STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

WESTERN NEW YORK YOUTH CLIMATE COUNCIL, et al.,

Petitioners, 808662/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Respondents.

EAST SIDE PARKWAYS COALITION, et al,

Petitioners, 808702/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Respondents.

MEMORANDUM DECISION
(*Preliminary Injunction*)

EAST SIDE PARKWAYS COALITION, et al.,

Plaintiffs, 808572/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Defendants.

WESTERN NEW YORK YOUTH CLIMATE COUNCIL, et al.

Petitioners, 808662/2024

vs.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, et al.,

Respondents.

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Colaiacovo, J.

Several actions were filed seeking similar relief, *inter alia*, to halt the commencement of a project designed to re-develop New York State Route 33, commonly referred to as the Kensington Expressway. The State seeks to "cap" a portion of the expressway, cover it, and develop a greenspace aimed at connecting two neighborhoods. Petitioners contend that this project violates the New York State

Constitution, the Public Trust Doctrine, SEQRA, and the Climate Leadership and Community Protection Act.

Because of the similarity of the parties, the issues, and the relief sought, the parties entered into a Stipulated Order wherein they agreed that one record would be submitted. See Stipulated Scheduling Order, See Index #808702/2024, #808662/2024, #808572/2024; NYSCEF Doc. #18. The actions to this Stipulated Scheduling Order were referred to as the *Removal Action* (Index #808572/2024 - alleged violations of the State Constitution and Public Trust Doctrine), the *Climate Proceeding* (Index # 808662/2024 - Article 78 Proceeding), the *EIS Proceeding* (Index #808702/ 2024 - Article 78 Proceeding), and the *Harris Proceeding* (Index #808703/2024 - Article 78 proceeding). The parties appeared on October 25, 2024 to argue motions seeking a preliminary injunction. The Court reserved decision, allowing the parties to submit additional memoranda. Having received same, the Court's decision is as follows. This decision will address the preliminary injunction motions for the *Removal Action*, *Climate Proceeding*, and *EIS Proceeding*.

PRELIMINARY FACTS

In the late 1860s and early 1870's, Frederick Law Olmsted, arguably America's foremost landscape architect, developed a series of proposals and plans for the City of Buffalo. Those plans included the development of a series of public parks and parkways. Among those parkways was Humboldt Parkway. Humboldt Parkway was a tree-lined boulevard located between the East and West sides of Buffalo, which

"served as a focal point for the adjacent neighborhoods, providing a link between the various local streets and nearby recreational attractions, cultural and religious institutions, and local businesses."[1]

Almost one hundred years later, construction began on the Kensington Expressway. Its purpose was to supplement existing arteries to move vehicles in and out of the City of Buffalo more quickly. The project removed the parkway and, as argued by the proponents of the recent project lament, "reduced connectivity between the east and west portions of the neighborhood."[2]

In the last two decades, several Western New York leaders promoted a monumental project to re-establish the historic parkway so that both communities could be reconnected. Eventually, the State agreed to allocate $1 billion to fund this ambitious project. While the goals of the project have significant support, it is not without opposition. Petitioners fault the State with expediting the environmental review process and failure to follow climate laws aimed at reducing emissions. Petitioners also express frustration with the cost of the project and being excluded from stakeholder meetings. Petitioners are frustrated that they have been accused of "spreading misinformation" for merely asking questions and voicing their objections.

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[1] NYS Department of Transportation, "New York State Route 33 - Kensington Expressway Project - Reconnecting East Buffalo", Background, NYS Route 33, Kensington Expressway Project.
[2] Id.

In 2022, the State began its environmental review of the project. See generally Petition, Index #808702/2024; NYSCEF Doc. #1. This was done pursuant to SEQRA. On December 20, 2022, the State released a Project Scoping Report ("PSR") as well as an Environmental Assessment ("EA"). Id., generally, see ¶¶84-86.[3] The project was classified as a "Non-Type II" under SEQRA, "indicating that it has the potential for environmental impacts or substantial controversy on environmental grounds." Id. However, no Environmental Impact Study was performed. Petitioners contend that

> "[u]nder NYSDOT's SEQRA regulations, a non-Type II action is to be treated similar to a Type I action under NYSDEC's SEQRA regulations. See 17 NYCRR 15.1(c)(2). A Type I action is one which "carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." 6 NYCRR 617.4(a)(1)."

Id. The EIS Proceeding Petitioners contend that the State did not perform the required "hard look" and argue that an EIS should have been completed to adequately judge the environmental effects of this project, which would include assessing the impact the project would have not only on the environment, but also how the project would impact noise levels and traffic disruption.

Similarly, the Climate Proceeding Petitioners challenge the determinations made by the State, arguing that they violated the Climate Leadership and Community Protection Act. More specifically, the Climate Proceeding Petitioners

[3] It should be noted that many of these documents have been filed in all of the cases that are before the Court. However, these often have different NYSCEF document numbers for each Index Numbers. Acknowledging that they are filed in other index numbers, this decision will reference only one index number and associated document number.

insist that by issuing a negative declaration, the State ignored the gas emissions this project will release into the atmosphere. As they note in their petition, "the net effect of the Project will be an increase in greenhouse gas emissions by the year 2050 ... ." See Petition, ¶100, Index #808662/2024; NYSCEF Doc.# 1. Petitioners argue that the State ignored many of the environmental effects this project may cause, noting that, for example, "more than 26,000 metric tons of carbon dioxide into the atmosphere is inarguably an adverse effect of this Project." Id., ¶101.

Lastly, the Removal Action Petitioners insist that the Kensington Expressway was built on public parkland owned by the City of Buffalo in violation of the Public Trust Doctrine and federal law. They argue "the taking of the Humboldt Parkway and its conversion into non-park use without the direct and specific approval of the New York State Legislature, plainly conferred, was and is a violation of the rights of the surrounding community. See Complaint, ¶3, Index #808572/2024; NYSCEF Doc. #2. Petitioners seek to have the area restored as a public park similar to what it was prior to the construction of New York State Route 33.

In response, Respondents maintain that the project is compliant with the CLCPA and that they performed the "hard look" necessary when issuing a negative declaration before classifying the project as Type II under SEQRA. They also note that many of the documents prepared as part of the "hard look" process would not be that different from those submitted in an EIS. Further, Respondents insist that

the subject property was never a public park, but instead a parkway. To that end, the Public Trust doctrine does not apply.

STANDARD OF LAW

Preliminary Injunction

The limited issue before the Court is whether Petitioners are entitled to a preliminary injunction. It is well settled that on a motion for a preliminary injunction, the moving party must demonstrate by clear and convincing evidence a likelihood of ultimate success on the merits, irreparable injury if the injunction were not granted, and a balancing of equities in favor of granting the injunction. See Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 N.Y.3d 839 (2005); Aetna Ins. Co. v. Capasso, 75 N.Y.2d 860 (1990). If any one of these three requirements are not satisfied, the motion must be denied. See Faberge Intern., Inc. v. Di Pino, 109 A.D.2d 235 (1st Dept. 1985). An injunction is a provisional remedy to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual. However, it is not to determine the ultimate rights of the parties. As such, absent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief sought in the complaint. See Reichman v. Reichman, 88 A.D.3d 680, (2nd Dept. 2011); SHS Baisley, LLC v. Res Land, Inc., 18 A.D.3d 727 (2nd Dept. 2005). In addition, preliminary injunctions should not be granted absent extraordinary or unique circumstances or where the final

judgment may otherwise fail to afford complete relief. See SHS Baisley, LLC v. Res Land, Inc., 18 A.D.3d at 727, supra. However, the decision whether to grant or deny a preliminary injunction is within the sound discretion of the Court. See Masjid Usman, Inc. v. Beech 140, LLC, 68 A.D.3d 942 (2nd Dept. 2009).

The Court must evaluate the preliminary injunctive standard in the context of the requirements under Article 78 of the CPLR.

Article 78 Analysis

Article 78 of the CPLR is the main procedural vehicle to review and challenge administrative actions in New York. On judicial review of an administrative action under Article 78, courts must uphold the administrative exercise of discretion unless it has "no rational basis" or the action is "arbitrary and capricious." See Matter of Pell v. Board of Ed. Union Free School District, 34 N.Y.2d 222 (1974). "The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." Id. at 231; See also Jackson v. New York State Urban Dev Corp., 67 N.Y.2d 400 (1986). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion. See Matter of Pell v. Board of Education, 34 N.Y.2d at 231. The Court's function is completed on finding that a rational basis supports the administrative determination. See Howard v. Wyman, 28 N.Y.2d 434 (1971). "Where the administrative interpretation is founded

on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion." Mid-State Management Corp. v. New York City Conciliation and Appeals Board, 112 A.D.2d 72 (1st Dept. 1985) aff'd 66 N.Y.2d 1032 (1985); Matter of Savetsky v. Zoning Bd. Of Appeals of Southampton, 5 A.D.3d 779 (2d Dept. 2004).

SEQRA

As this issue involves the application of SEQRA, it is important to understand that SEQRA is intended to minimize to the greatest degree possible the adverse environmental consequences of government actions. See Matter of Chase Partners, LLC v. Incorporated Vil. Of Rockville Ctr., 43 A.D.3d 1049 (2nd Dept. 2007); Matter of Sun Beach Real Estate Dev. Corp. v. Anderson, 98 A.D.2d 367 (2nd Dept. 1983). "[A] Court will not disturb a SEQRA determination 'so long as the lead agency identified the pertinent areas of environmental concern, took a hard look at them and advanced a reasoned elaboration of the grounds for its determination'." Matter of Save the Pine Bush, Inc. v. Town of Guilderland, 205 A.D.3d 1120 (3rd Dept. 2022) citing Matter of Evans v. City of Saratoga Springs, 202 A.D.3d 1318 (3rd Dept. 2022) quoting Matter of Town of Waterford v. New York State Dept. of Envtl. Conservation, 187 A.D.3d 1437 (3rd Dept. 2020) 1442; see Matter of Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan, 30 N.Y.3d 416 (2017). The sole function of the Court is "to assure that the agency has satisfied SEQRA, procedurally and substantively," and the Court cannot nor will it "evaluate data de novo, weigh

the desirability of any particular action, choose among alternatives or otherwise substitute [its] judgment for that of the agency." Matter of Town of Amsterdam v. Amsterdam Indus. Dev. Agency, 95 A.D.3d 1539 (3rd Dept. 2012; see Akpan v. Koch, 75 N.Y.2d 561 (1990); Matter of Village of Ballston Spa v. City of Saratoga Springs, 163 A.D.3d 1220 (3rd Dept. 2018).

DECISION

I.

Removal Proceeding

(Public Trust)

Plaintiffs allege that when "the Commissioner embarked on a program of construction and reconstruction of State Routes 33 & 198 in the 1950s and 1960s ... he unlawfully and without authority alienated parkland for non-park use. Stated otherwise, the DOT work of that age destroyed the Humboldt Parkway as well as significant parts of Delaware Park without direct and specific approval by the Legislature." Complaint at ¶. 48, Index # 808572/2024; NYSCEF Doc. #2. Plaintiffs further maintain that in doing so, "the Commissioner has violated the Public Trust Doctrine and national policy to the injury of plaintiffs and the Community, the City, and all of its residents." Id. at ¶ 51.

Plaintiffs assert that "Humboldt Parkway's status as parkland cannot be disputed." Id. at ¶ 17. The State disagrees and maintains that "Plaintiffs' challenge to the State defendants' conversion of portions of Humboldt Parkway to a traditional

highway fails because automobile parkways are not protected by the public trust doctrine." State Defendants' Memorandum of Law in Support of Motion to Dismiss, at p. 18; NYSCEF Doc.# 18. Resolving this disagreement over the parkway's classification is key to determining whether the State violated the Public Trust Doctrine when it built the Kensington Expressway in place of Humboldt Parkway.

"Rooted in Roman and English law, 'the public trust doctrine is based on the notion that the public holds inviolable rights in certain lands and resources, and that regardless of title ownership, the state retains certain rights in such lands and resources in trust for the public (citation omitted).'" Landmark West v. City of New York, 9 Misc.3d 563, 572 (Sup. Crt. N.Y. Cty, 2005). "[O]ur courts have time and again reaffirmed the principle that parkland is impressed with a public trust, (citation omitted) requiring legislative approval before it can be alienated or used for an extended period for non-park purposes (citations omitted)." Fiends of VanCortlandt Park v. City of New York, 95 N.Y.2d 623, 630 (2001).

The parties do not disagree that parkland may not be alienated absent legislative authority. The question that this Court must answer is whether Humboldt Parkway was parkland when the Kensington Expressway displaced it, as Petitioners argue it was, or merely a road meant for vehicular traffic, as Respondents argue.

A proper definition of terms is necessary. Merriam-Webster defines a parkway simply as "a broad landscaped thoroughfare."[4] On the other hand, Merriam-Webster defines a park as "a piece of ground in or near a city or town kept for ornament and recreation."[5] Although originally referring to a broad road through a park, the dictionary definition of a parkway predates the invention of the automobile. In the latter part of the nineteenth century and early part of the twentieth century the question of whether there should even be roads in parks was quite clear. "[It] had therefore been important to insure that . . . families had the most pleasant surroundings possible to drive through, and within the city's limits the most pleasant surroundings were those provided by parks. The provision of pleasant scenery for drivers to enjoy was, in fact, a primary function of parks . . ." Caro, Robert, The Power Broker, Robert Moses and the Fall of New York, 1974, Vintage Books Edition, p. 483.

However, as the nature of driving changed, the question was no longer clear. See Id.

> "[P]eople no longer used their cars primarily for weekend pleasure trips but, increasingly, to get to and from work and to shop. Cars were part of people's daily lives. And they drove faster now; they had less time for scenery. What implications did these facts have for parkways?
>
> What was a parkway anyway?
>
> Was it still mainly a source of beauty and pleasure, or had it changed into a source of convenience—or at least intended

[4] Miriam-Webster, "parkway", www.merriam-webster.com, (November 12, 2024).
[5] Miriam-Webster, "park", www.merriam-webster.com, (November 12, 2024).

> convenience? Were people still interested in parkways primarily because of the scenery they could see along them or were they interested in them primarily as a means of getting from one place to another? And if the latter, what was the significance of that fact? Should the best of scenery still be reserved for the driver?"

Id.

For decades, the courts have weighed in on this definitional dispute. The Court of Appeals wrote that the "terms 'park' and 'parkway' are not synonymous. While each may include certain common features of ornamentation or recreation, the respective definitions of the two words as a whole are clearly distinguishable." Kupelian v. Andrews, 233 N.Y. 278 (1922). The Kupelian Court noted further that "the essential and decisive fact is that a parkway exists when we have a single entire street of which a part is devoted to ordinary purposes of travel and a part to ornamental or recreation purposes. The two portions together constitute a single, entire way which has some of the characteristics of a park." Id. at 282. "In other words, a parkway is a thoroughfare for vehicular traffic, little different from any street, highway, thruway, or expressway, except for the added accessory of ornamental landscaping (citation omitted)." Matter of Angiolillo v. Town of Greenburgh, 290 A.D.2d 1 (2d Dept. 2001).

Having established a general understanding of the difference between a park and a parkway, where does this leave the Court? Was Humboldt parkway parkland or was it a thoroughfare meant for vehicle traffic?

The Olmsted Parks Conservancy describes Buffalo's Park system as "six parks, seven parkways, eight landscaped circles and several smaller spaces. The original concept for the tree-lined parkways and avenues was to link the six main parks and integrate the park system with the city. *These parkways were designed to allow visitors to travel from one park to another* (emphasis added by court) without leaving the serenity of these green spaces."[6] The Congress for New Urbanism - CNU22 Buffalo noted that "Humboldt Parkway was once a beautiful Maple and Elm-lined *street* (emphasis added by court) designed by Frederick Law Olmsted. The parkway was an integral *route* (emphasis added by court) along the City of Buffalo's Paris-inspired parks and parkways system, the oldest of its kind in the U.S."[7] It should be noted that the dictionary definition of a street is "a thoroughfare especially in a city, town, or village that is wider than an alley or lane and that usually includes sidewalks" and a route is defined as "a traveled way" or "a means of access."[8]

Despite the assertion of Francis Kowsky, a SUNY Distinguished Professor and Architect, who states that at "no time from its construction until its destruction was Humboldt Parkway or its median used other than for park purposes," the historical record leads this Court to a very different conclusion. See Affidavit of Francis R. Kowsky, ¶15; NYSCEF Doc. #44. In addition to the Olmsted Parks Conservancy's own

[6] Buffalo Olmsted Park Conservancy, "Our History", www.bfloparks.org/history/.
[7] Preservation Ready, www.preservationready.org.
[8] Miriam-Webster, "Street", www.merriam-webster.com, (November 12, 2024).

descriptions, a simple online search of travel patterns along Humboldt Parkway in the 1940's reveals photographs of automobiles traveling on the street and parked along curbs next to driveways.

Based on the foregoing, the Court agrees with the Respondents that the former Humboldt Parkway was a road and not dedicated parkland under the public trust doctrine. Therefore, the public trust doctrine is inapplicable. Given that Petitioners are not likely to prevail on the merits of their underlying cause of action, the request for a preliminary injunction is hereby DENIED.

II.

Climate Proceeding

In their Petition, the parties note that the anticipated project involving New York State Route 33 runs afoul of the Climate Leadership and Community Protection Act of 2020 and Green Amendment. Petitioners maintain that the Negative Declaration issued by the Respondents, which permits this project to proceed without a more invasive environmental review, violates the CLCPA, which was enacted to "ensure a livable environment for themselves and for future generations." See Petition, ¶4-5, Index # 808662/2024; NYSCEF Doc. #1. More specifically, Petitioners insist that the State misrepresented the negative climate impact of the Project and failed to justify or mitigate the violations of the CLCPA. Id., ¶6. Petitioners allege that the adopted Climate Scoping Plan relied on unrealistic transportation ambitions to justify the invasive project. More

importantly, Petitioners note that the Climate Scoping Plan did not address the greenhouse gas emissions anticipated to be produced by the Kensington Expressway construction project. In fact, they maintain that the project will "make greenhouse gas emissions...considerably worse." Id., ¶64. They note that more than 26,924 metric tons of carbon dioxide will be released into the atmosphere from this project. They explain that this is the equivalent of burning more than three million gallons of gasoline. Id., ¶67. The conclusions reached by the State make fleeting reference to these assertions which, according to the Petitioners, are arbitrary and capricious.

Petitioners make not only these allegations, but also state that the construction project violates the Green Amendment and, as such, the Negative Declaration should be annulled.

The Respondents insist that they complied with SEQRA, that the Climate Scoping Plan was consistent with the CLCPA, and that it did not violate the Green Amendment.

This portion of the decision will address those arguments.

CLCPA

In their Petition, the Western New York Youth Climate Council, the Coalition for Economic Justice and the Citizens for Regional Transit insist that the State misrepresented the negative climate impact of the Project and failed to justify or mitigate the violations of the CLCPA. Petitioners maintain that the "CLCPA,

recognizing the existential threat posed by climate change, set the entire state on a legally binding path to reduce greenhouse gas emissions by certain dates grounded in science." See Memorandum of Law in Support of Verified Petition, p. 1, Index # 808662/2024; NYSCEF Doc. # 7. "On February 16, 2024, Respondents issued the Determination of No Significant Effect-Negative Declaration ("DONSE-Negative Declaration") and the Final Design Report / Environmental Assessment ("FDR/EA"), by which they have decided to proceed with the NYS Route 33, Kensington Expressway Project PIN 5512.52 ("the Project")." See Verified Petition at ¶. 5, Index # 808662/2024; NYSCEF Doc. #1. "Petitioners seek to annul the approvals issued by Respondents New York State Department of Transportation." Id. Petitioners maintain that "Respondents have misrepresented the negative climate impact of the Project, have acted in violation of the CLCPA, and have failed to justify or mitigate their violations of the CLCPA." Id. at ¶ 6.

More specifically, Petitioners assert four causes of action in their Petition. First, they note that this project, which they allege will add more than 26,000 metric tons of carbon dioxide into the atmosphere, should never been classified as a Type II action and that by issuing a Negative Declaration, the State acted arbitrarily and capriciously by ignoring the adverse effect greenhouse gas emissions would have on the environment. Second, Petitioners note that the State's Climate Scoping Plan fails to comply with the CLCPA by not making the necessary VMT reductions consistent with the "accepted science of climate change." Id. at ¶109, Index #:

808662/2024; NYSCEF Doc. #1. In its third cause of action, Petitioners allege that the State failed to prioritize reductions of greenhouse gas emissions in disadvantaged communities. They contend this violates §7(3) of the CLCPA. Id. at ¶115, Index #: 808662/2024; NYSCEF Doc. #1. Lastly, the fourth cause of action alleges that by failing to ensure the right to clean air, the State has violated the Green Amendment.

With respect to the first, second and third causes of action, other than disagreeing with the State's conclusions regarding greenhouse gas emissions, Petitioners present no proof, and certainly no science to contradict these conclusions. Instead, Petitioners rely on emotional appeals in an effort to convince the Court that the State's approval of the Kensington Expressway Project violates the CLCPA and that their approvals must be annulled. Included in their submissions are an affirmation from a City Honors student, who affirms that he has "experienced mental duress in relation to climate change as I was constantly fearful for my future," See Affirmation of Felix Hutton, at ¶ 9, Index #808662/2024; NYSCEF Doc.#4. Also, they include an affidavit from a Senior at the University at Buffalo who relates that "a sense of psychological safety is primarily rooted in the physical environment, so like many other youths, I have experienced climate anxiety." See Affirmation of Valerie Juang, at ¶. 9, Index #808662/2024; NYSCEF Doc.#3. They also filed an affirmation of "Student X", a ninth grader at a Western New York High School, who also affirms that he has "experienced climate anxiety and frustration with those around me for their inaction during crucial times for the environment."

See Affirmation of Student X, at ¶8, Index #808662/2024; NYSCEF Doc.#5. The closest Petitioners come to an expert submission is the Affirmation of Nickolas Sifuentes, Director of the Summit Foundation's Sustainable Cities program. The "Summit Foundation is a family foundation based in Washington DC devoted to improving our world and the quality of life for its inhabitants." See Affirmation of Nickolas Sifuentes, at ¶ 1, Index #808662/2024; NYSCEF Doc.#6. Sifuentes notes that

> "[w]hile I was heartened to learn that Buffalo and the Kensington Expressway would be receiving a significant investment of state and federal resources toward highway removal and remediation, I was dismayed to see that Respondent New York State Department of Transportation failed to adopt the recommendations of the Climate Action Council and make any meaningful changes in reduction of VMT and thus greenhouse gas emissions." Id. at ¶14.

Yet, Mr. Sifuentes does not specify any section of the State's findings, nor does he present any conclusions of his own to demonstrate how the State's findings violate the CLCPA.

The CLCPA was enacted with the goal "to limit statewide greenhouse gas emissions to 60 percent of 1990 emissions by 2030 and to 15 percent of 1990 emissions by 2050 (see ECL § 75-0107 [1]; codified by DEC at 6 NYCRR § 496.1)." See Respondents' Memorandum of Law in Opposition to Verified Petitions, p. 11, Index #808662/2024; NYSCEF Doc.#21. To expect a construction project that will revamp a portion of a highway with the goal of recreating a parkway that will reconnect two

communities without at least a short-term impact on the environment is unreasonable and outside the scope of what is before this Court. While addressed later herein, what the State did to evaluate those impacts remains a serious question.

As the neighborhood around Humboldt Parkway is on the verge of having the State correct a longstanding mistake, Petitioners want to put a halt to the project and, essentially, do nothing. Petitioners argue that by proceeding with the project, it will, "on net, add to New York's greenhouse gas emissions, [and] will hasten the arrival of more adverse climate events." Memorandum of Law in Support of Verified Petition, p. 13-14, Index #: 808662/2024; NYSCEF Doc. #7. This Court wonders if Petitioners have considered the idea that leaving the Kensington Expressway as it is, with the traffic patterns as they are, may have a much more serious, long-term impact on the environment?

While the SEQRA portion of these proceedings are inter-related, and addressed in Section III of this decision, Petitioners seek injunctive relief based upon their asserted causes of action. However, with regard to the Negative Declaration needing to be annulled on the basis of its failure to comply with the CLCPA, the Court finds that Petitioners have not met their burden. Many of the arguments Petitioners raise in seeking this form of relief are pure speculation. For instance, they seem to demand a net-zero approach to carbon emissions. However, this is not realistic. Restricting any construction project, or even the further use of the Kensington

Expressway as it currently is, on an expectation of a complete reduction of greenhouse gas emissions is pure fantasy. Despite the government's greenhouse gas calculators it features on its web pages and statistics that have little credible support, the Court cannot simply annul the Negative Declaration on this basis alone. While there is an argument to be made that the State failed to take into consideration many of the impacts this project will create, those singularly alleged by these Petitioners in these first three causes of action fail to meet the heavy burden that would otherwise entitle them to injunctive relief.

GREEN AMENDMENT

Petitioners allege in their fourth cause of action that Defendants "by their continuous maintenance and operation of the [Kensington] Expressway, have violated the Individual Plaintiffs' constitutional rights to clean air and a healthy environment." See Petition, ¶65, Index # 808662/2024; NYSCEF Doc. #1. This alleged violation is in reference to New York's Green Amendment of 2021, which declares that "[e]ach person shall have a right to clean air and water, and a healthful environment." New York Constitution, Article 1, section 19.

In their first cause of action, Petitioners maintain that the State, "in maintaining, operating, and reconstructing the Expressway, with the City's agreement, has caused continuing pollution, emissions and fumes to permeate the area along this portion of the Expressway, and caused other unhealthy effects, in violation of the constitutionally protected rights of the Petitioners to 'clean air . . .

and a healthful environment.'" See Complaint at ¶ 69. Petitioners also maintain that "by their actions maintaining and operating the Expressway, respondents have proximately caused and are causing injury to the Individual Plaintiffs." Id. at ¶ 70. Petitioners further insist that they are entitled to a "declaration of the rights of the parties, including that the respondents are acting in a manner injuring petitioners in violation of their constitutional rights to clean air and a healthful environment." Id. at ¶. 71.

In opposition, Respondents argue that the Green Amendment has no retroactive application, that the complaint contains no fact-specific allegations based on established science, and that the complaint fails to make a fact-specific connection between that alleged harm and an actual plaintiff, so as to establish the essential element of injury. See generally Respondents' Memorandum of Law in Opposition to the Verified Petitions, Index #808662/2024; NYSCEF Doc. #21.

"In determining whether statutory enactments should be given retroactive effect, there are two axioms of statutory interpretation. 'Amendments are presumed to have prospective application unless the Legislature's preference for retroactivity is explicitly stated or clearly indicated. However, remedial legislation should be given retroactive effect in order to effectuate its beneficial purpose (citations omitted).'" Nelson v. HSBC Bank, 87 A.D.3d 995 (2nd Dept. 2011).

Given these parameters, it is clear to the Court that retroactivity was not intended when the Legislature passed the Green Amendment. Had that been the

Legislature's intention, it would have been explicitly stated or clearly indicated. "It is a fundamental canon of statutory construction that retroactive operation is not favored by courts, and statutes will not be given such construction unless the language expressly or by necessary implication requires it. (citation omitted)." Puig v. City of Middletown, 71 Misc.3d 1098, 1107 (Sup.Crt. Orange Cty., 2021).

Furthermore, the Green Amendment is not remedial legislation. "Remedial statutes are those designed to correct imperfections in the prior law, or which provide a remedy for a wrong where none previously existed." McKinney's, NY STAT § 54. The Green Amendment, however, is merely a state law that protects environmental rights. As the Kensington Expressway opened almost sixty years ago, the Court is hard-pressed to understand how the Expressway's construction violated a law that did not exist. Although widely considered a mistake and an example of poor urban planning, it cannot be said to be a violation of constitutionally protected rights.

In addition to the fact that the Green Amendment is presumptively prospective in its effect, as Respondents note, "[it] has long been established that a governmental body, be it the State, a county or a municipality, is under a nondelegable duty to maintain its roads and highways in a reasonably safe condition, and that liability will flow for injuries resulting from a breach of the duty (citation omitted)." Lopes v. Rostad, 45 N.Y.2d 617, 623 (1978). Is it the Petitioners' position that the State should abandon its responsibility for the Expressway's maintenance

and let it go into a state of disrepair? That does not seem to be a reasonable solution. The only other alternative Petitioners offer is to dismantle existing highways. The Court fails to see how this can be done without that the same impact on traffic, noise, and air the Petitioners seek to avoid.

The Court also agrees with the DOT that Petitioners' allegations lack specificity with respect how the construction and maintenance of the Expressway violates the Green Amendment; how the increase in particulate matter will significantly contribute to unclean air; and any "fact-specific connection between that alleged harm and an actual plaintiff, so as to establish the essential element of injury." See Respondents' Memorandum of Law in Opposition to the Verified Petitions, p. 13, Index #808662/2024; NYSCEF Doc. #21.

Based on the foregoing, the Court finds that the Green Amendment does not apply and is not actionable under the circumstances here.

As such, as Petitioners have failed to meet their burden that would entitle them to injunctive relief alleging violations of the CLCPA and the Green Amendment, Petitioners' motion for a preliminary injunction is hereby DENIED.

III.

EIS Proceeding

(Article 78 Proceeding)

Petitioners brought this request for preliminary injunction by way of an Order to Show Cause. In it, they sought not only to halt the project but also to enjoin the Respondents from taking any action regarding the Best Street Bridge. It was submitted that this proposed bridge replacement is Stage 1 of the overall proposed project, which begins the process of lowering portions of the expressway, constructing the tunnel, and installing roundabouts on the current expressway known as New York State Route 33. Petitioners seek to enjoin the Respondents from taking any further action on the Best Street Bridge component and other stages associated with the Kensington Expressway Project.

As noted previously, Petitioners maintain that the State violated SEQRA by performing an environmental assessment instead of an Environmental Impact Statement (EIS). Petitioners argue that a "deeper dive" is necessary, especially in light of the breadth of this project and the environmental and community impacts the project is likely to cause. "Only an EIS will analyze the potentially significant adverse impacts arising from four and a half years of major construction within feet of a dense urban neighborhood (traffic displacement, noise, vibration, dust)." Petitioners Supplemental Memorandum of Law in Support of Motion for Provisional Relief, p. 3, Index #808702/2024; NYSCEF Doc. #94. In particular, an EIS would not

only offer a more thorough analysis, but additionally provide protection for residents. It will not only address reasonable alternatives, but it will disclose and acknowledge adverse impacts. Also, an EIS would be consistent with the applicable goals of the CLCPA. Id., generally, p. 7.

In opposition, the State argues that it did perform a "hard look" consistent with judicial precedent on matters governing SEQRA. After 18 months, the State maintains it performed the necessary review of all of the concerns addressed by the Petitioners. Respondents submit that they analyzed traffic counts and projections. It also "investigated construction related noise and vibration impacts based on extensive examinations of site conditions and the construction means that would be used in the project." State Parties' Summary of Memorandum of Law in Opposition to Motions for Preliminary Injunction, p. 6, Index #: 808702/2024; NYSCEF Doc. 92. Lastly, they insist they coordinated air quality review with state and federal agencies using methodologies set by the EPA and required under the Clean Air Act. Id., p. 7. The State argues that all assessed pollutants would remain below the applicable Clean Air Act standards. See Id.

"The purposes of SEQRA, as stated by the Legislature, are to encourage productive and enjoyable harmony with our environment; 'to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state'."

Matter of Cedar St. Comm. v. Board of Educ. of the E. Hampton Union Free School District, 223 A.D.3d 738 (2nd Dept. 2024), citing Society of Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761 (1991), quoting ECL 8-0101. A court reviewing a SEQRA determination is "limited to considering 'whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion'." Id. citing Chinese Staff & Workers Assn. v. City of New York, 68 N.Y.2d 359 (1986), quoting CPLR 7803[3]. "[I]t is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively." Id., citing Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400 (1986). To that end, "SEQRA mandates literal compliance with its procedural requirements and substantial compliance is insufficient to discharge the responsibility of the agency under the act." Id. citing Matter of East End Prop. Co. #1, LLC v. Kessel, 46 A.D.3d 817 (2nd Dept. 2007).

"The heart of SEQRA is the Environmental Impact Statement (EIS) process. Under the act, an EIS must be prepared regarding any action that 'may have a significant effect on the environment'." Id. citing Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d at 415, quoting ECL 8-0109[2]]). "Judicial review of a negative declaration under SEQRA is limited to whether the lead agency identified the relevant areas of environmental concern, took the requisite hard look, and made a reasoned elaboration of the basis for its determination." Id. citing

Matter of Manocherian v. Zoning Bd. of Appeals of the Town of New Castle, 201 A.D.3d 804 (2nd Dept. 2022). "Not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed [in order to] satisfy the substantive requirements of SEQRA," and therefore, "[t]he degree of detail with which each factor must be discussed . . . will vary with the circumstances and nature of the proposal." Id. citing Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d at 417.

"[T]he Legislature in SEQRA has left the agencies with considerable latitude in evaluating environmental effects and choosing among alternatives," and "[n]othing in the law requires an agency to reach a particular result on any issue, or permits the courts to second-guess the agency's choice." Id. citing Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d at 417; see also Akpan v. Koch, 75 N.Y.2d 561 (1990). "Nevertheless, an agency, acting as a rational decision maker, must have conducted an investigation and reasonably exercised its discretion so as to make a reasoned elaboration as to the effect of a proposed action on a particular environmental concern." Id. citing Akpan v. Koch, 75 N.Y.2d at 571. "Thus, while a court is not free to substitute its judgment for that of the agency on substantive matters, the court must ensure that, in light of the circumstances of a particular case, the agency has given due consideration to pertinent environmental factors." Id. citing Matter of Village of Chestnut Ridge v. Town of Ramapo, 99 A.D.3d 918 (2nd Dept. 2012).

In evaluating a Petition such as this one, this Court must determine whether the State performed the "hard look" and gave a "reasoned elaboration" for its determination. See Matter of Riverkeeper, Inc. v. Planning Bd. Of Town of Southeast, 9 N.Y.3d 219 (2007). What exactly is a "hard look"? The Fourth Department has defined this as the lead agency having undertaken "studied consideration" to potential traffic impacts resulting from the project, the management of storm water runoff, other impacts and reasonable alternatives to the project. See generally Mobil Oil Corp. v. City of Syracuse Indus. Dev. Agency, 224 A.D.2d 15 (4th Dept. 1996). While not particularly instructive, what may be considered a "hard look" or "studied consideration" to one court, may be viewed entirely different by another. Therein lies the issue before this Court.

SEQRA "mandates the preparation of an EIS when a proposed project ***may*** [emphasis added by the Court] have a significant effect on the environment." Vill. of Tarrytown v. Planning Board, 292 A.D.2d 617 (2nd Dept. 2002). Because the operative word triggering the requirement of an EIS is ***may***, there is a relatively low threshold for the preparation of an EIS. See Id. SEQRA requires a lead agency to prepare an EIS on "any action they propose or approve which may have a significant impact on the environment. See Id. If no significant effect is found, the lead agency may issue a negative declaration, identifying areas of environmental concern, and providing a reasoned elaboration explaining why the proposed action will not affect the environment. See generally Matter of Cedar St. Comm. v. Board of Educ. of the

E. Hampton Union Free Sch. Dist., 2019 N.Y. Misc. LEXIS 4821, aff'd Matter of Cedar St. Comm. v. Board of Educ. of the E. Hampton Union Free School District, 223 A.D.3d 738 (2nd Dept. 2024). "In furtherance of this mandate, the DEC classifies actions as Type I, Type II, or Unlisted. [A] Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS." Id. quoting 6 NYCRR 617.4[a][1]. Type II "actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under [SEQRA]". Id. quoting 6 NYCRR 617.5[a]; See generally Sierra Club v. Martens, 158 A.D.3d 169 (2nd Dept. 2018). However, even if a project results in at least one significant adverse environmental impact, an EIS must be completed.

Here, despite the enormity of this project and its expected effects, the State maintained no EIS was necessary. As the Court noted during oral argument, this remains hard to believe. See October 25, 2024 Transcript, p. 49; Index #: 808702/2024; NYSCEF Doc. #92.

In City of Buffalo v. New York State Dept. of Envtl. Conservation, Justice Eugene Fahey faced a similar dilemma when ruling on an Article 78 petition challenging the construction of the now-forgotten Signature Span Bridge. In their petition, the City of Buffalo challenged the State's negative declaration and determination that an EIS was not necessary in light of their "hard look". In the Signature Span case, the State argued that a negative declaration was appropriate

since the new bridge construction would have only minor impact on the existing Peace Bridge and that bridge construction would not significantly affect Front Park. Interestingly, the Signature Span bridge construction project would have affected 20.72 acres. As noted in his opinion, Justice Fahey found that a number of aspects of the negative declaration troubled him. Succinctly put, Justice Fahey declared "[t]he proposed project is the largest construction project in recent Western New York history. In terms of total dollars, it may be the most expensive ever. Can the court accept that a project of this magnitude will not have a significant environmental impact?" 184 Misc.2d 243 (Sup. Crt. Erie County 2000). Though also involving the question of segmentation, Justice Fahey concluded that the failure to consider the cumulative impact, as held in Save the Pine Bush v. City of Albany, of a project required the negative declaration to be invalidated and ordered an EIS. Id. citing Save the Pine Bush v. City of Albany, 70 N.Y.2d 193 (1987). Justice Fahey also referenced Matter of Village of Westbury v. Department of Transp., where the Court of Appeals found that "a project involving the widening of a State parkway" necessitated an EIS. Id. citing 75 N.Y.2d 62 (1989). Ultimately, Justice Fahey annulled the Negative Declaration and ordered the Respondents to prepare an EIS.

In Uprose v. Power Authority, the Second Department affirmed a lower court's decision to annul a negative declaration and ordered an EIS. In Uprose, the State assumed the role of lead agency for the construction of gas-powered turbine generators. After designating itself as lead agent, the Power Authority prepared an

Environmental Assessment Form and found that the project would not have any significant environmental impacts and issued a negative declaration. In affirming the trial court's decision, the Second Department, noting the low threshold for the preparation of an EIS, held "in light of the undisputed potential adverse health effects that can result from PM 2.5 emissions, we conclude that NYPA failed to take the requisite "hard look" at this area of environmental concern. An EIS is required if the proposed project 'may include the potential for at least one significant adverse environmental impact'." 285 A.D.2d 603 (2nd Dept. 2001).

Like Justice Fahey in the Signature Span Bridge case, this Court is troubled by the record before it and the shortcut the State took when issuing its negative declaration. In what is anticipated to be this community's largest, most expensive, most disruptive, and intensive construction project, it is baffling how the State, which portrays itself as the guardian of the environment, cut corners and ignored rules that any other developer would be required to adhere to.

In what is to be a four-stage project, the State seeks to repair bridges that are as old as the Kensington Expressway, build a tunnel nearly three-quarters of a mile long capping a portion of Route 33, excavate sub-surface areas that will invade local water tables, and drill and blast existing roadways to make way for new parkways and roadways in an area that is a traffic artery for the greater Buffalo area. This project will undoubtedly cause traffic disruptions, emit greenhouse gasses and other pollutants, and otherwise impair local neighborhoods. During argument, the State

casually said these inconveniences will be temporary. The lasting environmental effects of this project, respectfully, may not be temporary, especially considering the four year lifespan of this project. The arguments attesting to their temporary nature belie the State's refusal to perform a more in-depth environmental assessment.

Interestingly, the State DOT's web site features a section on the difference between an EA and EIS. It even notes "the traffic, social, economic, and environmental analyses that have been conducted for the Project would not differ if an EIS were prepared."[9] This is conclusory and quite convenient. As noted in Petitioner's final submission,

> "While an environmental assessment is used to determine significance or non-significance, the purpose of an EIS is to examine the identified potentially significant environmental impacts which may result from a project." Merson v. McNally, 90 N.Y.2d 742, 752 (1997). An EIS provides an impartial analysis of the full range of potential significant adverse environmental impacts, evaluation of alternatives to avoid those impacts, and development of mitigation measures to minimize identified impacts. See The SEQR Handbook, 4th Ed., 2020 ("SEQRA Handbook"), p. 97.

See Supplemental Memorandum of Law in Support for Provisional Relief, p. 4, Index #808702/2024; NYSCEF Doc.# 94. The State's willingness to blur these lines to avoid having to do a more intensive environmental assessment betrays its willingness to subject residents and the surrounding area to potential harm simply to meet an

[9] NYS Department of Transportation, "New York State Route 33 - Kensington Expressway Project - Reconnecting East Buffalo", What is the Difference Between an Environmental Assessment and Environmental Impact Statement?, NYS Route 33, Kensington Expressway Project.

artificial deadline for an expedited ribbon-cutting ceremony. This is certainly not what was contemplated by the SEQRA process. Further, contrary to the State's argument, studies conducted during the EA are not entirely similar to those prepared during an EIS. They are quite different in breadth and scope.

This massive building project, which has good motives, has numerous potential adverse impacts. The State has acknowledged it did not analyze the traffic impact during the four years of this project. Instead, it classified the disruption as temporary. In examining the four stages of the project, nothing can be considered temporary. Similarly, very little information was provided in the EA about noise and vibration effects from the construction. Rather, what was included was conclusory. With respect to air quality, significant differences exist on the sampling size and where those samples were collected. All of these discrepancies beg for a more thorough look and analysis that would otherwise be included in an EIS.

Without question, given the low threshold to require an EIS, the State missed the mark in failing to do so here. Given the profound concerns that this Court has about the environmental fall-out from this project, it is surprising that stake holders were largely shut out and that public comment was limited.

While the intentions are good and the money allocated for this project is waiting to be spent, this does not give rise to avoiding the responsibilities that the legislature required when it enacted sweeping legislation such as SEQRA, the Clean

Air Act, or the Climate Leadership and Community Protection Act. Simply put, the citizens deserve more before the State embarks on a project of this magnitude.

Though this decision does not rule on the ultimate merits of the Petition, when considering the request of the preliminary injunction, this Court finds that, on this action, the Petitioners have demonstrated a likelihood success on the merits. The Court finds that the State failed to give due consideration to pertinent environmental factors. The record thus far illustrates the Respondents did not do an appropriate "hard look" and that their decision was irrational and not supported by substantial evidence. Further, Petitioners have demonstrated irreparable harm that would result if this project began without an EIS. If the State were to begin the Best Street Bridge Project, which includes other portions of the larger plan to tunnel and cap the existing expressway, it would cause irreparable harm to the Petitioners. Also, the Petitioners have showed the balancing of the equities in their favor.

As such, on this action, the motion for a Preliminary Injunction is hereby GRANTED. Respondents are hereby enjoined from taking any further action on the NYS Route 33 Kensington Expressway Project, which includes the Best Street Bridge work (bridge replacement, lowering a portion of the Expressway, reconstruction of the Best Street interchange ramps, and construction of two roundabouts on Best Street). Further, Respondents are enjoined from conducting any construction involving physical or ground disturbance associated with the project. The Court

makes no ruling on whether Respondents may award contracts pending this litigation. The State assumes that risk notwithstanding this Court's decision.

IV.

Bond

As the Court noted in its prior temporary decision, a bond is necessary if a preliminary injunction is granted. See generally Matter of Citizens for St. Patrick's v. City of Watervliet Zoning Board of Appeals, 130 A.D.3d 1338 (3rd Dept. 2015). As the Court ruled in its Order extending the temporary restraining order, Petitioners were required to post an undertaking in the amount of $10,000. See Order dated October 31, 2024, Index #: 808702/2024; NYSCEF Doc.#96.

Respondents have argued that the potential for delay will cost taxpayers hundreds of thousands, if not millions of dollars. For instance, Respondents have suggested that delays associated with Stage 1 involving the Best Street Bridge project could result in damages in excess of $400,000 a month. See Affirmation of Jeffrey Moryl, ¶16-17, Index #: 808702/2024; NYSCEF Doc.# 71. In their Memorandum of Law, Respondents opine that, in response to the request for a temporary restraining order, Petitioners should be required "...post an undertaking of $222,500, which would cover a portion of the increased cost and damages to the public caused by delay." Memorandum of Law in Opposition to the Application for a Temporary Restraining Order, p. 24, Index #: 808702/2024; NYSCEF Doc. 68.

It is important to note that only Stage 1, or the Best Street Bridge project, is set to begin. Stages 2, 3 and 4 are not contemplated until 2025 and 2027. As such, the proposed scope of damages, albeit entirely speculative and somewhat inflated, contemplated by Respondents is not appropriate for the Court to consider. That said, an undertaking is nonetheless required.

While CPLR 6312(b) provides the Court with discretion in setting the undertaking, it also unequivocally mandates that the plaintiff furnish an undertaking "prior to the granting of a preliminary injunction." This requirement cannot be waived by the Court. See Puppies Behind Bars, Inc. v. Doolen, 2019 N.Y. Misc. LEXIS 6708 (Sup. Crt, N.Y. County 2019) citing Rourke Developers Inc. v. Cottrell-Hajeck Inc., 285 A.D.2d 805 (3rd Dept 2001).

Petitioners maintain that, as a public interest group, they lack the financial resources to post an undertaking. A more expensive bond, they argue, would constructively deprive them of the preliminary injunction they are otherwise entitled to. This Court agrees. It would be improper to condition a preliminary injunction on requiring an unrealistic undertaking. See generally Peyton v. PWV Acquisition LLC, 950 N.Y.S.2d 725 [Sup Ct, NY County 2012], aff'd 101 A.D.3d 446 (1st Dept. 2012); see also Modugno v. Merritt-Chapman Scott Corp., 17 Misc. 2d 679 (Sup. Crt., Queens County 1959). However, as noted in Plattsburgh City Retirees' Assn. v. City of Plattsburgh, the amount of the bond must not be insufficient." 2017 N.Y. Misc. LEXIS 993 (Sup. Crt., Clinton County 2017).

The difficulty lies in establishing a sufficient bond for a project that has not begun and where several stages are not scheduled to begin anytime soon. In light of their status as a public interest group, which Petitioners note come from a disadvantaged community, the Court hereby directs Petitioners to post an undertaking in the amount of $100,000 within 90 days of this Memorandum Decision. Should they fail to do so, the preliminary injunction shall be vacated. In the interim, the Temporary Restraining Order initially granted, and subsequently extended by the Court by its Order of October 31, 2024, shall remain in effect.

V.

Motion for Expedited Discovery

Removal Proceeding

As part of this litigation, Petitioners in the Removal Proceeding brought a motion seeking expedited discovery pursuant to CPLR 3214(b). Petitioners seek to lift the stay imposed by the filing of the Respondents' motions to dismiss. However, Petitioners fail to articulate a basis in support of its discovery requests.

In the absence of any basis to deviate from established precedent, Petitioners' motion is hereby DENIED.

VI.

Conclusion

In sum, Petitioners' request for a preliminary injunction in the Climate Proceeding (Index # 808662/2024) is hereby **DENIED**. Petitioners' request for

injunctive relief in the Removal Action, referred to herein as the Public Trust doctrine case (Index #808572/2024), is hereby **DENIED**. Petitioners' request for a preliminary injunction in the EIS Proceeding (Index #808702/2024) is hereby **GRANTED.** Petitioners must post an undertaking in the amount of $100,000 within 90 days. Should they fail to do so, the Preliminary Injunction shall be vacated. However, the Temporary Restraining Order shall remain in effect during the period of time Petitioners must secure a bond.

Lastly, Petitioners' motion for discovery notwithstanding the stay imposed by the Motion to Dismiss is **DENIED**.

Petitioners in each of the above-referenced index numbers shall submit separate orders consistent with this Memorandum Decision.

Hon. Emilio Colaiacovo, J.S.C.

Dated: November 15, 2024
Buffalo, New York