

**STATE OF NEW YORK
SUPREME COURT: ERIE COUNTY**

**In the Matter of the Application of
WESTERN NEW YORK YOUTH CLIMATE COUNCIL,
COALITION FOR ECONOMIC JUSTICE, AND
CITIZENS FOR REGIONAL TRANSIT**

Petitioners,

**For a Judgment Under Article 78 of the Civil
Practice Law and Rules,**

v.

**NEW YORK STATE DEPARTMENT OF
TRANSPORTATION, et al.**

Respondents.

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Index No.: 808662/2024

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INTRODUCTION

Petitioners Western New York Youth Climate Council (“WNYYCC”), the Coalition for Economic Justice, and Citizens for Regional Transit respectfully submit this Memorandum of Law in support of their motion for a preliminary injunction pursuant to Article 63 of the Civil Practice Law and Rules.

As set forth in the accompanying Attorney Affirmation, Petitioners herein adopt and incorporate the arguments made by the petitioners in the matter of *East Side Parkways Coalition et al v. New York State Department of Transportation et al*, Index No. 808702/2024, at NYSCEF Docs. 60-61. This Memorandum will not address those points and is solely offered on the issue of an undertaking under CPLR § 6312(b).

ARGUMENT

There can be no debate that the Kensington Expressway Project (“the Project”) is of profound public importance and that the issues raised in the Verified Petition in this matter should be decided on the merits. That is all Petitioners seek in this motion.

Nevertheless, Respondents would have this Court order the posting of an undertaking in the amount of hundreds of thousands of dollars during the

pendency of a preliminary injunction. In other words, Respondents seek to use the sheer size of this Project to insulate it from any meaningful review.

This would be a miscarriage of justice, as it would allow Respondents to violate state law with impunity, so long as the budget is big enough to crush any opposition, turning the very concept of equal access to the courts on its head.

For that reason, it is respectfully requested that this Court exercise its broad discretion and order an undertaking in a nominal amount. Indeed, in cases such as these, courts look to the financial ability of the moving party to post an undertaking, the party's status as a business, not for profit organization or association, as well as the public interest nature of the action. *See Daytop Village, Inc. v. Consolidated Edison Co. of New York, Inc.*, 61 A.D.2d 933 (1st Dep't 1978).

By weighing these factors, a court may ensure that a party entitled to a preliminary injunction is not left without a remedy simply because it cannot afford to post an undertaking—and that any public purpose of the lawsuit is not lost because of the party's limited means. This body of law recognizes that individuals and organizations, such as Petitioners in this matter, should be provided access to the courts even if they lack the resources to post a substantial undertaking. *Daytop Village*, at 935.

For example, in *Matter of Adirondack Wild Friends of the Forest Preserve v. New York State Dept. of Env'tl. Conservation*, 65 Misc.3d 1211(A) (Sup. Ct. Warren Cnty. 2019), the court issued an injunction to stop the State Department of Environmental Conservation from undertaking any construction or other site preparation activities in furtherance of constructing a bridge. There, the court imposed a nominal undertaking of \$500. *Id.*, at *12. *See also Broadway Triangle Community Coalition v. Bloomberg*, 35 Misc. 3d 167, 178 (Sup. Ct. N.Y. Cnty. 2011) (finding only a nominal bond warranted in light of petitioners' status as community groups and non-profits).

As set forth in the accompanying Affirmation of Valerie Juang, WNYYCC has no financial resources, nor does it have a financial backer. Petitioners Coalition for Economic Justice and Citizens for Regional Transit likewise are not-for-profit organizations without the ability to post a substantial undertaking.

Yet the claims Petitioners have raised in the Verified Petition in this matter are of profound public importance. The New York State Legislature, in passing the CLCPA, specifically found that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York,” and that such adverse effects would continue and worsen if greenhouse gas emissions were not reduced. CLCPA § 1[1]. In the words of

only of the only courts to examine the law, “the legislature identified a currently existing, urgent problem that was worsening, not a developing or potential problem that might arise if appropriate action was not taken in the future.” *Danskammer Energy, LLC v. DEC*, 76 Misc. 3d 196, 249 (Sup. Ct. Orange Cnty. 2022). As set forth in the Verified Petition, should the State of New York, because of projects such as the Project here, fail to reduce greenhouse gas emissions as it is required to do under the CLCPA, it is the state’s youngest citizens, such as WNYCC, who will bear the brunt of those consequences.

Petitioners ask this Court, should it require an undertaking, to order it in a nominal amount, such that Petitioners’ claims can be decided on the merits and the public interest of this lawsuit may be served.

DATED: Buffalo, New York.
October 17, 2024

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WORD COUNT CERTIFICATION

Pursuant to Uniform Rules for the New York State Trial Courts Rule 202.8-b, Daniel J. Brady, Esq. makes the following statement:

According to Microsoft Word's word-count function, this document contains 771 words excluding the caption, table of contents, table of authorities, and signature block.