

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

RENEW 81 FOR ALL, by its president Frank L. Fowler, CHARLES GARLAND, GARLAND BROTHERS FUNERAL HOOME, NATHAN GUNN, ANN MARIE TALIERCIO, TOWN OF DEWITT, TOWN OF SALINA, and TOWN OF TULLY,

*Petitioners,*

*-against-*

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, MARIE THERESE DOMINGUEZ, in her official capacity as the Commissioner of New York State Department of Transportation, NICOLAS CHOBAN, P.E., in his official capacity as the New York State Department of Transportation Chief Engineer, and MARK FRECHETTE, P.E., in his official capacity as the New York State Department of Transportation I-81 Project Director,

*Respondents,*

*-and-*

FEDERAL HIGHWAY ADMINISTRATION and JOHN DOES,

*Interested or Necessary Parties.*

Index No.: 007925/2022

**AFFIRMATION OF LANESSA OWENS-CHAPLIN IN SUPPORT OF THE MOTION  
BY THE NEW YORK CIVIL LIBERTIES UNION FOR LEAVE TO APPEAR AS  
*AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

Lanessa Owens-Chaplin, an attorney duly admitted to practice before the courts of the State of New York and not a party to the above-captioned action, hereby affirms the following to be true under penalty of perjury:

1. I am an attorney at the New York Civil Liberties Union Foundation and a member of the Bar of the State of New York. On behalf of the NYCLU, I submit this affirmation in support of the motion for leave to file the attached *amicus curiae* in support of Respondents New York State Department of Transportation (“NYSDOT”) and Marie Therese Dominguez, Nicolas Choubah, P.E., and Mark Frechette, P.E., in their official capacities. I am authorized by the NYCLU to bring this motion and to submit the New York Civil Liberties Union’s (“NYCLU”) proposed *amicus curiae* brief attached hereto.

2. The Article 78 petition in this case asks this Court to annul and vacate the joint federal-state plan to remove the crumbling Interstate 81 viaduct and replace it with a street-level grid (“the Project”). Halting the Project would hinder State and community efforts to ensure that the environmental justice community that lives in the shadow of the Interstate 81 (“I-81”) viaduct is no longer overburdened by its environmental harms. Petitioners’ demand implicates important issues of environmental, racial, and economic justice, namely the role of the street level grid (“Community Grid”) failure to remedy the I-81 viaduct’s racially discriminatory past and adverse health, economic, and social impacts on this predominately Black environmental justice community.

3. Representing the State Respondents, Letitia James, Attorney General for the State of New York, has filed a memorandum of law that defends the chosen Community Grid alternative. The memorandum largely focuses on how NYSDOT complied with its statutory obligations under SEQRA, CLCPA, and the Smart Growth Act. The NYCLU submits this brief to address the historical and environmental justice issues not addressed by the State’s filing and correct mischaracterizations of the NYCLU’s public comments on the Project by Petitioners. Specifically, the proposed *amicus* describes Syracuse’s history of racial segregation and how the original I-81

highway construction razed a Black community, displacing thousands of residents, isolating remaining Black community members, and further entrenching and concentrating poverty. *Amicus* provides necessary context for their public comments, cited by Petitioners, raising concerns about mitigation efforts during construction to remove the viaduct. *Amicus* further discusses the destructive environmental impacts the I-81 viaduct has had on the Black community living next to it, including the disproportionate exposure to air, lead, and noise pollution. Lastly, *Amicus* explain how removing the I-81 viaduct provides a critical opportunity to help restore community health and direct economic benefits to frontline communities that have long suffered from the structural racism built into the I-81.

4. The proposed brief of *amicus curie* is attached to this affidavit as **Exhibit A**.

5. The NYCLU believes it can assist the Court in this case because it adds important context to its own position raised by Petitioners here and has been deeply involved in the Project since at least 2017.

6. *Amicus curiae* the NYCLU, the New York state affiliate of the American Civil Liberties Union, is a non-partisan, non-profit membership organization with approximately 85,000 members statewide. The NYCLU's mission is to defend and promote the fundamental principles and values embodied in the United States and New York State Constitutions. In furtherance of its mission, the NYCLU litigates, advocates, and educates on a wide range of civil rights issues impacting New Yorkers, including those implicated by racial and environmental injustice.

7. The NYCLU has been actively engaged with community members residing near the I-81 viaduct regarding their position and concerns for the project and has consistently advocated for the demolition of the raised viaduct. Namely, the NYCLU has delivered over 5,000 public comments on the Final Environmental Impact Statement supporting the removal of the

viaduct, the undertaking of air quality and monitoring in the neighboring environmental justice community, and other efforts to restore public health and economic strength for the Black community burdened by the I-81 viaduct. The NYCLU also has held community meetings, spoken with hundreds of impacted residents and collaborated with community members to call for environmental and restorative justice measures. Notably, the NYCLU, alongside community members and coalition partners, advocated for NYSDOT to reconsider the location of a proposed new roundabout, to which NYSDOT was receptive and consequently moved the roundabout location in its plans for the Project.

8. For these reasons, the NYCLU respectfully seeks permission to file the attached brief as *amicus curiae*.

9. On December 1, 2022, I contacted counsel for Respondents by email to ask for their position on NYCLU's motion and Respondents consent to this motion. On December 5, 2022, I contacted counsel for Petitioner by email to ask if they would consent to this motion. As of this filing, Petitioners do not consent.

Respectfully submitted,



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Dated: December 6, 2022  
New York, New York

# Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

RENEW 81 FOR ALL, by its president Frank L. Fowler, CHARLES GARLAND, GARLAND BROTHERS FUNERAL HOME, NATHAN GUNN, ANN MARIE TALIERCIO, TOWN OF DEWITT, TOWN OF SALINA, and TOWN OF TULLY,  
Petitioners,

v.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION, MARTIE THERESE DOMINGUEZ, in her official capacity as the Commissioner of New York State Department of Transportation, NICOLAS CHOUBAH, P.E., in his official capacity as the New York State Department of Transportation Chief Engineer, and MARK FRECHETTE, P.E. in his official capacity as the New York State Department of Transportation I-81 Project Director,

Respondents.

and

FEDERAL HIGHWAY ADMINISTRATION, and JOHN DOES,

Interested or Necessary Parties.

Index No.: 007925/2022  
(Neri, J.)  
(NYSCEF Filed)

**PROPOSED AMICUS CURIAE BRIEF OF THE NEW YORK CIVIL LIBERTIES UNION IN SUPPORT OF THE RESPONDENTS**

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION

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Dated: December 6, 2022  
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## PRELIMINARY STATEMENT

The New York Civil Liberties Union (“NYCLU”) has long been involved in public discourse on the redevelopment of Interstate-81’s 1.4 raised viaduct.<sup>1</sup> Petitioners raise significant environmental justice concerns about the I-81 reconstruction project (“the Project”) and cite to some of the NYCLU’s comments in support of their claims to halt the Project, as if those comments support Petitioners’ claimed relief. They do not. The NYCLU submits this brief to address Petitioners’ mischaracterization of their environmental justice concerns regarding the Project and to explain why the street level grid (“Community Grid”) is the only option that will begin to repair the environmental, public health, social, and economic damage done by the original build of I-81’s raised viaduct.

The NYCLU has held community forums in the environmental justice community, heard from hundreds of residents who live closest to the raised viaduct, published a 40-page report, conducted two studies, and delivered over 5,000 comments to the New York State Department of Transportation (“NYSDOT”) during the public comment period. The NYCLU has provided substantial recommendations for protections for the environmental justice community regarding the I-81 Project.

The original construction of the I-81 highway tore apart Syracuse’s 15<sup>th</sup> Ward, displaced 1,300 people, and created a physical barrier separating the poorest and wealthiest parts of Syracuse. The predominantly Black community near the viaduct has been subject to traffic-related noise and air pollution from the approximately 110,000 cars that travel across it each day.

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<sup>1</sup> New York Civil Liberties Union, *Building a Better Future: The Structural Racism Built into I-81, and How to Tear it Down* at 4, 12 [2020] [hereinafter “*Building a Better Future*”], [https://www.nyclu.org/sites/default/files/field\\_documents/202012\\_nyclu\\_i-81report.pdf](https://www.nyclu.org/sites/default/files/field_documents/202012_nyclu_i-81report.pdf)

The neighborhoods closest to the viaduct also suffer from high lead levels, depressed land values, hyper-segregation, and concentrated poverty.

In light of this history and current conditions, the Community Grid is plainly an appropriate choice—indeed, a superior one—in terms of environmental and racial justice to Petitioners’ preferred plans—the no build alternative or replacing the viaduct with a wider and higher one. The Court should therefore reject Petitioners’ claims, including their claims under the Green Amendment, and the Climate Leadership and Community Protection Act, as neither provides any relief in circumstances like this in which a public-works project would yield dramatic environmental benefits for an environmental justice community.

#### INTEREST OF AMICUS CURIAE

The New York Civil Liberties Union is a non-profit, non-partisan organization with more than 85,000 members and supporters and is the New York State affiliate of the American Civil Liberties Union. The NYCLU’s mission is to advocate for all New Yorkers to have equal access to opportunities and the equal ability to participate in government decisions that affect them. This includes planning and development decisions, which have historically excluded or intentionally discriminated against Black, Indigenous, and Latinx New Yorkers—much like the original design and construction of I-81 raised viaduct and its continued harm. The NYCLU submitted public comments at every stage of the public participation process, published a report, *Building A Better Future, The Structural Racism Built Into I-81 and How To Tear It Down*, testified at NYSDOT public hearings, and held meetings with stakeholders such as the Environmental Protection Agency, Federal Highway Administration, and Department of Housing and Urban Development. Further, the NYCLU has litigated environmental review cases, such as *Broadway Triangle Community Coalition v Bloomberg*, 941 NYS2d 831 [Sup Ct,

NY County 2011] (challenging discriminatory New York City housing development plan in Brooklyn] and submitted amicus briefs in cases involving public participation, such as *Tucker v City of New York*, 2022 NY Slip Op 70894 [U] [1st Dept 2022]) (challenging the Department of Education failure to provide an adequate public participation process violated state law by denying parents, students, educators, and community members the opportunity to provide critical public comments). Accordingly, *amicus curiae* bring deep knowledge of the issue and a strong interest in the correct analysis of the environmental review of the Project.

## ARGUMENT

### **I. The Original Construction of I-81 Was Rooted in Racially Discriminatory Policies and Produced Adverse Economic, Social, and Environmental Harms that Impact Black Syracuse Residents Today.**

The continued racial segregation and poverty in Syracuse is connected to the original construction of the I-81 raised viaduct. In the 1950s, the construction of the interstate highway system served a dual purpose—to promote interstate travel and provide inner cities slum clearance, all under the guise of urban renewal.<sup>2</sup> During the same period, discriminatory housing practices known as redlining solidified racial housing segregation by denying Black residents the necessary loans to buy property, fix their homes, and otherwise depressed the value of their property.<sup>3</sup> Thus, by design, many of Syracuse’s Black residents were concentrated in the 15th Ward, which without the financial assistance provided to white communities, was quickly labeled as a slum, and subsequently razed for the construction of the I-81 raised viaduct.<sup>4</sup>

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<sup>2</sup> Richard F. Weingroff, *The Genie in the Bottle: the Interstate System and Urban Problems, 1939-1957*, vol 64, No. 2 [Sept/Oct. 2000] <https://highways.dot.gov/public-roads/septoct-2000/genie-bottle-interstate-system-and-urban-problems-1939-1957>.

<sup>3</sup> Michaela Zonta, *Racial Disparities in Home Appreciation*, Center for American Progress [July 15, 2019], <https://www.americanprogress.org/article/racial-disparities-home-appreciation/>.

<sup>4</sup> See *id.*; Alana Samuels, *How to Decimate a City*, *The Atlantic* [Nov. 20, 2015], <https://www.theatlantic.com/business/archive/2015/11/syracuse-slums/416892/>.

Many of the displaced residents who once occupied the 15<sup>th</sup> Ward moved to an area adjoining the I-81 raised viaduct.<sup>5</sup> Today, that area provides a residential neighborhood for the largest predominantly Black community remaining in Syracuse.<sup>6</sup> Approximately 68 percent of the 3,679 families in this neighborhood live below the poverty line.<sup>7</sup> The raised viaduct physically separates this residential community from the wealthier and predominately white University Hill area, as well as the suburban communities to the east, north, and west of the city.<sup>8</sup>

The ripple effects of the construction of the raised viaduct are still felt today. Property values fell at the onset of the original construction, and they remain stagnated as compared to whiter, more walkable neighborhoods in Syracuse.<sup>9</sup> Wealthier, usually white, residents fled to suburban areas and took with them the wealth, tax revenue, and resources used to fund and

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<sup>5</sup> These communities comprise Block Groups 1 and 2 of Census Tract 42 and Block Group 1 of Census Tract 53 within Onondaga County. See U.S. Census Bureau, *2020 Census – Census Tract Reference Map: Onondaga County, NY*, [Jan. 2021], [https://www2.census.gov/geo/maps/DC2020/PL20/st36\\_ny/censustract\\_maps/c36067\\_onondaga/DC20CT\\_C36067.pdf](https://www2.census.gov/geo/maps/DC2020/PL20/st36_ny/censustract_maps/c36067_onondaga/DC20CT_C36067.pdf).

<sup>6</sup> According to the 2016-2020 American Community Survey, about 71 percent of the neighborhood identifies as non-Hispanic Black. See U.S. Census Bureau, *2020 Census Redistricting Data*, [2020], [https://data.census.gov/map?g=0500000US36067\\$1000000&tid=DECENNIALPL2020.P1&layer=VT\\_2020\\_100\\_00\\_PY\\_D1&mode=thematic&loc=43.0533,-76.1991,z9.4635](https://data.census.gov/map?g=0500000US36067$1000000&tid=DECENNIALPL2020.P1&layer=VT_2020_100_00_PY_D1&mode=thematic&loc=43.0533,-76.1991,z9.4635).

<sup>7</sup> *Id.*

<sup>8</sup> *Building a Better Future* at 16.

<sup>9</sup> *Building a Better Future* at 11; see also Suzanne Gamboa, et.al., *Bulldozed and Bisected: Highway Construction Build a Legacy of Inequality*, NBC News, [Jun. 18, 2021], <https://www.nbcnews.com/specials/america-highways-inequality/> [“The noisy highway raining down smog depressed property values on the streets below. As property tax revenues fell, Dr. King Elementary School lost critical funding, became increasingly segregated and saw students underperform in test scores. That pushed property values down even more.”]; Richard Rothstein, *The Neighborhoods We Will Not Share*, N.Y. Times [Jan. 20, 2020], <https://www.nytimes.com/2020/01/20/opinion/fair-housing-act-trump.html>.

support neighborhoods.<sup>10</sup> The I-81 raised viaduct is a direct throughline between “white flight” and Syracuse’s high levels of concentrated poverty and racial segregation.<sup>11</sup>

Petitioners rely on this reprehensible racist history, not to redress its wrongs, but to maintain the status quo of the viaduct, throwing up their hands because “history cannot be changed” (Pet. ¶ 141). Petitioners admit that “94% of the approximately 96,000 cars and trucks” that travel through this Black neighborhood are “primarily operated by drivers who are suburban and rural residents or businesses who depend on this efficient route” (Pet. ¶ 56). As they state, the viaduct is a “vital [economic] backbone” for the suburban, predominately white Town of Salina.<sup>12</sup> (Pet. ¶ 63; *see also* Petrs’ Mem. of Law at 13). In short, although Petitioners make glancing reference to the serious harms created and perpetuated by the construction of the I-81 raised viaduct, they seek to maintain the status quo (Pet. ¶¶ 138-141). Petitioners’ remedy would force Black residents to continue to shoulder the adverse effects of the raised viaduct for the benefit of the predominately whiter, wealthier businesses and residents in the suburbs.

In arguing for the on-going convenience of suburban communities, Petitioners do not reckon with the air and noise pollution, or the physical barriers caused by the continued operation of *any* viaduct alternative. The future development of the Project cannot ignore the

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<sup>10</sup> Kijin Higashibaba, *Not Just A Highway: How Interstate I-81 Contributed To Poverty in Syracuse*, City Limits [2018], <http://citylimitsproject.org/episodes/not-just-highway-how-interstate-81-contributed-poverty-syracuse>; Samuels, *How to Decimate a City*, *supra* n 4.

<sup>11</sup> *See id.*; *see also* CNY Fair Housing, *Analysis of Impediments to Fair Housing: Syracuse and Onondaga County NY, 2014* at 62 [2014] <http://media.syracuse.com/news/other/2014/11/17/CNY-Fair-Housing-Report.pdf> [“The largest impediment to housing choice in Syracuse and Onondaga County is the self-sustaining effects of overtly discriminatory policies from the past.”] [hereinafter “CNY Fair Housing Report”].

<sup>12</sup> According to data from the 2020 U.S Census, the Town of Salina had a population 31,101, which is reported to be 90.3% white, and 2.5% Black; and the median household income is \$60,202 and \$38,893, respectively. Moreover, the data shows that Syracuse has 30.3% of persons living in poverty and the Town of Salina 9.8% of persons in poverty. United States Census Bureau, *QuickFacts, Syracuse City, Salina town, Onondaga County, New York* [2021], <https://www.census.gov/quickfacts/fact/table/syracusecitynewyork,salinatownonondagacountynewyork/PST045221>.

continuing impact on Syracuse historically marginalized Black community; the benefits and burdens of this large-scale infrastructure project must be shared more equitably.<sup>13</sup>

## **II. Petitioners Do Not Accurately Represent the NYCLU's Environmental Justice Concerns.**

Petitioners highlight many of the concerns raised by the NYCLU to argue the NYSDOT failed to address environmental justice concerns, but do not provide the full context and do not make clear that the NYCLU has determined that the Community Grid is the most suitable alternative. Petitioners cite to the NYCLU public comment submissions stating, “Respondents have not performed quantitative air quality studies of the environmental impacts from demolition and construction, including lead paint and asbestos exposure” (Pet. ¶ 129).

First, Petitioners do not make clear that the NYSDOT has addressed some of these concerns. For example, the NYSDOT has increased air quality protections as a direct result of the NYCLU's advocacy. In the Final Environmental Impact Statement (“FEIS”), the NYSDOT committed to locating an air monitor in the vicinity of Dr. King elementary school to assess air quality (*see* NYCLU FEIS Comments at 2, 3). In addition, during construction, the NYSDOT agreed to create an outdoor ambient air quality monitoring program in the environmental justice community during construction of the Project that will be overseen by NYSDOT. (Final Environmental Impact Statement [hereinafter “FEIS”] at 4-41, 6-106, 6-265.)

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<sup>13</sup> *See* NYCLU, *Comments in Response to New York State Department of Transportation's 2021 Draft Environmental Impact Statement for the Redevelopment of Interstate 81* at 2-8, [2021] [https://www.nyclu.org/sites/default/files/field\\_documents/220516-comment-exhibitb-i81publiccommentnysdot\\_1.pdf](https://www.nyclu.org/sites/default/files/field_documents/220516-comment-exhibitb-i81publiccommentnysdot_1.pdf) [hereinafter “NYCLU DEIS Comments”]; NYCLU, *Comments in Response to New York State Department of Transportation's 2022 Final Environmental Impact Statement for the Redevelopment of Interstate 81* at 2-4 [May 16 2022], [https://www.nyclu.org/sites/default/files/field\\_documents/220516-comment-i81\\_0.pdf](https://www.nyclu.org/sites/default/files/field_documents/220516-comment-i81_0.pdf) [“NYCLU FEIS Comments”].



Second, in referencing concerns for the environmental justice community, Petitioners cite to the NYCLU's public comment submission that the NYCLU has "observed that residents of Pioneer Homes would experience negative respiratory health impacts by living so close to the Project construction site" (Pet ¶ 130). Petitioners' claim that considering a sky bridge alternative will somehow resolve this risk is fanciful (*see* Pet. ¶¶ 172-180). Any option to redevelop the I-81 raised viaduct will require significant demolition and construction, and thus significant mitigation efforts to protect the surrounding community.

Similarly, Petitioners claim the relocation of the roundabout was done without public input or discussion (Pet. ¶ 110; Pet's Mem. of Law at 11). That is without foundation. The relocation of the roundabout was the result of significant advocacy by the NYCLU and other community organizations. The NYSDOT plan to place a roundabout near the Dr. King school generated significant controversy.<sup>14</sup> Input and comments were submitted by the NYCLU, alongside community members, Board of Education Commissioners at the Syracuse City School District, Syracuse Housing Authority, and dozens of other organizations.<sup>15</sup> The environmental justice community demanded the roundabout be moved at least 600 feet from the school. That demand was met by the NYSDOT, resulting in the new placement at Van Buren Street (Pet. ¶ 109).

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<sup>14</sup> Katelyn Ulrich, *State DOT Switches Gears on Location for I-81 Roundabout*, Spectrum News [Feb. 18, 2022], <https://spectrumlocalnews.com/nys/central-ny/news/2022/02/19/dot-switches-gears-on-location-for-i-81-roundabout->.

<sup>15</sup> Although Petitioners claim that most of the 8,000 comments received reflect concerns about diverted traffic crowding streets near STEAM at Dr. King Elementary School, *see* Pet. ¶¶ 115-116, they fail to mention that the ROD moved the roundabout to accommodate these concerns. *See* comment submission for March For Justice I-81, [Sept. 27, 2021], file:///C:/Users/bsturkey/OneDrive%20-%20New%20York%20Civil%20Liberties%20Union/Documents/March%20For%20Justice%20I-81%20(002).html; *see also* Melanie Johnson, *Syracuse neighbors stand up to DOT's I-81 plan; state rethinks MLK Elementary roundabout*, CNYCentral [Nov. 26, 2021], <https://cnycentral.com/news/local/syracuse-neighbors-stand-up-to-dots-i-81-plan-state-rethinks-mlk-elementary-roundabout>.

Finally, Petitioners' interest in advancing environmental justice diminishes further when arguing against the building of noise barriers. Petitioners allege the FEIS failed to adequately address impacts to the local ecology because building noise barriers at site of the I-81 raised viaduct will result in the loss of trees (Pet'rs Mem. of Law 11). But the building of noise barriers was a direct result of demands from the environmental justice community. The environmental justice community living in close proximity to the viaduct have been overexposed to noise pollution for over 50 years (FEIS at 6-292). Noise pollution presents a significant danger to health, including high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity.<sup>16</sup> But at the time of the original construction, federal law did not regulate noise pollution (42 USC § 4901 *et seq.*), and local noise ordinances do not govern traffic noise (FEIS at 6-292). Only now as part of the Community Grid alternative, the NYSDOT is providing noise barriers to mitigate noise pollution in the environmental justice community (FEIS at 6-334).

Although history cannot be changed, continued harm can be stopped. The State Environmental Quality Review Act demands the FEIS balance environmental harm against social and economic needs (*see* 6 NYCRR § 617.11 [d] [2] [findings must “weigh and balance relevant environmental impacts with social, economic and other considerations”]; *see Matter of Hudson River Fisherman's Assn. v Williams*, 139 AD2d 234 [3d Dept 1988] [need for a drinking water supply outweighed harm to fish life]). The benefits of protecting residents who have been overburden by noise pollution far outweigh any harms Petitioners mention (Pet'rs Mem. of Law

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<sup>16</sup> Noise pollution adversely affects the lives of millions of people. Studies have shown that there are direct links between noise and health. Problems related to noise include stress related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity. U.S. Environmental Protection Agency, *Clean Air Act Title IV – Noise Pollution* [2022], <https://www.epa.gov/clean-air-act-overview/clean-air-act-title-iv-noise-pollution#:~:text=Noise%20pollution%20adversely%20affects%20the,sleep%20disruption%2C%20and%20lost%20productivity>

11). To the extent that there is a balancing of interests in communities, the reductions in harm to the environmental justice community are paramount.

### **III. The Community Grid Alternative Is Consistent with New York’s Ambitious Environmental Justice Protections.**

Petitioners cite to the New York State Constitution Article I §19 (“Green Amendment”), and the Climate Leadership and Community Protection Act (“CLCPA”), Chapter 106, to support the sky bridge or no-build alternative. But these constitutional and legislative enactments advance environmental justice, and therefore support removing the viaduct and replacing it with the Community Grid.

Through enactment of the Green Amendment, New York has joined just three other states to create a constitutional right to “clean air and water, and a healthful environment” (NY Const, art I, § 19). While the courts have not yet had the opportunity to interpret the Green Amendment, the legislature’s concurrent legislation to amend the constitution makes clear that environmental justice is at its heart. As Senator May explained, “for too long we have treated these [clean air and water] as a privilege and because they have been treated as privileges, they have been denied to some of the least powerful among us including... people of color, they find themselves burdened with environmental health risks that the rest of us can barely imagine.”<sup>17</sup>

The environmental justice community living adjacent to the viaduct is overburdened with toxic facilities. This community is home to a sewage-treatment facility, a steam-manufacturing plant, an electrical grid, and several brownfields.<sup>18</sup> Together with the impact of the I-81 raised viaduct, a disproportionate and inequitable pollution burden has been imposed in this

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<sup>17</sup> Rachel May, *Senator May Speaks on Green Amendment*, New York State Senate at 0:19 [Jan. 12, 2021], <https://www.nysenate.gov/newsroom/video/rachel-may/senator-may-speaks-green-amendment>; *See also* New York State Senate, Stenographic Record [Apr. 20, 2019], <https://legislation.nysenate.gov/pdf/transcripts/2019-04-30T15:31/>.

<sup>18</sup> *Building a Better Future* at 12.

community. Achieving clean air, water, and a healthful environment demands that state agencies like NYSDOT take into account this historic burden and co-pollutants in disadvantaged communities. The Community Grid will do this.

Furthering these efforts, the CLCPA requires that an agency must consider the cumulative effects of any proposed action on environmental justice communities or disadvantaged communities, including whether the action may cause or contribute to, either directly or indirectly, a disproportionate or inequitable pollution burden on those communities. (*See* Env'tl. Conserv. Law § 75-0109 [d] [regulations issued pursuant to law must “[p]rioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities”]). Replacing the 1.4 miles of raised viaduct with a Community Grid alternative will reduce traffic from approximately 110,000 vehicles per day to approximately 39,000 per day, it will reconstruct streets, and address deficiencies in walkability of the neighborhoods adjacent to the viaduct that was obstructed by the original build. (*See* NEPA and NYSEQR Joint Record of Decision/Findings Statement at 12-13). Petitioners try to paint a false picture that an increase in stop signs and lower speed limits negatively impacts the environmental justice community (Petr’s Mem. of Law at 18-20), but lower speeds, stop signs, and pedestrian pathways are the very amenities that make a community desirable.

Whether it is the Kensington Highway in Buffalo, the Cross-Bronx Expressway, the Inner Loop in Rochester, or the I-81 viaduct at issue in Syracuse, New York State is confronting its legacy of dividing, destroying, and polluting communities of color and low-income communities via highway construction.<sup>19</sup> For the last fifty years, highway projects have had a disproportionate

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<sup>19</sup> Tiffany Cusaac-Smith, *New York Wants to Redress Racial Inequalities in Highways. How Will It Work in Four Cities*, Lohud [Feb. 14, 2022], <https://www.lohud.com/story/news/2022/02/14/new-york-highways-racial-inequalities/6740728001/>.

environmental, health and economic impacts on Black and other communities of color throughout the state.<sup>20</sup> While there is much work to do to ensure the safety of the environmental justice community during the demolition and construction phases, redressing the harms of the I-81 construction cannot happen without removing the raised viaduct. Simply put, the Community Grid alternative is the only plan that reroutes highway traffic out of this neighborhood, redresses past harms, and improves the quality of the neighborhood.

### CONCLUSION

For the foregoing reasons, *amicus curiae* joins in support of the Respondents and urges the Court to deny the Petitioners' Article 78 petition and uphold the state's plan to implement a community grid alternative to replace the I-81 raised viaduct.

Dated: December 6, 2022  
New York, N.Y.

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION  
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<sup>20</sup> *See id.*

**CERTIFICATE OF COMPLIANCE WITH 22 NYCRR §202.8-b**

I hereby certify that:

This brief complies with the word count limitation of 22 NYCRR §202.8-b because the total word count, according to the word count function of Microsoft Word, the word processing program used to prepare this document, of all printed text in the body of the brief, exclusive of the caption, table of contents, table of authorities and signature block is 3161 words.

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New York, New York



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