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NYC Congestion Pricing’s “Indefinite Pause”: **What Didn’t Happen, Why, and What’s Next?!**

The MTA announced in April 2024 that congestion pricing would begin in New York City on June 30, 2024. Following many months of hearings, pushback, and more discussions, the MTA finalized its tolling structure and planned to begin the congestion charge in Manhattan below 60th Street. It would be the first congestion pricing program in the United States, aiming to raise revenue for the MTA and reduce congestion in the City’s Central Business District (CBD). The MTA aimed to generate \$1 billion per year over the next five years to finance \$15 billion in bonds for its capital plan. The money was to be used for projects like the Second Avenue Subway extension and the Interborough Express (IBX), as well as accessibility enhancements and new bus and subway purchases. However, on June 5, 2024, New York State Governor Kathy Hochul suddenly directed the MTA to postpone congestion pricing implementation indefinitely.

In explaining her decision, Governor Hochul said that New York City and New Yorkers have not yet fully recovered economically from the pandemic and that she does not want to impose an additional financial burden on working-class New Yorkers. Since Governor Hochul’s announcement, the New York State Legislature has been looking for ways to fill the MTA’s \$1 billion revenue shortfall for the 2025 fiscal year, and MTA leadership has said it will likely shrink its capital budget and postpone important projects.

Congestion pricing has many supporters. Advocacy groups local to New York City had worked for years to push for congestion pricing. Some groups supported the program overall but took issue with some of the specifics. Taxi, For-Hire Vehicle (FHV), and bus operators, for example, pushed for discounts and exemptions because they are part of the public transit ecosystem. Others argued for exemptions for electric vehicles (EVs) on the basis that they do not contribute to pollution in the same way regular vehicles do.

The program also drew pushback from local New Yorkers, elected officials in New York and New Jersey, the United Federation of Teachers, and the Trucking Association of New York, all of whom brought lawsuits against the MTA and the Federal Highway Administration (FHWA). Many of these lawsuits fault the FHWA’s Final Environmental Assessment (EA) because, among other things, it did not account for the final tolling schedule adopted by the MTA. Most litigants are demanding congestion pricing be halted until the U.S. Department of Transportation conducts an environmental impact study (EIS) – a lengthy, often years-long process.

On June 14, 2024, FHWA issued a re-evaluation finding that the conclusions in the Final EA remain valid in light of the final tolling schedule, and that no further environmental review is warranted.¹ The report found that the tolling structure would result in 17% fewer vehicles driving into the CBD every day.

¹ <https://new.mta.info/project/CBDTP/reevaluation>

While this indefinite delay plunges congestion pricing into uncertainty, it could be an opportunity to get it right. The New York State Legislature could take the chance to revise the enabling legislation to focus less on a specific dollar amount and more on alleviating congestion, improving public transportation, and helping the environment. By focusing on congestion reduction, environmental benefits, and a more equitable tolling structure, the MTA and the New York State Legislature could create a program that addresses the City's needs while garnering wider support, ultimately making congestion pricing a win for both commuters and the City itself.

The Indefinite Pause

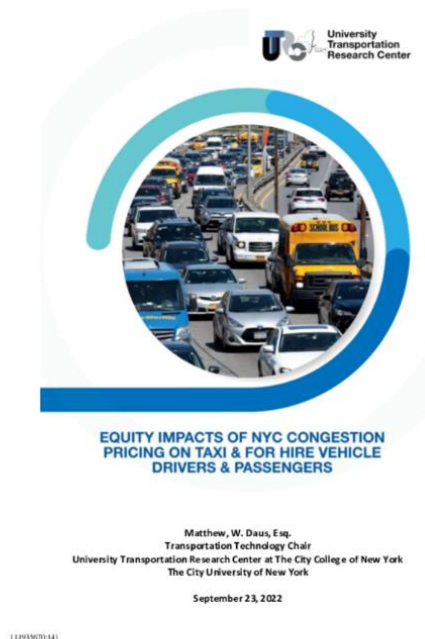


New York Governor Kathy Hochul and Matt Daus

Governor Hochul's last-minute decision to stop congestion pricing caught most by surprise. Publicly, Hochul said her decision was based on not wanting to impose an additional financial burden on working-class New Yorkers and reaffirmed her commitment to improving New York's transportation infrastructure. She also said the state had set aside funding to backstop the MTA capital plan and was exploring additional funding sources.² That is just part of the story.

² <https://www.nytimes.com/2024/06/05/nyregion/congestion-pricing-pause-hochul.html>

While Governor Hochul recently highlighted concerns around congestion pricing’s equity impacts on low-income New Yorkers, the University Transportation Research Center at the City University of New York (UTRC) researched this issue in depth last summer. The report, *Equity Impacts of NYC Congestion Pricing on Taxi & For-Hire Vehicle Drivers & Passengers*, makes three main observations. First, taxi and FHV riders already pay a surcharge to the MTA. As of the first quarter of 2024, taxi and FHV riders have paid over \$1.5 billion in congestion surcharges since 2019. Second, the taxi and FHV ridership has not yet fully recovered from COVID, and an additional toll could lead to significant job and income loss for taxi and FHV drivers. Third, additional charges paid by taxi and FHV riders can become a financial burden for those who live in transit deserts and require taxis and FHVs to travel throughout the city should not be subject to extra charges.



[Click Here to Read the UTRC Report](#)

The compelling reason for the about face, however, was purely political. Democrats are facing difficult House races in New York suburbs, and Republicans have planned to use congestion pricing as a political wedge. Before her announcement, the governor had reportedly notified the White House and House Minority Leader Hakeem Jeffries (of New York), who is trying to win back a Democratic majority this year, of her plans.³ Despite declaring neutrality in the congestion pricing policy debate, Jeffries’s spokesperson said he “unequivocally supports the temporary pause of limited duration.”⁴

³ <https://www.nytimes.com/2024/06/05/nyregion/congestion-pricing-pause-hochul.html>

⁴ <https://www.eenews.net/articles/hill-dems-bemoan-new-york-congestion-pricing-about-face/>



Matt Daus, and Rep. Hakeem Jeffries, Leader for the House Democrats.

The Lawsuits – An Update (Some Dismissed)



New Jersey Governor Phil Murphy

While many support congestion pricing, even while fighting for more equitable exemptions and discounts from the tolls, some groups are fighting to stop congestion pricing entirely. As of June 2024, eight lawsuits were filed against the FHWA and MTA seeking to nix congestion pricing. The legal challenges raise concerns about the environmental and financial impacts of the plan, particularly on those lacking viable public transit alternatives, small businesses, and residents

in surrounding areas. The outcome of these lawsuits could significantly influence the future of congestion pricing and shape the trajectory of the transportation policy in New York and beyond.

In a significant legal development, U.S. District Court Judge Lewis Liman of the Southern District of New York dismissed key claims in three lawsuits challenging congestion pricing. The decision, issued June 20, 2024, marks a pivotal moment for the City's transportation strategy, aimed at reducing traffic congestion and funding public transit improvements.

The lawsuits, which were brought by various groups of coalitions including residents, United Federation of Teachers President Michael Mulgrew, Staten Island Borough President Vito Fossella, and federal, state, and local politicians argued that the MTA and its state and federal partners did not conduct an adequate environmental review as required by the National Environmental Policy Act (NEPA).⁵ Judge Liman ruled that the extensive NEPA review process, which spanned four years and produced a 45,000-page administrative record, was more than adequate.

Judge Liman's 113-page ruling dealt mostly with jurisdictional claims and the standing of the plaintiffs and ultimately found no legal cause to halt the congestion pricing program based on the NEPA claims. The ruling also highlighted the potential benefits of congestion pricing, such as improving transit services for low-income residents who predominantly rely on public transportation. The decision dealt only with the non-constitutional claims in these cases, leaving the state and federal constitutional claims to be litigated.⁶

The recent court ruling could pave the way for implementing congestion pricing in New York City and set a precedent for the other lawsuits, which raise many of the same claims. The State of New Jersey was the first to file a suit in July 2023, alleging congestion pricing would unfairly burden New Jersey commuters with additional costs, and increase congestion and pollution in New Jersey in violation of NEPA and the U.S. Constitution.⁷ The constitutional challenges include claims that congestion pricing violates the right to travel. That question has been addressed by various courts. The right to travel is a fundamental right recognized by the Constitution, and it includes the right of a citizen to move freely between states. However, this right does not necessarily mean that one can travel without any restrictions or costs. The government has the authority to impose tolls on roads as a way to fund their construction and maintenance. The imposition of tolls has generally been seen as a legitimate exercise of state power, provided it does not discriminate against interstate commerce or violate other constitutional rights.

⁵ *Mulgrew, et al. v. The City of New York, et al.*, Case No. 1:24-cv-01644-LJL (US District Court for the Southern District of New York); *New Yorkers Against Congestion Pricing Tax et al v. United States Department of Transportation et al*, Case No: 1:24-cv-00367-LJL (Southern District of New York); *Chan et al. v. United States Department of Transportation et al.*, Case No. 1:2023cv10365 (US District Court for the Southern District of New York)

⁶ *Id.*

⁷ *State of New Jersey v. U.S. Dep't of Transportation*, No. 23-cv-03885 (US District Court for the District of New Jersey)

The Mayor of Fort Lee, New Jersey sued in November 2023, claiming congestion pricing would lead to increased traffic and pollution in Fort Lee, as drivers might reroute to avoid the fees, particularly affecting areas around the George Washington Bridge.⁸ The Fort Lee case is stayed pending the resolution of the New Jersey case, which is expected soon.

Rockland County and the Town of Hempstead, Long Island filed similar lawsuits earlier this year, arguing that the tolling program lacks a rational basis, is an unauthorized tax, and violates constitutional rights.⁹ The plaintiffs are challenging the constitutionality of congestion pricing under the Equal Protection Clause of the New York State and U.S. Constitutions. The contention is that the toll policies discriminate against drivers from outside the CBD. These cases are both still in their early phases.

The most recent lawsuit was filed by the Trucking Association of New York in May 2024, alleging that the tolling scheme is unconstitutional and unfairly burdens truck drivers who only make up 4% of all vehicle traffic in the CBD.¹⁰ They contend that the plan disproportionately affects trucks with higher tolls each time they enter the congestion zone, unlike passenger vehicles which are charged a flat rate regardless of the number of entries. They also argue that toll revenue will be allocated to the City's subways, buses, and railroads, which the trucking industry cannot use. The suit seeks a declaration that the tolling program is unconstitutional, and an injunction barring it from taking effect. The claim that trucks are being disproportionately burdened could carry water. In 2022, a Rhode Island District Court judge determined that Rhode Island violated the U.S. Constitution's dormant commerce clause by only assessing tolls on large heavy-duty commercial trucks, many of which come from out of state.¹¹ That case is currently on appeal, but it shows that, even though road tolls have been around for a while, they must apply proportionately to road users, and not have a disparate impact on interstate commerce.

These legal actions highlight the complexities of implementing congestion pricing in a city as dynamic as New York, where the balance to reduce traffic, generate revenue for public transportation, and ensure equitable treatment of all residents and businesses remains a contentious issue. If and when congestion pricing moves forward, these pending lawsuits, and those that may be filed, could alter the program or delay its implementation further.

⁸ *Sokolich v. U.S. Dep't of Transportation*, No. 23-cv-21728 (US District Court for the District of New Jersey)

⁹ *County of Rockland et al v. Triborough Bridge and Tunnel Authority et al*, Southern District of New York (White Plains), Case No. 7:24-cv-02285-CS; *Town of Hempstead et al v. Triborough Bridge and Tunnel Authority et al*, Eastern District of New York (Central Islip), Case No.: 2:24-cv-03263-ARL

¹⁰ *Trucking Association of New York v. Metropolitan Transportation Authority et al.*, Southern District of New York, Case No. 1:24-cv-04111

¹¹ *American Trucking Associations Inc. et al. v. Alvit*, Case No. 22-1795, U.S. Court of Appeals for the First Circuit

More Lawsuits & Progressive Politics?



New York City Comptroller Brad Lander

Advocates and legal experts have questioned whether Hochul has the unilateral authority to halt tolls passed by the New York State Legislature and signed into law in 2019. The law requires the Triborough Bridge and Tunnel Authority (TBTA), a part of the MTA, to “establish the central business district tolling program,” referring to the congestion pricing program. That language seems mandatory rather than optional.¹² Article 78 of the NY Civil Practice Law and Rules may provide an avenue to challenge the TBTA’s failure to implement congestion pricing, as required by legislation passed in 2019.

On June 12, 2024, NYC Comptroller Brad Lander, who may be running for mayor, announced he was assembling a coalition to explore legal action against the State of New York over Hochul’s congestion pricing delay. This coalition will likely wait until the original start date of June 30, 2024, to take any action. The coalition believes it has a few legal angles it may use. It could sue under the New York State’s Climate Leadership and Community Protection Act, which requires all state agencies to conduct business in a manner keeping with an overarching goal of reducing greenhouse gas emissions. There is also the 2021 Green Amendment approved by New York voters, affirming a constitutional right to clean air, water, and the environment. On the federal level, the coalition believes Hochul’s move could violate the landmark Americans with Disabilities Act. For now, though, legal experts believe their strongest affirmative defense of the program is the original 2019 statute, which requires the state to undertake a congestion pricing program in Manhattan’s core.¹³

¹² <https://nysfocus.com/2024/06/06/hochul-congestion-pricing-mta-lawsuit>

¹³ <https://www.amny.com/transit/congestion-pricing-lander-assembling-plaintiffs-lawsuits/>

The MTA's Next Move



Matt Daus and MTA Chair and CEO Janno Lieber

The MTA Board is scheduled to meet on June 26, 2024 – just four days before congestion pricing was supposed to go into effect. It is unclear whether a vote on congestion pricing is legitimately on the table, and how such a vote would go. However, if congestion pricing is on the agenda, it could pose a separate problem: Board members have a fiduciary duty to act in the Authority's best interest, and slashing its funding would go against that duty.

Less than a day after Hochul's announcement, MTA Board members Dan Garodnick, Midori Valdivia, Meera Joshi, and David Jones criticized the Governor's decision.¹⁴ The 23-member MTA board includes 18 voting members, and all four who have come out against the Governor's decision were recommended by New York City Mayor Eric Adams. Five members are recommended by the Governor, and nine are recommended by suburban county executives (though four share one vote). Elected officials from the suburbs have almost universally applauded the congestion pricing pause, and the Governor traditionally asserts tight control over their recommended MTA board members.¹⁵

¹⁴ <https://nysfocus.com/2024/06/06/hochul-congestion-pricing-mta-lawsuit>

¹⁵ <https://nysfocus.com/2024/06/06/hochul-congestion-pricing-mta-lawsuit>



Dan Garodnick, Director of the NYC Department of City Planning and Mayoral Appointee to the MTA Board; and Matt Daus

In a June 10, 2024, press conference, MTA CEO Janno Lieber explained that, without the funds provided by congestion pricing, the MTA would prioritize keeping the aging transit system operating safely. Lieber said Hochul's decision would force the MTA to shrink its current capital budget and could affect its next budget and ripple into day-to-day operations. The capital budget includes work for the Second Avenue Subway extension, the Interborough Express, accessibility improvements, and new bus and subway purchases.¹⁶ Most likely, the debate at the MTA will involve some board members voicing their displeasure with the decision, but then engaging in a debate on what projects to delay or cut.

¹⁶ <https://www.nytimes.com/2024/06/10/nyregion/mta-janno-lieber-congestion-pricing.html>

NYC Congestion Pricing 2.0 – An Opportunity for a Better Program?



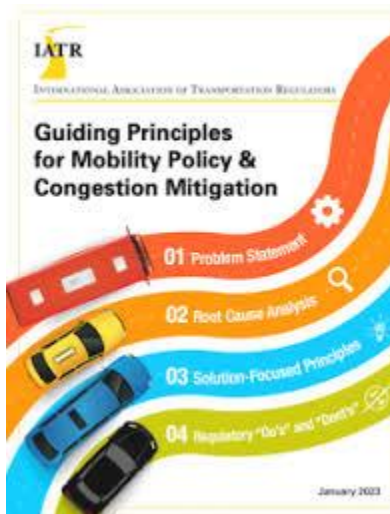
Rendering of the Interborough Express

This delay is a chance for the MTA to re-examine the tolling scheme and for the New York State Legislature to revisit the law establishing congestion pricing. Under that law, the MTA must use congestion tolls to bring in \$15 billion to fund capital projects. Instead of focusing solely on raising a specific dollar amount, this pause presents an opportunity to design a plan that more effectively reduces congestion and mitigates environmental impacts from vehicles.

The New York State Legislature can re-examine where congestion pricing revenue may be allocated and consider moving funding towards bus and subway safety and cleanliness, driving riders to the system through service quality improvements. They might also consider contributing more funds to Access-A-Ride, increasing subsidies for elderly and disabled riders, and targeted exemptions for taxis, for-hire vehicles, buses, and other shared mobility—all of which are important parts of the City’s public transportation ecosystem. The MTA and the New York State Legislature could also take time to talk with those behind the lawsuits and work with them on ways to better implement the program.

The MTA can look at successful congestion pricing programs in other cities around the world to learn from their experiences. For instance, London and Stockholm have implemented congestion pricing with various exemptions and adjustments that New York City could consider. These cities have included exemptions for certain types of vehicles, such as taxis, buses, and EVs, which not only support public transport and green initiatives but also address concerns from key stakeholders. These ideas reflect the *Guiding Principles for Mobility Policy and Congestion Mitigation* published by the International Association of Transportation Regulators (IATR), which supports exemptions for for-hire vehicles, taxicabs, TNCs and buses, as they are part of the public transit ecosystem. If not exempted, the IATR supports the passenger fees from taxi and for-hire trips being placed into a lockbox to fund and subsidize first-and-last mile links with public transit, Mobility-as-a-Service (MaaS) platforms and subsidized (or if possible “free rides”) using

wheelchair accessible taxicabs and for-hire vehicles as part of the MTA’s public paratransit program known as Access-A-Ride.



[Click Here to Read the IATR’s Guiding Principles](#)

During the pause, engaging with the litigants currently challenging the congestion pricing plan in court could also be a productive step. By addressing their concerns directly, the MTA could potentially develop a more robust and widely accepted program. This might involve convening regular meetings with representatives from affected industries, such as the taxi and trucking industries, as well as local community groups. These discussions could help the MTA refine the tolling structure, perhaps by incorporating more nuanced exemptions, discounts, and pollution and congestion mitigation strategies that reflect the unique needs of different communities.

If congestion pricing is meant to push people towards public transit and away from private vehicles, then ensuring that the subways and buses are attractive options for riders is crucial. Creating a safe, clean, and comfortable public transit system should be a top priority for the MTA. Increasing the presence of security personnel, installing better lighting, and ensuring frequent and thorough cleaning of transit vehicles and stations can make the system more appealing to riders. The MTA can also consider how it might continue its work on important infrastructure projects with creative delivery mechanisms.

In January, the New York City Bar Association Transportation Committee, which I chair, wrote an open letter to Governor Hochul and state, city, and MTA leadership about the potential budgetary burden the Interborough Express (IBX) would put on the MTA’s capital budget. The letter cited “high cost, project status relative to other announced MTA capital priorities, and right-of-way uncertainties unresolved by the work to date,” as reasons why the MTA might consider an alternative approach to project implementation.

The Transportation Committee recommended shifting responsibility for the project’s further development from the MTA to a new joint State-City multi-modal partnership. This entity

could have more flexibility to develop a lower-cost project concept and to shape an innovative financing and public-private partnership strategy, which could lessen or eliminate IBX's competition with other priorities for MTA capital program capacity and management's attention. A formal role for the City recognizes the project's dependence on coordination with multiple municipal functions and approvals. Together, the State and City could empower this new entity to foster other innovative local mobility services and support rail freight operations and ancillary infrastructure on the IBX corridor.



Matt Daus, Transportation Law Committee Chair of the NYC Bar Association delivers a speech at the association's headquarters in Midtown Manhattan

[Click Here to Read the NYC Bar IBX Letter](#)

Considering the new funding shortfall the MTA faces, it may make sense for the Governor, the MTA, and the New York State Legislature to consider creating a separate authority to deliver the IBX that does not rely on the MTA and its now extremely overburdened capital program. It would be a shame to completely scrap this program, so if the legislature takes the MTA funding gap up in a special session this summer, thought should be given to passing a law to create a separate quasi-governmental authority to handle and finance this major project, as the MTA has their hands full already running an aging system and dealing with subway safety issues and crime.

The MTA can create a public transit system that not only supports the goals of congestion pricing but also enhances the overall quality of life for New Yorkers. This holistic approach would ensure that congestion pricing is part of a broader strategy to improve urban mobility, reduce environmental impacts, and make New York City a more liveable and sustainable metropolis.

The story of congestion pricing is far from over, and is likely to come to fruition in early 2025. Even though congestion pricing is currently on pause, likely for political reasons, there is a strong likelihood it will be implemented in the near future following the November 2024 elections. If Donald Trump is elected President, I predict that before January 20th, 2025, the program might be started for fear that the incoming President-Elect might remove federal approval of the program. If President Joseph Biden is re-elected, I still believe the program will be implemented sometime during the first or second quarter of 2025 to provide for cushion and recovery politically from angry New Yorkers in time for NY State Governor Hochul's possible re-election bid in 2026. In the meantime, the MTA is looking for additional funding, and could even attempt to increase the existing congestion surcharge on taxis and FHV's via an act of the legislature this summer if they cannot make enough budget cuts or find funding elsewhere (such as from cannabis sales, casinos, a payroll tax or other sources). Those advocating for the taxi and FHV industry must remain vigilant, increase their efforts, and ensure congestion pricing is implemented equitably for drivers and riders alike. Governor Hochul called for ideas for additional funding. All stakeholders now have an opportunity to present their ideas to help the MTA get back on track and deliver its projects without relying on the taxi and FHV industry.