

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH CHAN, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TRANSPORTATION, *et al.*,

Defendants.

Case No. 23-cv-10365

Hon. Lewis J. Liman

**MOTION OF AMICI CURIAE ENVIRONMENTAL DEFENSE FUND, NEW YORK
LEAGUE OF CONSERVATION VOTERS, TRI-STATE TRANSPORTATION
CAMPAIGN, RIDERS ALLIANCE, REAL ESTATE BOARD OF NEW YORK, NEW
YORK LAWYERS FOR THE PUBLIC INTEREST, WE ACT FOR ENVIRONMENTAL
JUSTICE, STREETSPAC, AND TRANSPORTATION ALTERNATIVES FOR LEAVE
TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT**

Amici curiae Environmental Defense Fund (“EDF”), New York League of Conservation Voters (“NYLCV”), Tri-State Transportation Campaign (“TSTC”), Riders Alliance, Real Estate Board of New York (“REBNY”), New York Lawyers for the Public Interest (“NYLPI”), WE ACT for Environmental Justice (“WE ACT”), StreetsPAC, and Transportation Alternatives (“TA”) (collectively, “*amici*”) respectfully move for leave to file an *amicus curiae* brief in this matter.¹ The proposed *amicus* brief is attached as Exhibit 1.

INTEREST OF THE *AMICI CURIAE*

Amici are nine organizations representing a broad array of interests ranging from environmental protection, effective transportation, equity in the provision of public services, equity in environmental policy and enforcement, and the real estate industry all united in their goal of making the New York/New Jersey/Connecticut region a safe, healthy, and fair community.

EDF is a nonprofit organization headquartered in New York City that links science, economics, and the law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF is one of the world’s largest environmental organizations, with hundreds of thousands of members across the United States—many of whom are based in the New York/New Jersey/Connecticut region—and a staff of over 1,000 scientists, policy experts, and other professionals from around the world. Protecting public health and the environment from contaminants is a core organizational mission, as is protecting land, soil, and forestry resources. EDF regularly participates in regulatory and judicial proceedings at the federal and state level, and has worked for decades to protect human health and the environment for people and communities in New York City.

¹ *Amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

NYLCV is a non-partisan, statewide environmental organization in New York that fights for clean water, healthy air, renewable energy, and open space. For thirty years, NYLCV has worked to lobby state and local governments on environmental policy, provide objective information to the public, and hold elected officials accountable.

TSTC is a non-profit organization dedicated to promoting sustainable transportation, equitable planning policies and practices, and strong communities in the tri-state area around New York City. TSTC uses data and policy analysis, along with strategic media outreach, to influence decision-making throughout the metropolitan region. Since it was founded in 1993, TSTC has become a leading voice in the region for transportation and land use policy reform.

Riders Alliance is New York's grassroots organization of bus and subway riders from across New York City with a shared vision: a public transit system that works for every New Yorker, in every community. Riders Alliance fights for reliable, affordable, accessible public transit in order to build a more just and sustainable New York. Riders Alliance holds elected officials accountable and takes direct action to guarantee that riders have a powerful voice in the decisions that affect transit and the future of New York.

REBNY is New York City's leading real estate trade association. Founded in 1896, REBNY has more than 14,000 members with extensive experience in the City's real estate development industry, including commercial, residential and institutional property owners, builders, managers, investors, and others. REBNY regularly publishes market data, policy reports, and broker surveys, and it provides members with various resources, including educational courses and charitable service opportunities and a wide range of other member benefits. REBNY works to promote sound public and industry policies to expand and improve New York's economy.

For nearly 50 years, NYLPI has been a leading civil rights and legal services advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through NYLPI's community lawyering model, it bridges the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. NYLPI's work integrates the power of individual representation, impact litigation, organizing, and policy campaigns. Guided by the priorities of its communities, NYLPI strives to secure environmental justice for low-income communities of color, achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, and strengthen local nonprofits.

Founded in 1988, WE ACT is a community-based organization in Harlem, New York City. At the city, state, and federal levels, WE ACT fights environmental racism—racial discrimination in environmental policy-making, enforcement of regulations and laws, and targeting communities of color for toxic waste disposal and siting of polluting industries. WE ACT advocates for community-driven solutions that can remedy the institutionalized harms associated with unjust urban planning policies that have plagued communities of color for generations.

StreetsPAC is a New York City-based political action committee dedicated to electing candidates who support pro-safe streets and pro-public transit policies, and to advancing such policies through related advocacy work.

TA is a leader in the movement for safe, equitable streets in New York City. TA uses a combination of neighborhood-level grassroots organizing and citywide advocacy to push for changes in public policy, street design, enforcement, and resource allocation that transform New York City's streets for the better.

To achieve their respective missions, *amici* participate in filing *amicus curiae* briefs in cases, like this one, that raise issues of significant concern to the populace in the New York/New Jersey/Connecticut area. As relevant here, *amici* have a strong interest in ensuring the congestion pricing program approved by the United States Department of Transportation and Federal Highway Administration goes into effect, thereby realizing the significant quality of life, public health and environmental benefits it was designed to achieve for *amici*'s constituents in the New York/New Jersey/Connecticut area around New York City.

ARGUMENT

District courts have broad discretion to permit the filing of an *amicus* brief. *See C&A Carbone, Inc. v. County of Rockland*, 2014 WL 1202699, at *3 (S.D.N.Y. Mar. 24, 2014) (collecting cases); *In re GLG Life Tech Corp. Sec. Litig.*, 287 F.R.D. 262, 265 (S.D.N.Y. 2012); *Auto. Club of N.Y., Inc. v. Port Auth. of N.Y. & N.J.*, 2011 WL 5865296 at *1–2 (S.D.N.Y. Nov. 22, 2011); *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992), *aff'd*, 980 F.2d 161 (2d Cir. 1992); *United States v. Gotti*, 755 F. Supp. 1157, 1157–58 (E.D.N.Y. 1991). “An *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for parties are able to provide.” *C&A Carbone*, 2014 WL 1202699, at *3 (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997)).² “The court is most likely to grant leave to appear as an *amicus curiae* in cases involving matters of public interest.” *Andersen v. Leavitt*, 2007 WL 2343672 at *2 (E.D.N.Y. Aug. 13, 2007).

² In determining whether to grant leave to file an *amicus* brief, “courts often rely on principles set out by the Seventh Circuit,” including the decision in *Ryan*. *C&A Carbone*, 2014 WL 1202699, at *3–4; *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mort. Funding, Inc.*, 2014 WL 265784, at *1 (S.D.N.Y. Jan. 23, 2014); *Auto Club*, 2011 WL 5865296, at *2; *Jamaica Hosp. Med. Ctr., Inc. v. United Health Grp., Inc.*, 584 F. Supp. 2d 489, 497 (E.D.N.Y. 2008).

Amici respectfully submit that leave is proper here. *Amici*'s status as voices of a broad coalition of groups representing a wide range of members with diverse interests and constituencies and in diverse industries, gives them an interest in ensuring that the congestion pricing program approved by the United States Department of Transportation and Federal Highway Administration goes into effect, thereby realizing the significant quality of life and environmental benefits it was designed to achieve in the New York/New Jersey/Connecticut area around New York City. *See* Ex. 1 at 1–4. *Amici*'s proposed brief thus offers valuable additional perspective, beyond that submitted by the parties, on the important quality of life and environmental benefits that would be denied to their constituents and others in and around New York City if the Court were to grant Plaintiff's requested relief and delay the congestion pricing program. *Amici*'s proposed *amicus* brief provides specialized analysis on issues relating to environmental review, *see* Ex. 1 at 6–19, supplying “unique information” which may further assist the Court. *C&A Carbone*, 2014 WL 1202699, at *3–4.

CONCLUSION

The Court should grant leave to file the attached *amicus* brief.

Dated: April 1, 2024

Respectfully submitted,

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