* at 9.

105. County of Rockland v. Metro. Transp. Auth., No. 24-CV-2285, 2025 WL 100901, at *2 (Jan. 14, 2025) (finding "sufficient support in the record to show that defendants [MTA] will suffer substantial injury if the injunction is issued at this stage").

106. County of Rockland v. Triborough Bridge & Tunnel Auth., No. 24-CV-2285, 2025 WL 1927493, at *10-11 (S.D.N.Y. July 14, 2025) (citations omitted).

107. *See* Memorandum of Law in Support, Town of Hempstead v. Hochul, Nos. 450653/2025, 620801/2024, 2024 WL 6047815 (N.Y. Sup. Nov. 22, 2024) (citing to caselaw and N.Y. CONST. art. III, § 1). The defendants attempted to remove the matter to federal court, but a federal district court remanded it back to state court. *See* Town of Hempstead v. Hochul, No. 24-cv-08121, 2024 WL 5168714, at *2, *7 (E.D.N.Y. Dec. 19, 2024) (summarizing the town's arguments in state court and remanding the case to state court).

108. Town of Hempstead v. Hochul, No. 450653, slip. op. at 3-4 (N.Y. Sup. Ct. June 23, 2025) (ruling that the phased-in tolling schedule complies with state law and that Governor Hochul's action was not ultra vires).

109. Dave Colon, *Dismissed: Another Judge Throws Out Another Congestion Pricing Suit*, STREETSBLOGNYC, (June 18, 2025, 12:03 AM EDT), https://nyc.streetsblog.org/2025/06/18/dismissed-another-judge-throws-out-another-congestion-pricing-suit [https://perma.cc/N5S3-2PY3].

weakest relative authority, was unable to force an approval, and had to rely on third-party nonprofits to file litigation. Understanding the steps that occurred before the first camera started collecting tolls provides critical context for the unusual litigation still affecting this pivotal project.

II. *METROPOLITAN TRANSPORTATION AUTHORITY V. DUFFY*

The theory behind implementing congestion pricing in New York City—behind decades of advocacy, dozens of lawsuits, billions of dollars—was simple: charging drivers fees to enter the Manhattan central business district would result in fewer people driving.[110] The theory was proven right. Within days of its implementation in January 2025, commute times improved, transit ridership increased (and transit crime decreased), the air was measurably cleaner, and Broadway, retailers, and restaurants experienced surges in patronage.[111] If experience elsewhere holds, congestion pricing will make the roads safer for all users.[112] For six blissful weeks, the MTA (through the TBTA) operated the program, and they and project proponents reveled in its success.

Given all that New York City and the MTA endured to launch congestion pricing, it seems inconceivable that the federal government would attempt to undo it all over again. Yet, with the Secretary of Transportation purporting to rescind federal approval in February 2025, that is exactly what happened. This Part covers the politics behind Secretary Duffy's action, evaluates the merits of the lawsuit brought by the MTA (finding it likely to succeed), and explores how the facts that gave rise to the lawsuit illustrate the problematic manner in which locally driven projects like congestion pricing are permitted and constructed.

A. Duffy*'s Political Context*

Until 2025, partisan politics took a back seat in congestion-pricing battles. Instead, geographic and interest-group politics drove the conflict. From a geographic standpoint, people living in the suburbs around New York City (including the suburbs of both New York and New Jersey) opposed paying tolls, regardless of party affiliation. Their elected officials representing both political

110. *See supra* Part I.

111. Proposed Amicus Curiae Brief by Regional Plan Association, Inc. at 7-15, No. 25-cv-01413, Metro. Transp. Auth. v. Duffy, 784 F.Supp.3d 624 (S.D.N.Y. June 30, 2025).

112. *See* Bhavna Singichetti, Jamie L. Conklin, Kristen Hassmiller Lich, Nasim S. Sabounchi & Rebecca B. Naumann, *Congestion Pricing Policies and Safety Implications: A Scoping Review*, 98 J. URB. HEALTH 754, 769 (2021) (confirming that after several years, congestion pricing can reduce road crashes, injury, and death).

parties—including state legislators, county executives, and even governors—stalled the program. Interest-group politics, meanwhile, led to unusual alliances. Since the Bloomberg mayoral administration, for example, urban business community and environmental groups have joined forces to support congestion pricing. Partisan politics was perhaps less relevant because the people who held local, state, and federal office at key points in the march toward congestion pricing mostly came from the Democratic Party. (Bloomberg, a Republican and independent during his three mayoral terms, is a notable exception.)

Partisan politics, though, has arguably driven the most recent attempt to block congestion pricing. On January 20, 2025, President Trump took office for a second time—a member of the Republican party and a strong critic of urban cities run by Democratic politicians, like New York City. He railed against congestion pricing during his campaign for President.[113] So it is no surprise that the second Trump Administration took swift action to try to shut down the program. In February 2025, Transportation Secretary Duffy issued a letter claiming he was rescinding DOT approval for congestion pricing and terminating the November 2024 FHWA agreement.[114] Given that the DOT had issued an approval for the project just nineteen months before, in June 2023,[115] his action had a partisan flavor. For proponents of congestion pricing, it generated a sense of whiplash.

The text of the letter seemed hastily developed, but understanding its basic arguments reveals its partisan origins. Duffy claimed that the Biden Administration's approval exceeded congressional authority given to the DOT to approve this type of project. He pointed to statutory language that generally prohibits tolling on roads funded by federal dollars.[116] He asserted, incorrectly, that the FHWA's VPPP, pursuant to which the congestion-pricing program was approved, did not fit into any available exception to the prohibition on tolling.[117] Moreover, he asserted, again incorrectly, that the VPPP did not encompass cordon pricing, referencing the Town of Hempstead's arguments to that effect in its then-pending lawsuit. And he claimed that, contrary to the goals of the VPPP, the MTA's primary purpose in enacting the tolls was to subsidize the MTA, not to reduce congestion.

---

113. David Meyer, *Wednesday's Headlines: Trump Posts About Congestion Pricing Edition*, STREETSBLOG NYC (May 8, 2024, 12:01 AM EDT), https://nyc.streetsblog.org/2024/05/08/wednesdays-headlines-trump-posts-about-congestion-pricing-edition [https://perma.cc/63WZ-9AKW].

114. Letter from Sean P. Duffy, *supra* note 1.

115. Notice of Final Federal Agency Actions on the Central Business District Tolling Program, New York, New York, 88 Fed. Reg. 41998, 41998 (June 28, 2023).

116. *See* 23 U.S.C. § 301 (2024).

117. Letter from Sean P. Duffy, *supra* note 1.

Having read the electoral tea leaves, New York groups and elected officials were prepared to fight back. The very day Secretary Duffy issued his letter, Governor Hochul (a Democrat) and MTA Chair and CEO Janno Lieber held a press conference announcing a lawsuit filed by the MTA and TBTA "within minutes" of their receipt of the letter.[118] In challenging Duffy's action, they were joined by several intervenor-plaintiffs: the New York DOT, the Riders Alliance, the Sierra Club, and the New York City DOT. In her remarks, Hochul did not address the specific legal arguments advanced in the lawsuit. Rather, she set up the lawsuit as a defense of states' rights:

> [Duffy's action] is an attack on our sovereign identity, our independence from Washington. And we are a nation of states. This is what we fought for. This is what people like Alexander Hamilton and others fought for: To set up a system where we are not subservient to a king or anyone else out of Washington. So this is the fight we're in. It's all about our sovereignty.[119]

Lieber echoed the sentiment, pointing out the hypocrisy of the Trump Administration: "We are doing a thoughtful, local solution. I thought the Republican Party was in favor of local control."[120] Despite the rhetoric at the press conference, language trumpeting state and local control is muted in the MTA's filings.[121] But at the press conference, convened by the state's highest elected

---

118. *Transcript, Governor Hochul and MTA Chair and CEO Lieber Update New Yorkers on Congestion Relief*, METRO. TRANSP. AUTH. (Feb. 19, 2025, 8:00 PM), https://www.mta.info/press-release/transcript-governor-hochul-and-mta-chair-and-ceo-lieber-update-new-yorkers-congestion [https://perma.cc/ETT7-DSJ9].

119. *Id.*

120. *Id.*

121. Indeed, only state sovereignty (not local control) is mentioned near the end of the MTA's May 2025 memorandum of law. Instead, the MTA relies on straightforward legal-interpretation arguments and encourages adherence to judicial precedent. One of the arguments is that prior to deciding to terminate the congestion pricing, the DOT must conduct a full environmental-impact analysis of the effects of termination. Memorandum of Law of Plaintiffs, The Metro. Transp. Auth. & Triborough Bridge & Tunnel Auth. & Intervenor-Plaintiff N.Y. City Dep't of Transp.'s Motion for a Preliminary Injunction at 36-38, Metro. Transp. Auth. v. Duffy, 784 F. Supp. 3d 624 (S.D.N.Y. 2025) (No. 25-cv-01413), 2025 WL 1853371 [hereinafter Memo. of Law of MTA & TBTA]; *see also* Proposed Complaint-in-Intervention at 30-31, *Metro. Transp. Auth.*, 784 F. Supp. 3d 624 (No. 25-cv-01413) (alleging the defendant's violation of the NEPA). Even the Department of Justice (DOJ) attorneys who wrote a memorandum that they inadvertently filed with the court in *Duffy*—thus making it part of the public record—warned Secretary Duffy that a new NEPA analysis may be required to assess the environmental impacts of terminating the program. *See* Letter from Dominika Tarczynska, David Farber & Christine S. Poscablo, Assistant U.S. Att'ys, to Erin Hendrixson, Senior Trial Att'y, U.S. Dep't of Transp.

official, assertions that the federal government was attempting to trample state sovereignty and local control likely garnered more attention from the general public than a boring recitation of law.

B. Evaluating the MTA's Case

The role of partisan politics in the actions that gave rise to *Metropolitan Transportation Authority v. Duffy* is core to the disposition of the case. If Secretary Duffy's purported rescission resulted from politics and not reasoned decision-making, then a court, normally operating, should not allow him to shut down the program. The MTA makes a convincing case that the arguments contained in Duffy's letter (and subsequent communications) were pretextual, motivated primarily by a political desire to punish New York City and its residents. If true, then Duffy wrongly attempted to harness the federal bureaucracy in order to squash a project desired by locals. A closer look at the MTA's arguments is in order.

The MTA's central arguments advanced allegations that Secretary Duffy's letter is "entirely inconsistent with the statutory scheme it seems to enforce," "spurious and transparently pretextual," arbitrary, and capricious.[122] To support these allegations, the MTA cited to the history of the federal program pursuant to which the FHWA approved congestion pricing.[123] It argued that the VPPP is a stand-alone program that Congress created, not one subject to (and therefore not an exception from) Congress's general prohibition on tolling. The program expressly allows entities, including transportation authorities like the MTA, to seek authority to enact tolls.[124] In addition, according to the FHWA's own website, cordon pricing, of the sort that is currently being used by the MTA in Manhattan, is one of five types of eligible VPPP projects.[125] When applying its own

11 (Apr. 11, 2025) [hereinafter Letter from U.S. Att'ys Office], https://www.courthousenews.com/wp-content/uploads/2025/04/congestion-pricing-internal-memo-doj.pdf [https://perma.cc/KGX6-TWNP]. While not covered in the main text of this Essay, a requirement that DOT conduct NEPA review prior to acting could be entirely separate, statutory grounds for delayed implementation of the termination, or perhaps lead to a decision not to terminate at all.

122. Memo. of Law of MTA & TBTA, *supra* note 121, at 9-12.

123. *Id.*

124. Originally called the Congestion Pricing Pilot Program when it was established in 1991, the VPPP aims to support projects that might improve "driver behavior, traffic volumes, transit ridership, air quality and availability of funds for transportation programs." *Value Pricing Pilot Program*, FED. HIGHWAY ADMIN. (Sep. 30, 2025), https://ops.fhwa.dot.gov/congestionpricing/value_pricing/index.htm [https://perma.cc/99V7-V6JS].

125. *Congestion Pricing Strategies*, FED. HIGHWAY ADMIN. (Feb. 11, 2022), https://ops.fhwa.dot.gov/congestionpricing/strategies/index.htm [https://perma.cc/VHZ3-TVCF].

standards for the VPPP to New York City's congestion-pricing program, the FHWA confirmed that the VPPP "appear[ed] to be the best potential fit."[126] In light of this history, the MTA argued that the Secretary's "rationales are so weak as to be transparently pretextual. . . . Duffy did not [in his February 2025 letter] cite any provision of law entitling him to terminate the VPPP Agreement, because there is none."[127] In their complaint-in-intervention, the Riders Alliance took it a step further, adding that Duffy's letter "did not acknowledge that the decision was based on political animosity to a successful program that was delivering results for New Yorkers."[128]

In response to the Secretary's argument that the congestion-pricing scheme was primarily aimed at funding the MTA, the MTA referred to a recent federal district court decision holding that Congress had "unmistakably clear intent that a public authority be permitted to collect funds that exceed a toll road's costs and spend those funds on non-toll-road projects."[129] Indeed, the plain language of the law authorizing the VPPP program expressly allows revenue of the program to be applied to any other transportation project authorized under Title 23.[130] This precedent was not outdated or inapposite—it was written, in fact, in response to individual advocates' challenges to congestion pricing. Similarly, the Riders Alliance, in its complaint-in-intervention, noted that "basic common sense dictates that . . . [f]unding the MTA sufficiently to perform that task [or providing alternative transportation for drivers] is the only way in which congestion pricing could work."[131] Other public positions of the DOT seem to contradict the DOT's position in this case. The FHWA website still indicates that "toll revenues [can] be used to fund transit investments . . . if the public authority certifies to the FHWA annually that the tolled facility is being adequately

126. Memo. of Law of MTA & TBTA, *supra* note 121, at 15 (quoting a 2019 FHWA communication).

127. *Id.* at 16-17.

128. Complaint-in-Intervention of Riders Alliance et al., *supra* note 75, at 1, 21.

129. Chan v. Dep't of Transp., No. 23-cv-10365, 2024 WL 5199945 at *16-17 (S.D.N.Y. Dec. 23, 2024).

130. Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, § 1012(b), 105 Stat. 1914, 1938 ("Revenues generated by any pilot project under this subsection must be applied to projects eligible under such title."); Transportation Equity Act for the 21st Century of 1998, Pub. L. No. 105-178, § 1216(a), 112 Stat. 107, 211-12.

131. Complaint-in-Intervention of Riders Alliance et al., *supra* note 75, at 24.

maintained."[132] And federal law still suggests that transit investments fall under the array of purposes to which a state may put federal funds.[133]

In a surprising development, the federal government's attorneys inadvertently filed a memorandum that three Assistant U.S. Attorneys sent to the DOT admitting the weakness of the DOT's case with the court.[134] They noted that a court would not likely read "congestion pricing" or "value pricing" narrowly due to the technical understanding of those terms at the time of legislative passage and the fact that the legislative history for the program included references to cordon pricing.[135] Recalling the history of the VPPP program, the Assistant U.S. Attorneys also observed that the FHWA itself issued numerous reports interpreting "congestion pricing" and the VPPP to include cordon pricing, and the FHWA had approved studies of cordon pricing in both Florida and California.[136] The fact that the DOT's own attorneys recognized the lack of substantive factual or legal support for Duffy's letter confirms it to be a political maneuver to try to kill congestion pricing—one meant to sow chaos, even if ultimately thrown out by courts.

The attorneys' memorandum suggested a potential second pathway for Secretary Duffy: to seek termination of the congestion-pricing agreement pursuant to the regulations of a powerful White House office, the Office of Management and Budget (OMB).[137] Those regulations allow the Secretary of OMB to terminate an award if it "no longer effectuates the program goals or agency priorities."[138] Though the MTA did not receive federal funding through the VPPP for congestion pricing, the Assistant U.S. Attorneys opined that federal approval of the program constituted something "of value" which could be terminated, and that the November 2024 agreement with the FHWA constituted a "cooperative agreement" covered by the OMB regulation.[139] Around the time of the memorandum from the Assistant U.S. Attorneys, Secretary Duffy issued another letter to the MTA, incorporating the argument that he had the authority to terminate the November 2024 agreement pursuant to the OMB regulation that the DOJ

---

132. *Tolling and Pricing Frequently Asked Questions*, FED. HIGHWAY ADMIN. (Sep. 25, 2012), https://www.fhwa.dot.gov/ipd/tolling_and_pricing/tolling_pricing/faqs.aspx [https://perma.cc/TAR8-5U5J].

133. *See* 23 U.S.C. § 129 (a)(3)(A)(iv) (2024).

134. Letter from U.S. Att'ys Office, supra note 121, at 2. The letter noted that "[n]either of these reasons [in Duffy's February letter] is likely to convince the Court." *Id.*

135. *Id.* at 2-4.

136. *Id.* at 5-6.

137. *Id.* at 8.

138. 2 C.F.R. § 200.340(a)(4) (2025).

139. Letter from U.S. Att'ys Office, *supra* note 121, at 8-9 (citing numerous OMB regulations, statutes, and definitions).

attorneys had cited.[140] He added a threat to withhold federal funding for other, unrelated projects from the state.[141] Duffy's alarming threat attempted to wield federal-agency power, even beyond the DOT, to bend state and local authorities to the Administration's political will.

The MTA's May 2025 memorandum of law also addressed these issues, raising state-sovereignty principles in a series of interrelated arguments. First, MTA argued that the DOT has no statutory authority to issue the type of sanctions threatened in Secretary Duffy's April 2025 letter, whether under FHWA's regulatory powers or otherwise.[142] The MTA cited to a 2012 Supreme Court decision that recognized states as "independent sovereigns in our federal system"[143] and held that once a state has accepted federal funds, the federal government "cannot alter the conditions attached to those funds so significantly as to 'accomplish [] a shift in kind' of their policy."[144] The MTA further argued that any federal attempt to alter the conditions of its approval would "encroach on State sovereignty as guaranteed by the Tenth Amendment by 'commandeering . . . reserved State power.'"[145] Moreover, the MTA characterized infringements on state sovereignty, including Duffy's past threats, as "irreparable harm" necessitating judicial action. It may seem ironic that the MTA—a *regional* transit authority that arguably suffered from state power over its operations as the legislature stalled congestion pricing—is resting even a small part of its legal argument on state-sovereignty principles. But this argument could help the MTA. A judicial decision protecting the state's transportation funding could, at a minimum, delay the DOT by forcing it to find legally permissible consequences for the MTA's continuance of the program.

---

140. Letter from Sean P. Duffy, U.S. Sec'y of Transp., to Kathy Hochul, Governor of N.Y., at 3 (Apr. 21, 2025), https://www.transportation.gov/sites/dot.gov/files/2025-04/Gov.%20Hochul%20Cordon%20Letter_4.21.25_Signed.pdf [https://perma.cc/3FTS-RYZN] ("As explained above, and in my February 19, 2025, letter, the [congestion pricing program] does not effectuate the goals or priorities of the U.S. Department of Transportation.").

141. *Id.* at 2.

142. Memo. of Law of MTA & TBTA, *supra* note 121 at 56 (analyzing 23 C.F.R. § 1.36 (2025) and 23 U.S.C. § 315 (2024)).

143. *Id.* at 66 (citing Nat'l Fed. of Indep. Bus. v. Sebelius, 567 U.S. 519, 577 (2012)); *see also* Roderick Hills, *Can the U.S. Department of Transportation End the MTA's Congestion Pricing System?*, VITAL CITY (May 7, 2025), https://www.vitalcitynyc.org/articles/can-the-usdot-end-mtas-congestion-pricing-system [https://perma.cc/HSD2-9DJA] (referencing this case in reviewing the congestion-pricing dispute).

144. Memo. of Law of MTA & TBTA, *supra* note 121, at 61 (quoting *Sebelius*, 567 U.S. at 583-84).

145. *Id.* at 62 (quoting New York v. Dep't of Just., 951 F.3d 84, 115 (2d Cir. 2020)).

C. What Duffy *Reveals About Permitting*

By offering a window into the latest installment of a decades-old debate about congestion pricing, *Duffy* reveals the difficulty of building innovative transportation projects, even when those projects are desired by locals and would bring quality-of-life and environmental benefits. Projects like congestion pricing – along with public transit, passenger rail, and bicycle and pedestrian infrastructure – can be caught up in political handwringing and litigation. Proponents of such projects, aiming to innovate in a system with entrenched entities biased towards the status quo, can experience challenges that may be arbitrary or brazenly political. While the facts in *Duffy* fit this description, it is likely not the only instance in which politics and arbitrary considerations shaped infrastructure-project outcomes. We simply have a better vantage point into those challenges here given the high-profile nature of congestion pricing in New York City.

The case lays bare the complicated dynamics of transportation-project permitting, and the vulnerability of certain parties to intimidation and whim. Relatively powerless local and regional actors must beg for approvals, alliances, and dollars, and are most likely to suffer from legal roadblocks. In the case of congestion pricing in New York City, local forces were the strongest, if not the only, advocates. They were largely ignored or outmaneuvered. Only when state politicians finally came around to support congestion pricing, and federal officials approved it, could the locality-led initiative come to fruition. Then came Secretary Duffy's attempt to halt the project and the subsequent need for the MTA, along with the TBTA, the city, and the state, to sue the federal government to force their preferred outcome. The fact that the plaintiffs had to endure the time, cost, and risk of a lawsuit, when Duffy's actions seemed so contrary to law, reflects a fundamental imbalance in the permitting process – one favoring the federal government and disfavoring local project proponents.

While recalibrating our federalist system of government is both unlikely and beyond the scope of this Essay, recognition of the inability of local actors to shape their own communities may help to change the way both courts and legislators make decisions. Decarbonizing the transportation system requires us to find new approaches to transportation law and policy that safeguard local interests and result in the installation and construction of appropriate projects and programs.

III. RELIEVING LEGAL CONGESTION

This Essay has used the story of congestion pricing in New York City to highlight the complicated political and legal dynamics embedded in the American federalist system, with a push and pull between federal, state, and local

actors that stalls certain transportation projects. This is especially true in the case of innovative projects, championed by local governments, to reduce greenhouse-gas emissions. This Part presents a few high-level suggestions for how federal courts and Congress can start to make these types of projects easier to permit and build.

A. Courts

Federal courts can play a role in clarifying permitting processes and conditions so that local actors can proceed with innovative transportation projects that they have prioritized. At a minimum, they can require that the federal government follow the law and honor previously issued approvals and permits. The pending *Metropolitan Transportation Authority v. Duffy* lawsuit, filed in February 2025 against the Secretary of Transportation, presents an opportunity for just that type of judicial clarification.[146] As noted above, DOT has purported to rescind approval of a popular project that handily satisfied environmental reviews and was approved consistent with existing law. Any jurist who respects judicial precedent and basic principles of statutory interpretation would have to rule for the plaintiffs, who have simply and convincingly argued for rational and fair administration of existing laws.[147] My view is aligned with that of law professor Roderick Hills, who called Secretary Duffy's arguments "pulled out of thin air."[148]

The court could also address the allegations and threats contained in Secretary Duffy's letters, including the threat to pull unrelated funding from the state of New York. The court could clarify the extent to which federal parties, including agency heads, may punish nonfederal actors whose federal grants or permits fail to align with the priorities of a new administration. The court could find Secretary Duffy's threats and punishments pretextual, arbitrary, or otherwise illegal. Zachary Liscow, among others, has faith in the courts' ability to curb executive excesses, asserting that courts "can be good at protecting against unlawful behavior and executive branch abuses of power."[149]

Unfortunately, several surprising judicial decisions handed down this year have overturned precedent to affirm the power of the President to act in a manner

---

146. It is also possible that the court might find that the TBTA and MTA did not even need approval through the VPPP, since 23 U.S.C. § 129(a)(3)(A)(v) (2024) allows for tolling revenues to be put to any purpose as long as the agency administering tolls certifies that the tolling infrastructure is being adequately maintained.

147. *See supra* Part II.

148. Hills, *supra* note 143.

149. Zachary Liscow, *Getting Infrastructure Built: The Law and Economics of Permitting*, 39 J. ECON. PERSP. 151, 175 (2025).

that some view as abuses of power: controlling the purse strings for foreign aid, shuttering federal agencies, firing commissioners of independent agencies, and rescinding critical medical and research grants.[150] A decision in *Duffy* that follows the logic of these courts and favors a strong executive branch would be devastating to congestion pricing in New York City. The hundreds of millions of dollars already spent to implement congestion pricing would likely be wasted. What's more, such a decision would undermine faith in federal permitting processes and approvals. If the federal government is allowed to pull back its approval for a project already underway without any rational explanation, how could anyone rely on a federal approval or act in reliance on it? While it is not possible to banish politics entirely from transportation-project reviews, a decision that invalidates Duffy's threats can keep congestion pricing and other, already-approved projects on track.

The congestion pricing case involves a decision to rescind approval for an approved project. But courts can also consider the steps that lead to a decision. The way courts articulate federal obligations to conduct reviews, including environmental reviews, is constantly evolving. For example, a recent Supreme Court case, *Seven County Infrastructure Coalition v. Eagle County*, has limited how courts may evaluate federal agencies' obligations to review projects under NEPA.[151] The case considered whether the U.S. Surface Transportation Board adequately considered the impacts of the construction and operation of a railroad line on neighboring communities, and specifically whether the agency considered the indirect effects of the railroad line on communities further away from the line.[152] A unanimous Supreme Court limited the scope of NEPA review by upholding the agency's decision to acknowledge, but not fully analyze, such indirect effects.[153]

The Court held that courts "should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness."[154] Its *Seven County* decision may accelerate projects that

150. *See*, *e.g.*, Nat'l Insts. of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2660 (2025) (granting in part the United States's application for a stay of an injunction restoring NIH grants); Dep't of State v. AIDS Vaccine Advoc. Coal., 221 L. Ed. 2d 290 (Feb. 26, 2025), *vacated*, 145 S. Ct. 753 (mem.) (2025) (granting temporary administrative stay to allow withholding of $2 billion of foreign aid funding); Nat'l Treasury Emps. Union v. Vought, 149 F.4th 762, 770 (D.C. Cir. 2025) (vacating order that halted firing of hundreds of Consumer Financial Protection Bureau (CFPB) workers). *But see* Trump v. Cook, 222 L. Ed. 2d 1240 (2025) (deferring application to stay until January 2026 for D.C. Circuit court's decision to block the firing of Lisa Cook, a member of the Board of Governors of the Federal Reserve).

151. 145 S. Ct. 1497 (2025).

152. *Id.* at 1507-13.

153. *Id.* at 1508-09.

154. *Id.* at 1513.

actually harm the environment, contrary to NEPA's statutory purpose.[155] However, it has heartened those who are concerned that environmental reviews can delay projects so long that they become practically infeasible. Courts deciding whether to expedite federal review in particular cases should take into account the purpose of the statute triggering the reviews. In the case of NEPA, for example, courts might interpret *Seven County* to facilitate, as "reasonable," activities that promote environmental health. If this standard had been applied to congestion pricing, it might have emerged more quickly from the environmental-review phase. And then, perhaps, Governor Hochul may not have paused her support for the project, and the change in presidential administrations may not have been seen as an opportunity to derail it.

B. Congress

Courts can only go so far in addressing the issues raised in the congestion-pricing case. Congress, too, must play a role. The congestion-pricing saga highlighted the weakness of local governments, and Congress is unlikely to rush to reform permitting to promote local interests.[156] Instead, Congress should contribute by reviewing and reforming environmental-permitting processes as they apply to certain types of transportation projects: those, like congestion pricing, that would promote reductions in the emission of greenhouse gases caused by certain modes of transportation, including driving. Doing so may reduce political meddling, while also facilitating greater certainty for necessary and important projects that ensure a cleaner environment.

Improving permitting processes is only possible if Congress is determined to deliver alternative transportation projects more efficiently and to remove opportunities for politically motivated delays. Fortunately, the politics of the moment favor such improvements. For Republicans, cutting red tape, moving projects along faster, and reducing costs are all part of the mandate voters gave to President Trump. Indeed, the Trump Administration has deregulated at an

155. 42 U.S.C. § 4321 (2024) (establishing, as the purpose of NEPA, "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; [and] to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man," among others).

156. *Cf.* Gregory H. Shill, *Beyond Congestion Pricing*, 2025 J.L. & MOBILITY 1, 18 (promoting the notion that New York City can implement strategies like increasing its population, reducing the city's transportation costs, and better managing vehicular demand to "achieve for the City a significant increase in self-determination—in transportation, but also more broadly").

unprecedented rate (including defanging the body overseeing NEPA reviews[157]), eliminated entire federal agencies, and significantly reduced the federal workforce.[158] In the wake of their defeat in the 2024 national elections, Democrats, too, are moving towards streamlining rhetoric, articulating policy positions that promote construction and project deployment. The emerging "abundance" movement calls for combining process improvements with public-sector investments in construction.[159] Democrats, though, have yet to clearly articulate how the "more is better" abundance mantra applies to transportation—including whether more highways are just as good as more bus lines.[160] In my view, the types of transportation projects that we should be promoting are those that decarbonize the transportation sector, including congestion pricing, active transportation, and public-transit improvement projects.

---

157. Exec. Order No. 14,154, 90 Fed. Reg. 8353, 8353 (Jan. 29, 2025) (ordering the Council on Environmental Quality (CEQ) to rescind its NEPA regulations). CEQ published an interim final rule rescinding its regulations as of April 11, 2025. Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610, 10616 (Feb. 25, 2025) (amending 40 C.F.R. §§ 1500-08 (1979)); *see also* Marin Audubon Soc'y v. FAA, 121 F.4th 902 (D.C. Cir. 2024) (CEQ had no rulemaking authority and therefore did not have the authority to promulgate NEPA regulations); Iowa v. Council on Env't Quality, No. 25-1641, 2025 WL 2205808 at *1 (8th Cir. July 29, 2025) ("Appellants' motions to dismiss the appeal as moot and to vacate the district court's summary judgment decision have been considered by the court and are granted."); Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610, 10610-16 (Feb. 25, 2025) (rule removing CEQ's NEPA regulations from the Code of Federal Regulations).

158. *See, e.g.*, Nat'l Treasury Emps. Union v. Vought, 149 F.4th 762, 770 (D.C. Cir. 2025) (lifting an injunction that halted firing of hundreds of CFPB workers in the Administration's effort to dismantle CFPB); Brehm v. Marocco, 786 F. Supp. 3d 179, 181 (D.D.C. 2025) (allowing the removal of the U.S. African Development Foundation president and reduction of Foundation funds); Am. Foreign Serv. Ass'n v. Trump, No. 1:25-cv-352, 2025 U.S. Dist. LEXIS 143077, *4-5 (D.D.C. July 25, 2025) (dismissing a case alleging that the U.S. Agency for International Development shutdown is unconstitutional for lack of standing).

159. *See generally* EZRA KLEIN & DEREK THOMPSON, ABUNDANCE (2025) (advocating for Democrats to invest in public infrastructure and reduce bureaucratic red tape); Samuel Moyn, *Can Democrats Learn to Dream Big Again?*, N.Y. TIMES (Mar. 18, 2025), https://www.nytimes.com/2025/03/18/books/review/abundance-ezra-klein-derek-thompson.html [https://perma.cc/58G5-GEM6] (reviewing *Abundance* and highlighting its vision of "an abundant, green future emerging out of federal spending").

160. *See* David Zipper, *What Would "Transportation Abundance" Look Like?*, BLOOMBERG: CITYLAB (Apr. 3, 2025, 10:00 AM EDT), https://www.bloomberg.com/news/articles/2025-04-03/when-the-abundance-movement-talks-about-transportation [https://perma.cc/QGU2-4RPZ] (arguing that "applying [the abundance movement's] insights to transportation requires considering the kind of infrastructure that gets built, not just the quantity"); Gregory H. Shill & Jonathan Levine, Transportation for the Abundant Society 19 (Aug. 4, 2025) (unpublished manuscript) (on file with author) (suggesting that, to achieve the goals of the abundance movement, transportation policy be recalibrated to focus on measuring access to transportation by the largest number of people).

Despite rhetoric exalting construction, representatives of both parties, and indeed, all levels of government, have stalled or blocked environmentally friendly projects. As the congestion-pricing dispute demonstrates, Republicans are willing to exploit existing processes to derail projects they do not like. And attempting to derail New York's congestion-pricing plan in particular—to circumvent the will of the people and elected officials of the city and state of New York—contradicts the Trump Administration's talk of "giving power to the people," "local control," and "states' rights."[161] No doubt it was all too tempting, however, to undermine a successful program, created by Democrats for a Democratic city in a Democratic state, which may well have accounted for the "pretext" claimed by the MTA. Nevertheless, influential Democratic leaders also prolonged the realization of congestion pricing several times—even though the program is seemingly a slam dunk for Democrats on the merits. This behavior was especially puzzling because congestion pricing had benefits consistent with the policy goals of the Biden Administration. The need for ideological consistency disappears when convenient, even if it is at odds with the prevailing efficiency ethos on both sides of the political aisle. *Duffy* reveals that the laws on the books sometimes matter less, for practical purposes, than strongly motivated political actors.

If Congress decides to move forward with legislation to streamline transportation-project reviews and prevent politically motivated delays, it should align the scope of review with the likely impacts of projects. Projects that will have broad environmental benefits should be subject to a lighter environmental-review process or exempted altogether. Congestion pricing is a good example of the type of project that should be subject to streamlined review.[162] By definition, the policy reduces air pollution and alleviates traffic, while imposing the attendant costs on the people who create those harms (i.e., drivers). One wonders why a project that clearly yields more environmental benefits than costs had to develop an administrative record of more than 45,000 pages to receive federal approval.[163]

Already, NEPA allows for federal agencies, including the Department of Transportation, to identify actions that could be exempted from review. These

---

161. *See* President Donald J. Trump, The Inaugural Address (Jan. 20, 2017), https://trumpwhitehouse.archives.gov/briefings-statements/the-inaugural-address/ [https://perma.cc/Q8RL-6MJ9] ("[W]e are transferring power from Washington D.C. and giving it back to you, the American people.").

162. Congress could also increase the number of projects allowed under the VPPP (or eliminate the cap altogether).

163. Ironically, had the Administration in President Trump's first term succeeded in radically streamlining environmental reviews, such as those governing NEPA, congestion pricing may have gotten off the ground years earlier.

"categorical exclusions," typically identified through an agency rulemaking process, are possible as long as the agency determines such actions do "not significantly affect the quality of the human environment."[164] While sometimes the listed actions do not involve physical impacts (because they are, for example, administrative, planning, or financial actions), other times they may have some physical impacts that are deemed insignificant. Agencies may impose limitations (such as financial caps on the cost of projects) on such categorical exclusions.[165]

The Advisory Council on Historic Preservation (ACHP), a federal agency that administers a review process involving ten times the number of federal actions as NEPA, has already identified transportation projects that should be subject to lesser review or no review at all. I led the ACHP to implement such reforms in 2024 during my tenure as its chair.[166] The ACHP oversees the historic-preservation review process created by Section 106 of the National Historic Preservation Act, which requires federal agencies conducting certain actions (including financing or approving nonfederal projects) to evaluate the effects of their undertakings on historic properties.[167] Congress expressly tasked the ACHP with promulgating regulations related to the Section 106 process,[168] and the ACHP has used its regulatory powers to create five processes it can use to exempt or streamline specific types of federal undertakings from Section 106 review.[169] One such process, the program comment, enables the ACHP to create guidelines for other federal agencies to conduct reviews for specified categories of undertakings, either upon the request of another federal agency or on its own initiative.[170] Because program comments are typically requested by a specific federal agency (or federal agencies), they will follow the guidelines set out in the

164. 42 U.S.C. § 4336(c)-(e)(1) (2024).

165. *See* COUNCIL ON ENV'T QUALITY, LIST OF FEDERAL AGENCY CATEGORICAL EXCLUSIONS (May 2024), https://ceq.doe.gov/docs/nepa-practice/May-2024-CE-Catalog.xlsx [https://perma.cc/RDG2-ZBXZ]. For example, the FHWA and the Federal Transit Administration include on their list of activities subject to the categorical exclusion any projects under five million dollars. 23 C.F.R. § 771.117-118 (2025).

166. I was confirmed by the Senate in December 2022 and served as ACHP chair between January 2023 and December 2024.

167. 54 U.S.C. § 304101 (2024).

168. *Id.* § 304108. The general counsel of the ACHP issued a memorandum indicating that because of this express authority, the ACHP would likely be able to defend its own regulations from challenges under a recent Supreme Court case reducing the level of judicial deference for agency action. ACHP Legal Opinion on *Loper* Decision, ADVISORY COUNCIL ON HIST. PRES. (July 9, 2024), https://www.achp.gov/news/achp-legal-opinion-loper-decision [https://perma.cc/ATW6-DBU7] (opining that ACHP regulations "should be safe from challenges emanating from the *Loper* decision").

169. 36 C.F.R. §§ 800.14-.16 (2025) (identifying five types of "program alternatives").

170. *Id.* § 800.14(e).

program comment. In 2024, the ACHP on its own initiative developed and adopted a program comment that addressed a number of housing-, building-, and transportation-related undertakings.[171] In determining what types of undertakings to include, the ACHP identified a list of projects unlikely to have impacts on historic properties. Among other projects (like sidewalks, ADA-compliant ramps, and bike-lane striping), the program comment exempts any "decision to limit motor vehicle access to, through, or on streets . . . including, but not limited to . . . tolling or congestion pricing."[172] The program allows the installation of cameras and supporting infrastructure to proceed as long as the agency determines there will not be effects on properties important to Indian Tribes or Native Hawaiian organizations.[173] Federal agencies can choose to adopt this program comment simply by notifying the ACHP.[174] By exempting and streamlining reviews of these activities, the program comment narrows the scope of the Section 106 review process to federal agency actions more likely to impact historic properties. It could provide a template for congressional reform of other environmental review processes.

Others have offered different proposals for congressional streamlining. David Schleicher, for example, recently proposed that Congress create a "priority list" of infrastructure projects that merit streamlined review.[175] The idea is that the largest projects of national importance might merit streamlined review. However, because interstate-highway and highway-expansion projects are the largest projects, it is likely that a priority list would fast-track exactly the types of projects most likely to cause large-scale environmental destruction and destruction of cultural resources protected by NEPA and Section 106, among other laws. If a priority list were to be created, it should be limited to those projects that, by their nature, would have more environmental benefits than costs. These would include most public-transit projects, sidewalk and bicycle improvements, and, yes, congestion pricing.

---

171. Program Comment on Certain Housing, Building, and Transportation Undertakings, 90 Fed. Reg. 14526 (Apr. 2, 2025).

172. *Id.* at 14546.

173. *Id.* at 14537 (subjecting such activities to a step-by-step process to determine, in consultation with Indian Tribes and Native Hawaiian organizations, that the activities have no adverse effects on any historic properties within the area of potential effects).

174. Several agencies, but not DOT, have formally notified ACHP that they will use this program comment. *See* ADVISORY COUNCIL ON HIST. PRES., *About the Program Comment on Certain Housing, Building, and Transportation Undertakings*, https://www.achp.gov/program_alternatives/program_comment/housing_building_info [https://perma.cc/L7X6-62BB] (listing the agencies that have adopted the program comment).

175. David Schleicher, *The Priority List*, BROOKINGS INST. (Aug. 7, 2025), https://www.brookings.edu/articles/the-priority-list [https://perma.cc/GB3B-VVZ3].

CONCLUSION

The proponents of new transportation projects face a number of challenges: they must handle waffling politicians and cranky neighbors, build a defensible and robust administrative record, solicit and incorporate public feedback, and ward off lawsuits—all while developing technically sound construction plans. But some projects have more challenges than others. The congestion-pricing program adopted in New York City happens to fit the unfortunate profile of projects more likely to have an arduous permitting process: it is novel, it is a local (i.e., not state or federal) priority, and it aims to reduce the number of cars on the road in a system that otherwise prioritizes driving.

Metropolitan Transportation Authority v. Duffy highlights the many barriers to the implementation of congestion pricing, and the disproportionate burdens imposed on local or regional actors. But we must conclude by asking whether these burdens are a feature, rather than a bug. Federalism's checks and balances—even in the extreme—are built into the system of approving transportation projects. Clarifying and strengthening local-government power, while promoting innovative projects that improve our quality of life and environmental values, could help rebalance a system that too often thwarts good projects.

Sara C. Bronin is the Freda H. Alverson Professor of Law at George Washington University Law School and the former Chair of the U.S. Advisory Council on Historic Preservation, which took action to facilitate congestion pricing. *She would like to thank Roderick M. Hills, Jr. for insightful comments, Clare Westra for research support, and the excellent team of student editors at the* Yale Law Journal *for their guidance and review.*