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Keeping the Streets Clear: Advancing Transportation Equity by Limiting Exemptions under New York City's Central Business District Tolling Program

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KEEPING THE STREETS CLEAR: ADVANCING TRANSPORTATION EQUITY BY LIMITING EXEMPTIONS UNDER NEW YORK CITY'S CENTRAL BUSINESS DISTRICT TOLLING PROGRAM

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[†] The 2019 New York State budget authorizing congestion pricing in New York City mandates the program begin no earlier than December 31, 2020. Dana Rubinstein, *Why Congestion Pricing Might Be Delayed*, POLITICO (Feb. 18, 2020), https://www.politico.com/states/new-york/city-hall/story/2020/02/14/why-congestion-pricing-might-be-delayed-1261628 [https://perma.cc/NP57-AZTC]. Among the Metropolitan Transportation Authority (MTA) and outside observers, the "understood goal" for implementation of congestion pricing was January 2021. *Id.* However, as of March 2020, delays in the required federal approval processes for congestion pricing meant that implementation of the program by early 2021 is unlikely. *Id.* Worsening relations between New York State and the federal government have sparked fears that the program may be delayed indefinitely. Christina Goldbaum & Winnie Hu, *Could the Trump Administration Block Congestion Pricing in New York?*, N.Y. TIMES (Feb. 25, 2020), https://www.nytimes.com/2020/02/25/nyregion/-trump-congestion-pricing-nyc.html [https://perma.cc/X8A9-KHPG]. Regardless of the eventual implementation date of congestion pricing in New York, the analysis contained in this Note regarding the program's design is likely to remain applicable. The theories contained below can also be applied to implementations of congestion pricing in other cities around the United States and the world.

INTRODUCTION

In the first half of 2017, New York City subway riders were confronted with a series of increasingly outlandish instances of the rapid deterioration of the subway system.[1] On March 2, a water main break flooded the Court Street station.[2] On May 2, pieces of the ceiling fell onto a train at the Franklin Avenue stop in Crown Heights.[3] On May 5, a major storm caused waterfalls inside several stations.[4] On May 9, a power outage in Brooklyn led to a cascade of delays.[5] As a result, a woman failed to make it to housing court and faced eviction.[6] A graphic designer lost $100 in wages.[7] A

1. *See generally* Amy Plitt & Zoe Rosenberg, *MTA WTF: A Visual Timeline of the MTA's Epic 2017 Meltdown*, CURBED N.Y. (Jul. 17, 2017), https://ny.curbed.com/2017/6/14/15801694/mta-nyc-subway-delays-twitter [https://perma.cc/55JF-QV7V].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Emma G. Fitzsimmons, *'Money out of Your Pocket': New Yorkers Tell of Subway Delay Woes*, N.Y. TIMES (May 31, 2017), https://www.nytimes.com/2017/05/31/nyregion/money-out-of-your-pocket-new-yorkers-tell-of-subway-delay-woes.html [https://perma.cc/V4KQ-8NGR].

psychoanalyst failed to make an appointment with a patient, and the patient failed to make it too.[8]

Had they opted to drive instead, these travelers likely would not have fared much better. An analysis conducted that year by the traffic analytics company INRIX found that New York City was the third most traffic-congested city in the world.[9] Drivers averaged 91 peak hours stuck in traffic and spent 13% of their time sitting in congestion.[10] Even as a surge of investment over the subsequent two years has resulted in improved subway conditions,[11] traffic congestion has remained pervasive. Travel speeds in the section of Manhattan below 60th Street reached a new annual low of just over seven miles per hour in late 2018.[12]

In a bid to address these transportation issues, New York State adopted legislation in 2019 that paved the way for the implementation of congestion pricing in New York City as soon as January 2021, allowing the state to toll vehicles driving into Manhattan below 60th Street.[13] Although congestion pricing has successfully reduced traffic in cities around the globe, New York City is the first city in the United States to adopt this strategy.[14] If successful, congestion pricing has the potential to alleviate traffic congestion in Manhattan, reduce harmful carbon dioxide emissions, and raise desperately needed revenue to fund improvements to the region's public transportation infrastructure. However, almost as soon as the legislature passed its congestion pricing plan into law, advocacy groups, business interests, and elected officials sought exemptions from congestion pricing fees. While social and economic concerns

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7. *Id.*

8. *Id.*

9. Ameena Walker, *NYC Is the Third Most Traffic Congested City in the World*, CURBED N.Y. (Feb. 6, 2018), https://ny.curbed.com/2018/2/6/16979696/new-york-city-traffic-congestion-second-worst [https://perma.cc/JUE7-XQLR].

10. *Id.*

11. Emma G. Fitzsimmons, *Why the Subway Is No Longer a Daily Disaster.*, N.Y. TIMES (Sept. 13, 2019), https://www.nytimes.com/2019/09/13/nyregion/mta-subway-nyc.html [https://perma.cc/2MSU-556Q].

12. N.Y.C. DEP'T OF TRANSP., NEW YORK CITY MOBILITY REPORT 18–19 (2019), https://www1.nyc.gov/html/dot/downloads/pdf/mobility-report-singlepage-2019.pdf [https://perma.cc/VEP3-8PCF].

13. Jesse McKinley & Vivian Wang, *New York State Budget Deal Brings Congestion Pricing, Plastic Bag Ban, and Mansion Tax*, N.Y. TIMES (Mar. 31, 2019), https://www.nytimes.com/2019/03/31/nyregion/budget-new-york-congestion-pricing.html?module=inline [https://perma.cc/TV6Y-4NCG].

14. *Id.*

may justify certain exemptions, each exemption granted will result in less traffic reduction, less emissions reduction, and less revenue raised. The Triborough Bridge and Tunnel Authority (TBTA), tasked with implementing New York's congestion pricing plan, will have to make difficult decisions regarding who is excluded from or included in the plan's tolls.

This Note argues that the concept of transportation equity should guide the TBTA in determining who receives exemptions from tolling under New York's congestion pricing plan. The TBTA should grant exemptions only if necessary, to preserve congestion pricing's effectiveness in minimizing negative transportation-related externalities, such as congestion and pollution, and in supporting a system that provides all people with adequate access to transportation regardless of geography, race, or socioeconomic status. Part I of this Note provides background on New York City's transportation crisis, the theory of congestion pricing, the history of congestion pricing in other cities, — with a particular focus on London's congestion pricing scheme — and New York City's congestion pricing plan. Part II examines exemptions to congestion pricing — why they are important, how they have impacted the effectiveness of congestion pricing in London, how authorities will determine who receives them in New York City, which groups are seeking them, and how these groups may try to obtain them through litigation or legislation. Part III discusses the concept of transportation equity, proposes and applies a two-part test for determining which congestion pricing exemptions advance transportation equity, and suggests alternative strategies for preserving transportation equity under New York City's congestion pricing plan.

I. CONGESTION PRICING IN NEW YORK CITY

Part I examines the path to congestion pricing in New York City. Section I.A recounts the transportation challenges in New York City precipitating congestion pricing's introduction. Section I.B provides background on how congestion pricing works, while Section I.C reviews the congestion pricing systems implemented in other cities, with a special focus on the system used in London. Section I.D discusses the specifics of New York's congestion pricing plan, including its objectives, the mechanisms for tolling vehicles, the system of allocating revenues, and the plan's administration.

A. New York's Transportation Crisis

In June 2017, New York Governor Andrew Cuomo declared a state of emergency for the Metropolitan Transportation Authority (MTA), the public benefit corporation that runs the New York City region's public transportation network.[15] The declaration — which followed several high-profile equipment failures and service disruptions on the subway — came amid skyrocketing delays and a growing chorus of rider complaints.[16] Since 1991, the subway's on-time performance rate had decreased by 26%, even as ridership increased by 77%.[17] With only 65% of trains reaching their destinations on time, on-time performance was at its lowest rate since the 1970s transit crisis.[18] The New York City subway on-time rate is now the lowest of any major rapid-transit system in the world.[19]

In addition to causing New Yorkers frustration,[20] the increasing unreliability of the subway had substantial economic effects for the

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15. Emma G. Fitzsimmons, *Cuomo Declares a State of Emergency for New York City Subways*, N.Y. TIMES (June 29, 2017), https://www.nytimes.com/2017/06/29/nyregion/cuomo-declares-a-state-of-emergency-for-the-subway.html [https://perma.cc/4A6Y-AKER] [hereinafter Fitzsimmons, *Cuomo Declares a State of Emergency*]; *The MTA Network*, MTA, https://new.mta.info/about-us/the-mta-network [https://perma.cc/7KEY-L3TY] (last visited Nov. 4, 2019). Cuomo's state of emergency declaration coincided with a pledge of $1 billion for subway improvements and orders for the MTA Chairman to provide a reorganization plan for the MTA within 30 days. *See* Fitzsimmons, *Cuomo Declares a State of Emergency*, *supra* note 15.

16. Fitzsimmons, *Cuomo Declares a State of Emergency*, *supra* note 15.

17. Brian M. Rosenthal et al., *How Politics and Bad Decisions Starved New York's Subways*, N.Y. TIMES (Nov. 18, 2017), https://www.nytimes.com/2017/11/18/nyregion/new-york-subway-system-failure-delays.html [https://perma.cc/HB4H-H27H].

18. In the 1970s and early 1980s, chronic underinvestment in New York City's public transportation infrastructure, along with plummeting ridership, brought the system to the brink of collapse. Derailments, equipment failures, crime, graffiti, and crumbling facilities plagued the subway and on-time rates dropped below 50%. MARK SEAMAN ET AL., RUDIN CTR. FOR TRANSP. POLICY & MGMT., FROM RESCUE TO RENAISSANCE: THE ACHIEVEMENTS OF THE MTA CAPITAL PROGRAM 1982–2004 1–3 (2004). For a snapshot of conditions at the outset of this crisis, see Thomas R. Brooks, *Subway Roulette: The Game Is Getting Dangerous*, N.Y. MAG., June 15, 1970, at 41, https://books.google.com/books?id=_-ICAAAAMBAJ&pg=PA41&lpg=PA41&dq=may+20,+1970+nyc+subway+crash&hl=en#v=onepage&q=may%2020%2C%201970%20nyc%20subway%20crash&f=false [https://perma.cc/Y7K8-VP87].

19. Rosenthal et al., *supra* note 17.

20. *See, e.g.*, *Subway Service Close to Normal, but Power Outage Cause Unknown*, WABC-TV (Apr. 21, 2017), https://abc7ny.com/traffic/subway-service-close-to-normal-but-outage-cause-unknown/1899411/ [https://perma.cc/978S-58N4]; CBS N.Y., *Another Day, Another Signal Problem on the Subway*, YOUTUBE (June 14, 2017),

city and its residents. A 2017 analysis by New York City Comptroller Scott Stringer estimated the annual cost of subway delays could be as high as $389 million.[21] The causes of the subway's declining performance were multifaceted: natural disasters, bureaucracy, and mismanagement all contributed to the system's struggles,[22] but the primary driver of the subway's decline was underinvestment.[23] Amidst surging ridership and increasing city and state revenues, beginning in the early 1990s, government investment in the subways declined as city and state officials diverted a combined $1.5 billion from the MTA.[24] While Governor Cuomo's emergency declaration was followed by the implementation of an $800 million dollar short-term rescue plan for the subway,[25] officials estimate a comprehensive plan to upgrade the subway's outdated signal system would cost up to $19 billion over the first five years.[26]

Above ground, New Yorkers have experienced a transportation crisis of a different sort — traffic congestion. Between 2010 and 2017, steadily increasing population, employment, and tourism combined to increase travel demand in New York City.[27] Motorists below 60th Street — an area including the city's commercial core — have acutely felt the effects of this increased demand.[28] Although the number of

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https://www.youtube.com/watch?v=9L5MAVwB4XQ [https://perma.cc/HC57-P6CT]; CBS N.Y., *Power Problem Cause More Subway Delays*, YOUTUBE (May 9, 2017), https://www.youtube.com/watch?v=i7RmACOG4uM [https://perma.cc/A8GE-MK69].

21. *The Economic Cost of Subway Delays*, OFF. N.Y.C. COMPTROLLER (Oct. 1, 2017), https://comptroller.nyc.gov/reports/the-economic-cost-of-subway-delays/ [https://perma.cc/R8HQ-FAYQ].

22. *See generally* Rosenthal, Fitzsimmons & LaForgia, *supra* note 17. The long list of factors contributing to the MTA's poor financial state includes not just disasters, such as the September 11 attacks and Hurricane Sandy, but also poor financial decisions, such as a "debt bomb" refinancing deal Governor George Pataki pushed, and diversions of funds to other sources, such as when Governor Andrew Cuomo redirected $5 million of MTA funds to bail out upstate ski resorts struggling after a warm winter in 2016. *Id.*

23. *Id.*

24. *Id.*

25. Emma G. Fitzsimmons, *A Sweeping Plan to Fix the Subways Comes with a $19 Billion Price Tag*, N.Y. TIMES (May 22, 2018), https://www.nytimes.com/2018/05/22/nyregion/nyc-subway-byford-proposal.html [https://perma.cc/GT5V-N29J].

26. Emma G. Fitzsimmons, *M.T.A. Plan to Upgrade Subways Is Ambitious. But Is It Even Possible?*, N.Y. TIMES (June 11, 2018), https://www.nytimes.com/2018/06/11/nyregion/subway-signal-upgrade-plan.html [https://perma.cc/TE7V-HTS3].

27. N.Y.C. DEP'T OF TRANSP., *supra* note 12, at 10–11.

28. *Id.* at 18.

vehicles entering this portion of the city decreased from 776,000 to 709,000 per day during this period, average automobile travel speed fell from 9.1 to 7.1 miles per hour.[29] Two factors driving congestion are the skyrocketing number of trips made by for-hire vehicles[30] and an increase in freight traffic and home deliveries.[31] Like delays in the subway system, traffic congestion imposes a quantifiable economic cost on New Yorkers. A 2018 analysis by the business advocacy group Partnership for New York City estimated that traffic congestion costs the New York City region about $20 billion annually,[32] meaning that, for the average commuter entering Manhattan, the cost is $1892 per year.[33] Facing the dual crises of declining subway performance and increasing traffic congestion, Governor Cuomo voiced support for a solution that advocates believed could help solve both problems — a congestion pricing plan requiring drivers to pay a fee to enter lower Manhattan.[34]

B. Basics of Congestion Pricing

Congestion pricing is a pricing strategy that aims to regulate demand by increasing costs without increasing supply.[35] Congestion

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29. *Id.* at 12–13.

30. The number of citywide for-hire vehicle trips increased from approximately 168.9 million in 2010 to 315.9 million in 2017. *Id.* The number of taxi and for-hire vehicle registrations increased from approximately 41,200 in 2010 to 100,700 in 2017. *Id.*

31. The annual number of MTA Bridge & Tunnel and Port Authority of New York and New Jersey freight trips increased from approximately 32.9 million in 2010 to 34.6 million in 2017. *Id.* Almost 45% of New Yorkers receive a home delivery at least once per week. Amy Plitt & Valeria Ricciulli, *New York City's Streets Are 'More Congested Than Ever': Report*, CURBED N.Y. (Aug. 15, 2019), https://ny.curbed.com/2019/8/15/20807470/nyc-streets-dot-mobility-report-congestion [https://perma.cc/GKK7-3QL6].

32. *$100 Billion Cost of Traffic Congestion in Metro New York*, PARTNERSHIP FOR N.Y.C. (2018), https://pfnyc.org/wp-content/uploads/2018/01/2018-01-Congestion-Pricing.pdf [https://perma.cc/63D5-A6YE]. Of this figure, $9.17 billion is attributable to increased travel time cost, $5.85 billion to revenue loss by industry, $2.54 billion to excess fuel and vehicle operating costs, and $2.42 billion to increases in operating costs by industry. *Id.*

33. *Id.*

34. Marc Santora, *Cuomo Calls Manhattan Traffic Plan an Idea 'Whose Time Has Come'*, N.Y. TIMES (Aug. 13, 2017), https://www.nytimes.com/2017/08/13/nyregion/cuomo-rethinks-opposition-to-tolls-to-ease-manhattan-traffic.html?module=inline [https://perma.cc/4ZHN-ADU3].

35. Carla Tardi, *Congestion Pricing*, INVESTOPEDIA (Jul. 9, 2019), https://www.investopedia.com/terms/c/congestion-pricing.asp [https://perma.cc/7QGD-NBER].

pricing is used by certain sectors — like the hotel and utility industries — where demand varies depending on physical location, time of day, or time of year.[36] For example, hotel rooms may be more expensive during major holiday travel periods and electricity rates may be higher during the summer because of increased air conditioner usage.[37] Congestion pricing forces individuals to account for the costs of using a resource in a time or place where the resource is in high demand by charging those individuals extra fees.[38]

In the context of automobile traffic, congestion pricing incentivizes drivers to shift discretionary automobile travel to other modes of transportation or to off-peak periods by imposing a cost for driving in high-traffic areas or during high-traffic periods.[39] While allowing governments to raise revenue that can be redirected towards mass transit or other projects, congestion pricing also benefits the public by reducing automobile travel times, fuel consumption, and emissions.[40] Several traffic pricing strategies are included under the umbrella of congestion pricing — including variably priced express lanes, roadway tolls, and area-wide per-mile driving charges — but proposals for New York involve a cordon pricing strategy where drivers are charged a flat fee for entering a specific area, that is, below 60th Street in Manhattan.[41] Initial studies of potential congestion pricing plans in New York City indicated congestion pricing could raise over $1 billion annually for improving public transportation in the region.[42]

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36. *Id.*

37. *Id.*

38. *Id.*

39. U.S. DEP'T OF TRANSP., FED. HIGHWAY ADMIN., CONGESTION PRICING: A PRIMER 1 (2006) [hereinafter FED. HIGHWAY ADMIN., PRIMER], https://ops.fhwa.dot.gov/publications/congestionpricing/congestionpricing.pdf [https://perma.cc/P6ZS-4KX5] .

40. *Id.* at 5.

41. *Id.* at 1; *see* N.Y. VEH. & TRAF. LAW § 1704-A (McKinney 2019).

42. *See, e.g.,* Justin Davidson, *Why You Should Be in Favor of Congestion Pricing in New York*, N.Y. MAG. (Mar. 27, 2018), http://nymag.com/intelligencer/2018/03/all-the-arguments-against-congestion-pricing-refuted.html [https://perma.cc/6XUW-63XH]; Benjamin Kabak, *Amid Political Bickering, a Progressive Solution to NYC's Transit Crisis Waits in the Wings*, CURBED N.Y. (Aug. 1, 2018), https://ny.curbed.com/2018/8/1/17631480/nyc-subway-transit-crisis-congestion-pricing-progressive [https://perma.cc/4UTV-TLJD]; Charles Komanoff, *The Fix NYC Congestion Pricing Plan Looks Solid — If Cuomo Aims High*, STREETSBLOG NYC (Jan. 23, 2018), https://nyc.streetsblog.org/2018/01/23/the-fix-nyc-congestion-pricing-plan-looks-solid-if-cuomo-aims-high/ [https://perma.cc/9G4R-YSC7] [hereinafter Komanoff, *The Fix NYC*].

By discouraging drivers from entering Manhattan via automobiles, congestion pricing could also help increase traffic speeds by as much as 10%.[43]

C. Congestion Pricing outside the United States

The effective implementation of congestion pricing in cities outside the United States has bolstered arguments in favor of congestion pricing in New York City.[44] In 1975, Singapore began charging drivers to enter a two square mile "restricted zone" in its central business district during morning peak hours.[45] This charge on Singaporean drivers resulted in a 76% reduction in private car usage within the central business district and a doubling of bus usage.[46] The Italian city of Milan,[47] the Swedish cities of Gothenburg and Stockholm,[48] and other European cities such as Durham, England and Znojmo, Czech Republic[49] have also introduced cordon-style congestion pricing schemes. These congestion pricing

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43. Komanoff, *The Fix NYC*, *supra* note 42.

44. Jesse McKinley & Winnie Hu, *Congestion Pricing in Manhattan, First Such Plan in U.S., Is Close to Approval*, N.Y. TIMES (Mar. 25, 2019), https://www.nytimes.com/2019/03/25/nyregion/congestion-pricing-nyc.html?module=inline [https://perma.cc/2FAK-WXYY].

45. KIRAN BHATT ET AL., U.S. DEP'T OF TRANSP., LESSONS LEARNED FROM INTERNATIONAL EXPERIENCE IN CONGESTION PRICING 2-1 (2008), https://ops.fhwa.dot.gov/publications/fhwahop08047/Intl_CPLessons.pdf [https://perma.cc/8VX5-K666]; Christian Iaione, *The Tragedy of Urban Roads: Saving Cities from Choking, Calling on Citizens to Combat Climate Change*, 37 FORDHAM URB. L.J. 889, 917 (2010). For comparison, New York City's central business district has an area of approximately nine square miles. Press Release, Metro. Transp. Auth., MTA Announces Selection of TransCore to Build Nation-Leading Central Business District Tolling System (Oct. 18, 2019), http://www.mta.info/press-release/bridges-tunnels/mta-announces-selection-transcore-build-nation-leading-central [https://perma.cc/N4PV-WDU7].

46. Iaione, *supra* note 45, at 918. As Singapore has expanded its congestion pricing system over the years, results have remained strong. While the sizable immediate effects have diminished somewhat, congestion remained 31% below pre-plan levels as of 2010, despite a 77% increase in the number of cars in the city. *Id.*

47. *Id.* at 922. The primary stated goals of Milan's plan, which began in 2008, were to reduce emissions and improve air quality. *Id.*

48. *Congestion Taxes in Stockholm and Gothenburg*, TRANSPORT STYRELSEN (Oct. 2, 2017), https://transportstyrelsen.se/en/road/Congestion-taxes-in-Stockholm-and-Goteborg/ [https://perma.cc/G42L-2RKR].

49. *See* NICOLE DUPUIS ET AL., NAT'L LEAGUE OF CITIES, MAKING SPACE: CONGESTION PRICING IN CITIES 17 (2019), https://www.nlc.org/sites/default/files/2019-08/CSAR_ConjestionPricingReport_Final_0.pdf [https://perma.cc/RD54-3PJX].

implementations demonstrate the success of cordon-style congestion pricing schemes across a range of urban areas.

The largest city to implement congestion pricing[50] — and the city most similar to New York in terms of population size and economic and cultural diversity[51] — is London. Like New York, London has a robust and complex transportation network that includes subways, commuter rail, ferries, and an extensive bus system.[52] London has also suffered from severe traffic congestion.[53] Before the introduction of congestion pricing in 2003, London had an average automobile speed of only 7.5 miles per hour in the city center and was losing between $3 to $6 million a week as a consequence of gridlock.[54] Broad public acknowledgment of the traffic congestion problem and Mayor Ken Livingstone's strong commitment to congestion pricing hastened congestion pricing's passage into law.[55]

London's congestion pricing system — administered by the city's transit agency, Transport for London (TfL) — charges drivers a flat daily fee to enter a 16 square mile area in the city center between 7:00 a.m. and 6:00 p.m Monday through Friday.[56] The system utilizes an extensive camera network to charge zone entrants using automatic license plate recognition.[57] The charge for entering the zone was £5 ($6.41 USD)[58] in 2003 and has been raised several times, reaching the current rate of £11.50 ($14.74 USD) in 2014.[59] The goals of London's

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50. EMILY PROVONSHA & NICKOLAS SIFUENTES, TRI-STATE TRANSP. CAMPAIGN, ROAD PRICING IN LONDON, STOCKHOLM AND SINGAPORE: A WAY FORWARD FOR NEW YORK CITY 4 (2018), https://nyc.streetsblog.org/wp-content/uploads/2018/01/TSTC_A_Way_Forward_CPreport_1.4.18_medium.pdf [https://perma.cc/GND3-FA78].

51. DUPUIS ET AL., *supra* note 49, at 6.

52. PROVONSHA & SIFUENTES, *supra* note 50, at 6.

53. DUPUIS ET AL., *supra* note 49, at 6.

54. *Id.*

55. PROVONSHA & SIFUENTES, *supra* note 50, at 7. At the time of the scheme's implementation, 90% of London residents believed there was too much traffic and expressed concerns about travel time and air pollution. *Id.*

56. *Id.*; BHATT, HIGGINS & BERG, *supra* note 45, at 2-12.

57. PROVONSHA & SIFUENTES, *supra* note 50, at 7. Cameras mounted at all zone entry points photograph the license plates of entering vehicles. Drivers can pay by telephone, text message, online, or mail. If authorities do not receive payment by midnight on the day after travel, drivers receive a fine of £130 ($166.66 USD). *Id.*

58. This currency conversion, and all subsequent currency conversions in this Note, were conducted on February 29, 2020, using the Google Finance currency conversion tool. For more information, see *Finance Data Listing and Disclaimers*, GOOGLE FIN., https://www.google.com/googlefinance/disclaimer/ [https://perma.cc/9PPG-WHXG] (last visited Feb. 29, 2020).

59. PROVONSHA & SIFUENTES, *supra* note 50, at 8.

congestion pricing system include reducing automobile congestion, improving bus service, improving journey-time reliability for car trips, and improving the efficiency of the distribution of goods and services.[60] The scheme required a $214 million initial investment and has annual operating costs of roughly $172 million.[61] Annual net revenue is roughly $182 million.[62]

London's system has provided an array of benefits to the city. Approximately $1.8 billion in net revenue was invested in public transportation, road and bridge improvement, walking, and cycling projects between 2003 and 2013.[63] By 2004, traffic congestion had decreased by 30%, and automobile speeds in the congestion zone had increased by 30%.[64] Public transportation usage surged, with bus ridership reaching a 50-year high in 2011.[65] Pollution decreased,[66] lowering the risk of health issues such as asthma, bronchitis, and heart attacks for city residents.[67] One study estimated that more than 1888 extra years of life had been saved for London's residents as a result of cleaner air.[68]

However, implementation of congestion pricing has not solved all the transportation problems in London. Traffic congestion has once again begun to tick upwards in recent years[69] — a trend attributed both to increases in the amount of road capacity devoted to buses, cyclists, and pedestrians,[70] as well as to an increase in the number of for-hire vehicles.[71] Furthermore, revenues from congestion pricing made up only 8.5% of revenues for TfL between 2014 and 2015.[72] In April 2019, London introduced a separate congestion fee to combat

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60. *Id.* at 7.

61. *Id.* at 8.

62. *Id.* The annual operating cost of London's system takes up almost half of the system's gross revenue. *Id.* In Stockholm (7%) and Singapore (16%), the proportion of gross revenue used on operating costs is significantly lower. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. From 2002–2003, carbon dioxide emissions declined by 16%, nitrogen oxide emissions by 13.5%, and particulate matter by 15.5%. *Id.* at 9.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Nicole Badstuber, *London's Congestion Charge Is Showing Its Age*, CITYLAB (Apr. 11, 2018), https://www.citylab.com/transportation/2018/04/londons-congestion-charge-needs-updating/557699/ [https://perma.cc/8NJY-PGSQ].

72. DUPUIS ET AL., *supra* note 49, at 7.

the still-persistent air pollution problem.[73] Even with these challenges, London provides a case study for how a congestion pricing plan can help solve a variety of transportation, health, and infrastructure challenges in the urban core of a large city like New York.

D. New York's Central Business District Tolling Program

Despite the success of congestion pricing in London and other cities around the world, early efforts to implement congestion pricing in New York City were met with resistance from business, labor, and political interests.[74] The New York congestion pricing plan passed into law in 2019 follows a decades-long history of attempts to regulate traffic in the city through pricing.[75] Previous congestion pricing plans for New York City had been defeated in court,[76] been fatally limited in scope,[77] withered in the face of political backlash,[78] or failed to gain

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73. *Ultra Low Emission Zone (ULEZ)*, CITY OF LONDON, https://www.cityoflondon.gov.uk/business/environmental-health/environmental-protection/air-quality/Pages/ultra-low-emission-zone.aspx [https://perma.cc/RP7Z-27BF] (last visited Apr. 2, 2020). The new £12.50 ($16.03 USD) fee will be applied daily to vehicles entering the city center that fall short of established emissions standards. *Id.* Unlike the existing congestion pricing charge, this new fee will be charged 24/7. *Id.* A driver entering the congestion zone during a weekday may be charged both fees, for a total of £24 ($30.77 USD). *Id.* Authorities plan to extend the new fee to cover an even greater area beginning in 2021. *Id.*

74. Groups that opposed previous congestion pricing plans include the taxi, trucking, tourism, hotel, entertainment, hospital, and parking garage industries, as well as the labor union the Teamsters. Aaron Naparstek, *Congestion Charging in New York City: The Political Bloodbath*, STREETSBLOG NYC (Dec. 4, 2006), https://nyc.streetsblog.org/2006/12/04/congestion-charging-in-new-york-city-the-political-bloodbath/ [https://perma.cc/KF9K-LVJ8] (chronicling the decades-long history of opposition to attempts to toll drivers entering Manhattan); *see also* Nicholas Confessore, *$8 Traffic Fee for Manhattan Gets Nowhere*, N.Y. TIMES (Apr. 8, 2008), https://www.nytimes.com/2008/04/08/nyregion/08congest.html [https://perma.cc/BCJ2-FMZM] (regarding the collapse of New York City Mayor Michael R. Bloomberg's 2008 congestion pricing proposal amidst strong opposition from state legislators representing Brooklyn, Queens, and New York City suburbs).

75. Iaione, *supra* note 45, at 919.

76. Auto. Club of N.Y., Inc. v. City of New York, 1981 N.Y. Misc. LEXIS 3518 (N.Y. Sup. Ct. 1981). This was the fate of two separate plans proposed by Mayor Ed Koch in the 1980s. Iaione, *supra* note 45, at 919.

77. A 2000 congestion pricing scheme for several city bridges and tunnels had minimal impact on traffic congestion. Observers have suggested the poor results were due to the marginal nature of the toll increases during peak periods and the lack of alternatives to using the tolled facilities. *See* Iaione, *supra* note 45, at 919.

78. This was the fate of a 2005 cordon pricing proposal from Mayor Bloomberg's Administration. *Id.* at 920.

necessary support in the New York State Legislature.[79] As late as December 2017, New York City Mayor Bill de Blasio continued to oppose congestion pricing, asserting that the strategy was regressive and would unfairly burden low-income New Yorkers and outer-borough residents.[80] Mayor de Blasio — along with a majority of the New York City Council — advocated raising funds for subway improvements through a "millionaire's tax" on individuals earning more than $500,000 annually.[81]

Finally, in March 2019, the New York State Legislature authorized a cordon-style congestion pricing plan for lower Manhattan as part of the state budget.[82] Support from Governor Cuomo and a change in position from Mayor de Blasio — who came to agree the strategy was essential for funding New York City's subway system — helped ensure the plan's passage.[83] New York's plan has three major goals: reducing the volume of Manhattan traffic, reducing air pollution, and securing funding for the region's public transit system.[84] In passing the plan, the state legislature specifically declared a "long-term and

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79. A non-vote in the state assembly defeated a second Bloomberg Administration cordon pricing plan. Strong opposition from some state lawmakers contributed to this defeat, despite an extensive review by a joint panel of city and state experts and the availability of hundreds of millions of dollars in federal funding. *Id.* at 921.

80. Brad Aaron, *De Blasio's Wrong: There's a Fair Congestion Pricing Plan Right under His Nose*, STREETSBLOG NYC (Dec. 1, 2017), https://nyc.streetsblog.org/2017/12/01/de-blasios-wrong-theres-a-fair-congestion-pricing-plan-right-under-his-nose/ [https://perma.cc/37JU-HSRA]. Studies by the advocacy group Community Service Society contradicted Mayor de Blasio's claim that congestion pricing would function as a regressive tax that would disproportionately burden outer-borough residents. *Id.*

81. Zoe Rosenberg, *De Blasio's Proposed Millionaire's Tax Backed by More Than Half of City Council*, CURBED N.Y. (Oct. 26, 2017), https://ny.curbed.com/2017/10/26/16552712/millionaires-tax-bill-de-blasio-fair-fix [https://perma.cc/JB98-ETLS]. While a millionaire's tax would serve as a progressive means of raising revenue, it would fail to address the negative externalities resulting from traffic congestion including noise pollution, air pollution, and increased travel times.

82. McKinley & Wang, *supra* note 13.

83. David Meyer, *Breaking: Mayor de Blasio Endorses Congestion Pricing as Part of Cuomo MTA Takeover*, STREETSBLOG NYC (Feb. 26, 2019), https://nyc.streetsblog.org/2019/02/26/breaking-mayor-de-blasio-endorses-congestion-pricing-as-part-of-cuomo-mta-takeover/ [https://perma.cc/NSH8-GJYD].

84. Michael B. Gerrard & Edward McTiernan, *New York's New Congestion Pricing Law*, N.Y.L.J. (May 8, 2019), https://www.law.com/newyorklawjournal/2019/05/08/new-yorks-new-congestion-pricing-law/ [https://perma.cc/35EY-KJS2].

sustainable solution" was necessary "to ensure stable and reliable funding to repair and revitalize" New York City's subway system.[85]

The 2019 New York State budget establishes a "central business district tolling program" (CBDTP) to be administered by the TBTA.[86] The central business district (CBD) is defined as the area in Manhattan from 60th Street southward, excluding the FDR Drive and the West Side Highway.[87] This nine square mile area is the largest employment center in the region, housing 2 million jobs, 450 million square feet of office space, and 600,000 residents.[88] Approximately 880,000 people drive into the CBD every day.[89] Under the CBDTP, the TBTA has the power to establish and collect tolls and fees from vehicles entering or remaining in the CBD at any time.[90] Passenger vehicles may only be charged once per day.[91] In addition to laying out the basic parameters of this plan, the state legislature also made plans to establish a permanent infrastructure to manage and administer the new CBDTP.

Under the new congestion pricing plan, the TBTA must ensure that annual revenues from the CBDTP, minus costs, are sufficient to provide at least $15 billion for capital projects in the 2020–2024 MTA Capital Program.[92] Subject to agreements with bondholders and federal law, remaining revenues from the CBDTP after covering the program's operating costs must go towards MTA capital expenditures, with 80% designated for the New York City Transit Authority (which runs the city's subway and bus systems), 10% designated for the Long Island Rail Road (LIRR), and 10% designated for the Metro North Commuter Railroad.[93] Infrastructure for the tolling system is to be planned, designed, installed, and operated by the TBTA in coordination with the New York City

85. N.Y. VEH. & TRAF. LAW § 1701 (McKinney 2019).

86. *Id.* § 1704 (McKinney 2019).

87. *Id.*

88. Press Release, Metro. Transp. Auth., *supra* note 45.

89. Emma G. Fitzsimmons, *New York Is Adopting Congestion Pricing. New Jersey Wants Revenge.*, N.Y. TIMES (Apr. 16, 2019), https://www.nytimes.com/2019/04/16/nyregion/congestion-pricing-new-jersey.html [https://perma.cc/5UWE-GKAG] [hereinafter Fitzsimmons, *New York Is Adopting Congestion Pricing*].

90. N.Y. VEH. & TRAF. LAW § 1704-A (McKinney 2019).

91. *Id.* Notably, this leaves the door open for the TBTA to charge trucks and other non-passenger vehicles more than once per day.

92. *Id.*

93. N.Y. PUB. AUTH. LAW § 553-j (McKinney 2019).

Department of Transportation.[94] The state budget requires the TBTA establish a six-person Traffic Mobility Review Board (TMRB) to conduct studies related to the CBDTP and determine toll amounts.[95] The Mayor of New York City is to recommend one of the TMRB's members, and one member shall come from each of the LIRR and Metro North service areas.[96] With this basic framework and administration outlined by the state legislature, the TBTA and TMRB now must consider a critical element of this new plan: exemptions.

II. THE PROVISION OF EXEMPTIONS UNDER NEW YORK'S CENTRAL BUSINESS DISTRICT TOLLING PROGRAM

Part II discusses the factors influencing provision of exemptions under the CBDTP. Section II.A explains why limiting exemptions is essential for preserving the effectiveness of the CBDTP in achieving its stated goals. Section II.B examines the present exemptions under London's congestion pricing plan and considers what lessons New York can learn from the London model. Section II.C lays out the procedures the TBTA will use to determine exemptions under the CBDTP. Section II.D surveys the numerous groups seeking exemptions under the CBDTP and examines their arguments. Lastly, Section II.E speculates how these groups may seek to obtain exemptions through litigation or legislation.

A. The Importance of Limiting Exemptions in a Congestion Pricing System

Effectively implementing congestion pricing in New York will highly depend on tolling, exemptions, and other design aspects of the CBDTP.[97] Pressure to provide exemptions is likely to be high, especially considering the lukewarm initial public response to the CBDTP. A Quinnipiac poll from April 2019 found that 54% of New Yorkers oppose the plan, and 52% have expressed skepticism about the plan's effectiveness in reducing traffic.[98] Because the CBDTP's

94. Gerrard & McTiernan, *supra* note 84.

95. *Id.*

96. *Id.*

97. DUPUIS ET AL., *supra* note 49, at 13.

98. *Congestion Pricing Won't Work, New Yorkers Say, Quinnipiac University Poll Finds; Voters Say Scrap Elite School Test, Increase Diversity*, QUINNIPIAC U. POLL (Apr. 2, 2019), https://poll.qu.edu/new-york-city/release-detail?ReleaseID=2612 [https://perma.cc/Q7PQ-UH8X]. This mirrors initial public opinion towards

authorizing legislation requires the program to raise a set amount of revenue, provision of exemptions will necessarily result in higher tolls.[99] Even without an established revenue threshold, experts warn excessive exemptions would damage the congestion and emissions benefits of the CBDTP.[100]

Transportation experts and advocates have been vocal about limiting the number of exemptions. Transportation engineer and former New York City Traffic Commissioner Sam Schwartz,[101] one of the New York congestion pricing plan's authors, argues there should be "just about no exemptions" because "[p]eople using their cars contribute to congestion. It doesn't matter what group they belong to."[102] Transit economist Charles Komanoff notes congestion pricing rests upon the principle that all vehicles contributing to congestion should pay a price to mitigate its effects.[103] By undermining this principle, Komanoff worries excessive exemptions would breed public resentment of congestion pricing and erode compliance.[104] Using a sample congestion pricing plan that Governor Cuomo's Fix NYC Advisory Panel proposed,[105] Komanoff conducted an analysis of how exemptions for 10% of rides would affect the impacts of congestion

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congestion pricing in other cities that have implemented congestion pricing. In many cases, public opinion shifted favorably once governments implemented their plans and the benefits of the plans were realized. DUPUIS ET AL., *supra* note 49, at 15.

99. Traffic expert Sam Schwartz, one of the architects of New York's congestion pricing plan, notes that too many exemptions could push tolls to over $15. Emma G. Fitzsimmons & Winnie Hu, *Congestion Pricing Is Coming. Now Everyone Wants a Break.*, N.Y. TIMES (Apr. 4, 2019), https://www.nytimes.com/2019/04/04/nyregion/congestion-pricing-trucks-new-jersey.html?module=inline [https://perma.cc/YTP6-3NZT].

100. Charles Komanoff, *Komanoff: Congestion Pricing Carveouts Will Steal Millions of Hours and Billions of Bucks*, STREETSBLOG NYC (Mar. 28, 2019), https://nyc.streetsblog.org/2019/03/28/komanoff-congestion-pricing-carveouts-will-steal-millions-of-hours-and-billions-of-bucks/ [https://perma.cc/LQ4R-QLJ5] [hereinafter Komanoff, *Congestion Pricing Carveouts*].

101. *Samuel I. Schwartz, PE*, SAM SCHWARTZ, https://www.samschwartz.com/leadership-samuel-i-schwartz [https://perma.cc/6593-Y7EX] (last visited Apr. 2, 2020).

102. Fitzsimmons & Hu, *supra* note 99.

103. Komanoff, *Congestion Pricing Carveouts*, *supra* note 100.

104. *Id.* Administration of exemptions would also impose additional bureaucratic costs. *Id.*

105. The Governor convened this panel, comprised of elected officials, business and labor leaders, and transportation experts and advocates, in October 2017 to advise the state on proposals for funding mass transit improvements and reducing traffic congestion. *Governor Cuomo Announces "Fix NYC" Advisory Panel*, N.Y. STATE (Oct. 5, 2017), https://www.governor.ny.gov/news/governor-cuomo-announces-fix-nyc-advisory-panel [https://perma.cc/SFZ2-A9MR].

pricing.[106] He found net annual revenues for investment into the transit system would shrink by $100 million,[107] travel time savings for drivers would shrink by 7%, and 44,000 hours a day of combined time savings and $300 million per year in net benefits from congestion pricing would be lost.[108] Komanoff's analysis indicates how excessive exemptions under the CBDTP could curtail the program's effectiveness at raising revenue for public transportation and combating negative externalities stemming from congestion.

B. Discounts and Exemptions under London's Congestion Pricing Scheme

The congestion pricing system in London can provide lessons for New York regarding how to manage exemptions to congestion pricing. London's congestion pricing system provides discounts and exemptions for a variety of vehicles.[109] Registered residents of the congestion zone in London receive a 90% discount on the congestion charge.[110] Full exemptions from the charge are provided for emergency service vehicles, National Health Service vehicles, vehicles used by people with disabilities, vehicles with nine or more seats, two-wheeled motorbikes and motor tricycles, tow trucks and roadside recovery vehicles, and vehicles used by certain government agencies including the armed forces and the Royal Parks Agency.[111] These exemptions existed from the beginning of the London congestion pricing scheme, and TfL has supplemented these exemptions with other specialized exemptions.

TfL has further implemented two large exemptions over the course of the scheme's history. The first exemption is the "Greener Vehicle

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106. Komanoff, *Congestion Pricing Carveouts*, *supra* note 100.

107. *Id.* The cost of outfitting a subway line with modern signals is approximately $1.2 billion. *Id.*

108. *Id.* A report issued by the Regional Plan Association (RPA), a civic organization focused on regional planning in the New York metropolitan area, echoes Schwartz's and Komanoff's warnings about exemptions. According to the RPA, "[a]ny discounts or exemptions granted to particular classes of users will erode the revenue and congestion mitigation impacts of the program, and increase the burden on non-exempt users." CHRISTOPHER JONES ET AL., REG'L PLAN ASS'N, CONGESTION PRICING IN NYC: GETTING IT RIGHT 17 (2019), http://library.rpa.org/pdf/RPA-CongestionPricingNYC_GettingItRight.pdf [https://perma.cc/9BQZ-DQU3].

109. *Discounts and Exemptions*, TRANSPORT FOR LONDON, https://tfl.gov.uk/modes/driving/congestion-charge/discounts-and-exemptions [https://perma.cc/6U2G-J8Y3] (last visited Jan. 15, 2020).

110. *Id.*

111. *Id.*

Discount" that originally exempted vehicles emitting less than 100g/km of carbon dioxide from the congestion pricing fee.[112] In 2013, this discount was replaced with the "Ultra Low Emission Discount," which imposed even stricter fuel efficiency standards.[113] By 2021, only zero-emission vehicles will be exempt from congestion pricing fees, and TfL will eliminate the discount entirely at the end of 2025.[114] In April 2019, London introduced a new, 24/7 Ultra Low Emission Zone coterminous with the congestion pricing zone.[115] Vehicles entering this zone that do not meet fuel efficiency standards are now charged a separate fee that is, if necessary, added onto the weekday congestion pricing fee.[116]

Another shifting exemption under London's congestion pricing scheme involves taxis and for-hire vehicles. Initially, all for-hire vehicles were exempt from London's congestion charges.[117] However, as ride sharing services, such as Uber, grew in popularity inside the congestion zone, these vehicles began to affect the congestion pricing scheme's effectiveness, contributing to longer travel times and increased congestion.[118] In 2019, the exemption for private for-hire taxi operators was eliminated, although London's famous black cabs retained their exemption.[119] The histories of London's low emissions vehicle and for-hire vehicle exemptions demonstrate the need for congestion pricing plans to be flexible in adapting to changing conditions and technology, and to take a hard

112. Jessica Shankleman, *London Tightens up Congestion Charge in Attempt to Drive out Diesel*, GUARDIAN (Apr. 24, 2013), https://www.theguardian.com/environment/2013/apr/24/pollution [https://perma.cc/6GKQ-3TLV].

113. *Id.*

114. DUPUIS ET AL., *supra* note 49, at 7.

115. *Ultra Low Emission Zone* (*ULEZ)*, *supra* note 73.

116. *Id.*

117. DUPUIS ET AL., *supra* note 49, at 7.

118. *Id.*

119. Costas Pitas, *Uber and Other Taxi Firms to Pay London Congestion Charge*, REUTERS (Dec. 19, 2018), https://www.reuters.com/article/us-britain-taxi/uber-and-other-taxi-firms-to-pay-london-congestion-charge-idUSKBN1OI14H [https://perma.cc/7D2L-TYKB]. Black cabs are also exempt from paying to enter the new ultra-low emission zone. Gwyn Topham, *London Prepares for Launch of Ultra-Low Emissions Zone*, GUARDIAN (Apr. 6, 2019), https://www.theguardian.com/uk-news/2019/apr/06/london-prepares-for-launch-of-ultra-low-emissions-zone [https://perma.cc/EJL3-3GX2].

stance against exemptions that threaten a congestion pricing plan's effectiveness.[120]

C. Approved Exemptions under New York's Central Business District Tolling Program

The New York City CBDTP's authorizing legislation mandates two broad classes of exemption. First, emergency vehicles and vehicles carrying persons with disabilities will not be tolled under the CBDTP.[121] A statement by Governor Cuomo and Mayor de Blasio suggests this exemption is intended to extend to "individuals who have an identifiable hardship or limited ability to access medical facilities in the CBD."[122] Second, CBD residents with annual incomes less than $60,000 will receive a tax credit offsetting their amount paid under the CBDTP.[123] The TBTA is authorized to provide additional credits, discounts, and exemptions under the CBDTP upon the TMRB's recommendation or on the basis of a traffic study that considers impact.[124] The TBTA is also specifically tasked with implementing a plan addressing credits, discounts, and exemptions for for-hire vehicles, informed by the TMRB's recommendations.[125]

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120. DUPUIS ET AL., *supra* note 49, at 7; Bobby Cuza, *London's Experience with Congestion Pricing: It's Working!*, STREETSBLOG NYC (May 31, 2019), https://nyc.streetsblog.org/2019/05/31/london-on-congestion-pricing-its-awesome/ [https://perma.cc/AR62-JQ4X].

121. N.Y. VEH. & TRAF. LAW § 1704-A (McKinney 2019).

122. Press Release, N.Y.C. Office of the Mayor, Mayor de Blasio and Governor Cuomo Announce 10 Point Plan to Transform and Fund the MTA (Feb. 26, 2019), https://www1.nyc.gov/office-of-the-mayor/news/111-19/mayor-de-blasio-governor-cuomo-10-point-plan-transform-fund-mta?fbclid=IwAR0y1WP-HtEQNMnMOkQR6kf7ZTmKIr3DoSLmgWMjuA9H8yOhumgZIlV-5Bw [https://perma.cc/FLC8-AAZS].

123. JONES ET AL., *supra* note 108, at 4.

124. *Id.*

125. *Id.* These vehicles — taxis, green cabs, limousines, black cars, livery vehicles, rideshare vehicles, and pool vehicles — are already subject to a separate congestion surcharge. *Congestion Surcharge*, N.Y. ST. DEP'T TAX'N & FIN. (Sept. 30, 2019), https://www.tax.ny.gov/bus/cs/csidx.htm [https://perma.cc/8UUJ-QGUT]. This surcharge, which went into effect on February 2, 2019, imposes an additional cost ($2.50 for medallion taxicabs, $2.75 for other for-hire transportation trips, and $0.75 for pool rides) on all for-hire trips beginning in, ending in, or passing through Manhattan below 96th Street. *Id.* The New York State Legislature passed the fee — a precursor to the more extensive CBDTP — in 2018, but it was delayed by an unsuccessful lawsuit from the taxi industry. Like the CBDTP, the state legislature intended the fee to raise money for the subway system. Winnie Hu, *Your Taxi or Uber Ride in Manhattan Will Soon Cost More*, N.Y. TIMES (Jan. 31, 2019), https://www.nytimes.com/2019/01/31/nyregion/uber-taxi-lyft-fee.html [https://perma.cc/W687-4TRJ].

D. Groups Seeking Exemptions

Numerous interest groups are seeking, or are expected to seek, exemptions under the CBDTP. These include labor groups concerned that new congestion fees will disproportionately impact their workers and jeopardize their livelihoods, industry groups worried about the effects of new expenses on their bottom lines, motorcycle and low-emissions vehicle owners who believe they are inappropriate targets for a program intended to address congestion and emissions, and politicians fighting to protect their constituents from a new government-imposed cost.[126] Because New York State lawmakers intentionally left language regarding exemptions vague in the legislation authorizing the CBDTP, groups seeking exemptions have engaged in behind-the-scenes lobbying efforts to influence the TMRB and TBTA's decision-making processes, as well as overt efforts to sway public opinion.[127] Should these efforts fail, these groups may turn to the court system or seek additional legislation to codify exemptions for themselves.

One group that has been particularly vocal about expressing their desire for an exemption is New York City Police Department officers and personnel. Patrick J. Lynch, President of the New York City Police Benevolent Association, argues that police officers should receive an exemption because they require "the greatest possible flexibility" in getting to work.[128] According to Lynch, the unpredictability of hours and work locations for officers and their need to respond rapidly in emergency situations, often to locations poorly served by mass transit, makes driving into the CBD unavoidable.[129] Lynch suggests an exemption for police officers and other public employees in critical roles is necessary in addition to the

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126. *See generally* Fitzsimmons & Hu, *supra* note 99.

127. *Id.*

128. Patrick J. Lynch, *Exempt Cops from Congestion Fees: Police Officers Work Odd Hours, and They Don't Choose Where They're Posted*, DAILY NEWS (Apr. 8, 2019), https://www.nydailynews.com/opinion/ny-oped-exempt-cops-from-congestion-fees-20190408-pj2ebsx2njdibiud7etso6wuma-story.html [https://perma.cc/W8A3-8SUJ].

129. *Id.* Lynch's call for a police exemption was met with strong opposition from advocacy groups, including Riders Alliance, Transportation Alternatives, and the RPA, as well as at least one state legislator. Gersh Kuntzman, *Transit Advocates Strongly Oppose NYPD Congestion Pricing Carveout*, STREETSBLOG NYC (Apr. 8, 2019), https://nyc.streetsblog.org/2019/04/08/transit-advocates-strongly-oppose-nypd-congestion-pricing-carveout/ [https://perma.cc/3HXN-6PAY]. These opponents argue that the commuting challenges faced by police personnel are not meaningfully different from those faced by thousands of other workers, and that a carve-out would undermine the effectiveness of the CBDTP. *Id.*

exemption for emergency vehicles because "those vehicles don't run unless first responders are able to get to work."[130]

Another faction seeking exemption from the proposed CBDTP is the taxi and car service industry.[131] Taxis and car services are already subject to a surcharge ($2.50 for medallion taxicabs, $2.75 for other for-hire transportation trips, and $0.75 per pool ride) that operators must add to the price of any trip beginning in, ending in, or passing through the area of Manhattan south of 96th Street.[132] The New York Taxi Workers Alliance, a union representing more than 20,000 taxi, green cab, car service, and rideshare drivers, contends the current surcharge is severely harming the livelihoods of its members.[133] The industry, which has been supported in its quest for an exemption by New York City Council members Ydanis Rodriguez and Fernando Cabrera, argues that the addition of tolls under the CBDTP will cause further harm to struggling, working-class drivers already suffering from rideshare competition and the medallion lending crisis.[134] Industry leaders contend an exemption is necessary to protect driver incomes and to enable the continued existence of their industry in a densely populated city.[135]

Like their counterparts in the taxi and car service industry, private bus and trucking companies are seeking exemptions from the CBDTP as well.[136] Bus operators argue they can serve as part of the solution to congestion by transporting passengers who would otherwise be

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130. Lynch, *supra* note 128.

131. Fitzsimmons & Hu, *supra* note 99.

132. *See Congestion Surcharge*, *supra* note 125.

133. *Our Fight to Exempt Yellow and Green Cabs from the Congestion Surcharge!*, N.Y. TAXI WORKERS ALLIANCE, http://www.nytwa.org/exemptnow [https://perma.cc/4WQ5-LUYJ] (last visited Apr. 2, 2020) [hereinafter *Our Fight*].

134. Julianne Cuba, *Experts: Exempting Yellow Taxis from Congestion Pricing Won't Help Cabbies*, STREETSBLOG NYC (May 22, 2019), https://nyc.streetsblog.org/2019/05/22/experts-exempting-yellow-taxis-from-congestion-pricing-wont-help-cabbies/ [https://perma.cc/GR4Q-SSVC]. Transportation experts argue that an exemption for yellow taxis, which account for 20% of all miles traveled in the CBD, would be devastating for the effectiveness of the CBDTP. Komanoff called such an exemption "the mother of all carve outs." *Id.* Experts also note that the CBDTP is likely to yield a net benefit to the cab industry by reducing congestion in the CBD, thereby increasing the number of fares drivers can complete in a given time. Uber, perhaps realizing the CBDTP could benefit them in this way, spent $2 million lobbying for the program. Shannon Bond, *Uber Spent $2m to Help Push New York Congestion Charge*, FIN. TIMES (Apr. 3, 2019), https://www.ft.com/content/bb89ecd0-558a-11e9-91f9-b6515a54c5b1 [https://perma.cc/3WK5-FSY6].

135. *See* Cuba, *supra* note 134; *Our Fight*, *supra* note 133.

136. Fitzsimmons & Hu, *supra* note 99.

using cars.[137] In March 2019, several bus companies formed BUS4NYC, an alliance to advocate in favor of congestion pricing and public investment in bus-related infrastructure — along with an exemption for buses under the CBDTP.[138] The trucking industry is likewise lobbying for an exemption and is seeking discussions with the TMRB to educate the board on challenges truckers face.[139] Both industries argue exemptions are necessary to preserve the economic viability of their operations without raising prices for consumers.[140]

Drivers of motorcycles and low-emission cars are seeking exemptions, arguing their vehicles contribute less than conventional automobiles to the congestion and pollution issues the CBDTP seeks to address.[141] There are almost 8000 electric cars registered in New York City, and both state and city leaders support increased electric car usage.[142] New York State Assemblyman Felix Ortiz proposed a bill in March 2019 that would have exempted clean fuel and electric cars from congestion pricing fees, along with a separate bill exempting motorcycles.[143] Assemblyman Ortiz said an exemption for motorcycles was a "common sense environmental issue" because motorcycles cause less congestion than cars.[144] The advocacy group Riders Against Congestion argues that motorcycles are part of the

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137. *Id.*

138. *BUS4NYC: New Coalition Committed to Curbing Congestion Launches in New York City*, BUS4NYC (Mar. 25, 2019), http://bus4nyc.org/2019/03/bus4nyc-new-coalition-committed-to-curbing-congestion-launches-in-new-york-city/ [https://perma.cc/GH2U-D2P9]; *see also* Glenn Every, *Congestion Pricing Board Must Be Bus Friendly*, GOTHAM GAZETTE (Sept. 6, 2019), https://www.gothamgazette.com/opinion/8775-congestion-pricing-board-must-be-bus-friendly [https://perma.cc/4AP4-94EE].

139. Fitzsimmons & Hu, *supra* note 99.

140. *See* Jennifer Smith, *Truckers Weigh Higher Costs, Open Roads in New York Fees*, WALL ST. J. (Apr. 1, 2019), https://www.wsj.com/articles/truckers-weigh-higher-costs-open-roads-in-new-york-fees-11554151481 [https://perma.cc/UAW3-8N8E]; *BUS4NYC*, *supra* note 138.

141. Fitzsimmons & Hu, *supra* note 99; Jeanmarie Evelly, *Should Motorcycles and Greener Cars Get a Pass on Congestion Pricing?*, CITY LIMITS (May 14, 2019), https://citylimits.org/2019/05/14/should-motorcycles-and-greener-cars-get-a-pass-on-congestion-pricing/ [https://perma.cc/3KGG-GW9G].

142. Evelly, *supra* note 141. In 2018, Governor Cuomo launched a $250 million initiative to increase the number of electric vehicle charging stations in New York State. *Id.* Mayor de Blasio has stated a goal of having 20% of all cars in New York City be electric by 2025. *Id.*

143. *Id.*

144. Jimmy Vielkind, *Motorcyclists May Steer Clear of New Congestion-Pricing Fee*, WALL ST. J. (Mar. 29, 2019), https://www.wsj.com/articles/motorcyclists-may-steer-clear-of-new-congestion-pricing-fee-11553883939 [https://perma.cc/WA2W-BXWG].

solution to New York's traffic problems, because these vehicles cause fewer emissions and less congestion than cars.[145] Riders Against Congestion also points out that motorcycles and scooters provide efficient transportation options for residents of neighborhoods with poor access to public transit.[146]

In addition to the professional and industry groups seeking exemptions, various communities are likely to seek exemptions based on geography. New York State Assemblyman David I. Weprin, a strident opponent of congestion pricing, has called for an exemption for all city residents.[147] Elected officials representing New York's suburbs and outer boroughs are also seeking exemptions or the removal of existing bridge and tunnel tolls to avoid double-charging bridge and tunnel commuters travelling into the CBD: Long Island State Senator Todd Kaminsky is seeking a credit for commuters entering Manhattan via the Robert F. Kennedy Bridge,[148] Bronx Assemblyman Jeffrey Dinowitz claims to have exchanged his support for congestion pricing for a deal to offer Bronx residents free access to the Henry Hudson Bridge,[149] and U.S. Congressman Max Rose and Staten Island Borough President James Oddo have urged removal of the congestion fee for Staten Islanders travelling to Manhattan via the Verrazzano-Narrows Bridge.[150]

Adding to the exemptions sought for New York communities, New Jersey officials have also sought an exemption for their constituents.[151] Approximately 115,000 people drive directly from New Jersey into the CBD each weekday — accounting for about 13% of all drivers entering the zone.[152] New Jersey Governor Phil Murphy

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145. Evelly, *supra* note 141.

146. *Id.*

147. Winnie Hu, *Over $10 to Drive in Manhattan? What We Know about the Congestion Pricing Plan*, N.Y. TIMES (Mar. 26, 2019), https://www.nytimes.com/2019/03/26/nyregion/what-is-congestion-pricing.html?action=click&module=RelatedLinks&pgtype=Article [https://perma.cc/2QAD-LKNN].

148. Fitzsimmons & Hu, *supra* note 99.

149. Ryan Hutchins & Dana Rubinstein, *New York, New Jersey Governors Cut Deal on Congestion Pricing*, POLITICO (Apr. 24, 2019), https://www.politico.com/states/new-jersey/story/2019/04/24/new-york-new-jersey-governors-cut-deal-on-congestion-pricing-986686 [https://perma.cc/4WDW-Z6FL]. Queens politicians claim to have secured a similar deal for the Cross Bay Veterans Memorial Bridge. *Id.*

150. Shant Shahrigian, *Lawmakers Call for Exemptions from NYC's Controversial Congestion Pricing Plan*, N.Y. POST (July 6, 2019), https://nypost.com/2019/07/06/lawmakers-call-for-exemptions-from-nycs-controversial-congestion-pricing-plan/ [https://perma.cc/SKP5-7Z2F].

151. Fitzsimmons, *New York Is Adopting Congestion Pricing*, *supra* note 89.

152. *Id.*

initially suggested CBDTP revenues be shared with the Port Authority Trans-Hudson (PATH) and New Jersey Transit, two rail services that serve New Jersey commuters, but later discussions between Governor Murphy and Governor Cuomo centered around providing credits towards congestion pricing fees for tolls paid at Hudson River crossings between New York and New Jersey.[153] Initial reports of a deal between the two governors to provide these credits, effectively implementing an exemption for all New Jersey commuters,[154] were denied by the MTA.[155] MTA Chairman Patrick Foye insisted the MTA would make decisions about credits, exemptions, and carve-outs only after conducting traffic studies and receiving recommendations from the TMRB.[156] If negotiations between New York and New Jersey fail to yield an agreement, New Jersey officials, like others seeking exemptions, may be forced to explore litigation or legislation as a means of obtaining relief from CBDTP tolls.

E. Creation of Exemptions through Litigation and Legislation

In the event any of the above groups fail to secure an exemption from the TBTA, these officials and professional organizations may try to secure relief from the CBDTP through litigation or legislative advocacy. Litigation by the taxi industry regarding the congestion surcharge implemented earlier this year[157] provides a preview of the claims groups seeking exemptions may bring against the State of New York. In *Taxifleet Management LLC v. State of New York*,[158] a group of medallion taxi owners asserted several causes of action in New York State Supreme Court in their attempt to halt the

153. Larry Higgs, *N.Y. Will Cut Us a Break on Congestion Pricing, Murphy Says*, NJ.COM (Apr. 25, 2019), https://www.nj.com/traffic/2019/04/nj-drivers-will-not-be-double-taxed-by-nyc-under-congestion-pricing-deal-murphy-said.html [https://perma.cc/6U37-YDUZ].

154. Hutchins & Rubinstein, *supra* note 149. Transit advocates had widely assumed that commuters using the Holland and Lincoln Tunnels, which both empty directly into the CBD, would receive credits. *Id.* Assurance by Governor Cuomo that commuters using the George Washington Bridge, which empties into Manhattan north of the CBD, would be treated equally would likely result in all New Jersey commuters being exempt from CBDTP tolls. *Id.*

155. Jen Chung, *NJ Governor Anticipates a Congestion Pricing Exemption, MTA Says 'Huh?'*, GOTHAMIST (Apr. 25, 2019), https://gothamist.com/news/nj-governor-anticipates-a-congestion-pricing-exemption-mta-says-huh [https://perma.cc/J6EH-5DJL].

156. *Id.*

157. *See supra* note 125 and accompanying text.

158. No. 161920/18, 2019 WL 2995810 (N.Y. Sup. Ct. July 9, 2019).

surcharge. The complaint alleged the surcharge specifically targeted for-hire vehicles despite the state's lack of a specific finding that these vehicles were a cause of congestion.[159] The petitioners argued the surcharge, in singling out for-hire vehicles without a rational basis, violated both the state and federal constitutions.[160] While these arguments ultimately failed to sway the court,[161] they may provide a blueprint for groups denied exemptions. Exemptions provided by the TBTA, if not sufficiently justified by cost, efficiency, public safety, or other concerns, may leave the agency open to lawsuits brought in court arguing the agency has arbitrarily favored certain groups over others.

Interested parties may also seek to secure exemptions from the CBDTP through specific acts of legislation. While the New York State Legislature's deferral of decisions regarding toll rates and exemptions under the CBDTP to the TMRB[162] may be indicative of its hesitancy to wade into the political thicket of exemptions, effective lobbying efforts could yield results for groups with sufficient influence in Albany. The opaque and complex nature of most lobbying campaigns makes it difficult to quantify the success of previous lobbying efforts by groups seeking exemptions, but the scale of lobbying expenditures in New York State indicates lobbying is pervasive. Aggregate spending on lobbying in New York hit an all-time high of nearly $262 million in 2018, an increase of more than

159. *Id.* at *3.

160. *Id.* In total, petitioners asserted five distinct causes of action. *Id.* The first alleged the arbitrary and capricious nature of the surcharge violated both the New York State Constitution and U.S. Constitution. *Id.* The second alleged violation of due process rights under both constitutions. *Id.* The third alleged violation of equal protection, on the basis that the surcharge treated taxis and for-hire vehicles differently from other vehicles without rational basis. *Id.* The fourth alleged that the difference in the surcharge for taxis and for other for-hire vehicles violated Article 16 Section 4 of the New York State Constitution. *Id.* The fifth alleged the state legislature's passage of the surcharge violated the Home Rule Clause of the New York State Constitution. *Id.*

161. *Id.* at *7. In addition to holding that the surcharge is a rational means of pursuing the state's legitimate objective of reducing congestion in lower Manhattan, *id.* at *5, the court held that targeting for-hire vehicles before implementing a broader congestion pricing scheme "is rational given the ease of collecting a tax from [for-hire vehicles] without the installation of any specific tolling devices or gateways, etc." *Id.* at *6.

162. Connor Harris, *Congestion Disaffection*, CITY J. (Apr. 10, 2019), https://www.city-journal.org/exemptions-congestion-pricing [https://perma.cc/3C9A-QSCA].

$21 million from 2017.[163] The transportation industry had lobbying expenditures of $13,688,570.[164] Uber, which invested $2 million lobbying for congestion pricing in New York City,[165] spent more on lobbying than any other entity in the state, with total expenditures of $5,989,966.[166] These expenditures indicate the scale of resources industries and advocacy groups will invest to secure favorable legislation or deter unfavorable legislation in Albany.

In addition to lobbying efforts in Albany, parties seeking exemptions may also turn to the federal government for relief from CBDTP tolls. In May, two U.S. congressmen from New Jersey, Josh Gottheimer and Chris Smith, introduced the Anti-Congestion Tax Act — bipartisan federal legislation aimed at combatting congestion pricing fees for New Jersey commuters.[167] The Act would prohibit the award of federal grants for MTA projects until New Jersey residents receive an exemption from the CBDTP and would create a federal tax credit to offset congestion pricing fees paid by New Jersey residents.[168] The Anti-Congestion Tax Act mirrors a strategy used by Guy V. Molinari, a U.S. congressman representing Staten Island, who in 1985 successfully attached a provision to a Federal Department of Transportation appropriations bill mandating that New York lose 1% of its federal transportation aid if tolls on Brooklyn-bound traffic over the Verrazzano-Narrows Bridge were not removed.[169] Molinari's gambit prompted the MTA to remove the tolls despite a predicted $10 million loss in revenue from the change and predictions from traffic experts that it would increase congestion in Brooklyn and lower Manhattan.[170]

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163. N.Y. STATE JOINT COMM'N ON PUB. ETHICS, 2018 ANNUAL REPORT 7 (2019), https://jcope.ny.gov/system/files/documents/2019/04/2018-annual-report-compiled-final41019.pdf [https://perma.cc/S2XM-7YWT].

164. *Id.* at 42.

165. Bond, *supra* note 134.

166. N.Y. STATE JOINT COMM'N ON PUB. ETHICS, *supra* note 163, at 34.

167. Press Release, Josh Gottheimer, Gottheimer, Smith Introduce Bipartisan Legislation to Fight Back against New York Congestion Tax (May 6, 2019), https://gottheimer.house.gov/news/documentsingle.aspx?DocumentID=1316 [https://perma.cc/GLD9-6KVU].

168. *Id.*

169. James Brooke, *One-Way Toll Plan Voted for Verrazano's Travelers*, N.Y. TIMES (Mar. 1, 1986), https://www.nytimes.com/1986/03/01/nyregion/one-way-toll-plan-voted-for-verrazano-s-travelers.html [https://perma.cc/R5HT-R2MV].

170. *Id.* After 34 years, a federal spending package signed into law in December 2019 removed the ban on two-way tolling on the Verrazzano-Narrows Bridge. Local members of Congress, led by Staten Island Congressman Max Rose, supported the measure. MTA and independent consultants predict the removal of two-way tolling

III. CREATING AN EXEMPTION SYSTEM THAT ADVANCES TRANSPORTATION EQUITY

This Part applies the lens of transportation equity to the issue of exemptions under the CBDTP. Section III.A seeks to define transportation equity by examining different conceptions of the term. Section III.B formulates a two-part test for determining which exemptions to the CBDTP are likely to advance transportation equity. Section III.C applies this test to the various groups and communities currently seeking exemptions from the CBDTP. Finally, Section III.D suggests alternative strategies for ensuring the CBDTP supports, rather than hinders, creation of an equitable transportation system in the New York City region.

A. Defining Transportation Equity

Authorities can measure the consequences of congestion pricing for various subsets of a region's population through the concept of transportation equity. Measurement of transportation equity involves comparisons of transportation benefits, burdens, and resource allocations between neighborhoods with high concentrations of vulnerable populations and regional averages.[171] Advocates of transportation equity seek to create fairness in mobility, transportation access, and transportation cost across races, classes, and geographies.[172] Factors in determining transportation equity include environmental consequences of transportation policies, discrepancies in resource allocation and investment, and distribution of service across various population groups.[173] Transportation equity is difficult to measure because there is no single, agreed-upon

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will reduce traffic congestion on Staten Island, generate additional revenue for transportation projects, and deter the practice of "toll shopping," which incentivized drivers to enter New York City through Staten Island rather than through more direct routes. Erik Bascome, *With Legislation Signed, Split Tolling No Longer Banned on Verrazzano Bridge*, STATEN ISLAND ADVANCE (Dec. 23, 2019), https://www.silive.com/news/2019/12/with-legislation-signed-split-tolling-no-longer-banned-on-verrazzano-bridge.html [https://perma.cc/4XS4-XM57].

171. *Equity*, U.S. DEP'T TRANSP. (Dec. 17, 2013), https://www.transportation.gov/mission/health/equity [https://perma.cc/F3MT-47W3].

172. Sean B. Seymore, *Set the Captives Free!: Transit Inequity in Urban Centers, and the Laws and Policies Which Aggravate the Disparity*, 16 GEO. MASON. U. CIV. RTS. L.J. 57, 61 (2005).

173. *Id.*

definition of the concept.[174] Various categorizations of actors, analyses of impacts, and methods of measurement can all yield differing determinations of what is "equitable."[175]

Researcher Todd Litman of the Victoria Transport Policy Institute defines three separate conceptualizations of transportation equity: "horizontal equity," "vertical equity with regard to income and social class," and "vertical equity with regard to mobility, need, and ability."[176] Horizontal equity examines the distribution of transportation impacts among individuals and groups with equal abilities and needs.[177] Horizontal equity suggests that public policies should avoid favoring one group or individual over others.[178] Transportation users should "get what they pay for and pay for what they get."[179] Vertical equity contemplates the distribution of transportation impacts among individuals and groups with differing abilities and needs.[180] Vertical equity with regard to income and social class explicitly encourages progressive transportation policies that favor economically and socially disadvantaged groups to compensate for broader inequalities.[181] Vertical equity with regard to mobility, need, and ability focuses on ensuring transportation systems are designed to support the needs of users with physical disabilities.[182]

Litman is not the only theorist with a tripartite theory on equity within transportation policy. Robert Bullard of Texas Southern University — considered by some to be the father of environmental justice[183] — has separately defined three conceptualizations of transportation equity: procedural equity, geographic equity, and social equity.[184] Procedural equity focuses on the process by which transportation decisions are made and executed, and considers

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174. TODD LITMAN, VICTORIA TRANSP. POLICY INST., EVALUATING TRANSPORTATION EQUITY: GUIDANCE FOR INCORPORATING DISTRIBUTIONAL IMPACTS IN TRANSPORTATION PLANNING 2 (2006).

175. *Id.*

176. *Id.* at 4.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Dr. Robert Bullard*, TEX. SOUTHERN U., http://bjmlspa.tsu.edu/faculty/dr-robert-bullard/ [https://perma.cc/MN45-MLKZ] (last visited Apr. 2, 2020).

184. Robert D. Bullard, *Addressing Urban Transportation Equity in the United States*, 31 FORDHAM URB. L.J. 1183, 1188 (2003).

whether rules apply equally to everyone.[185] Geographic equity focuses on how transportation decisions affect individuals and communities in different geographic locations.[186] Social equity focuses on distribution of transportation benefits and burdens across racial, socioeconomic, and generational classes.[187] Although they differ slightly in their organization, Bullock's and Litman's conceptualizations of transportation equity share an emphasis on the disparate impacts of transportation decisions on different communities and classes of people.

Whether, and to what extent, a congestion pricing plan advances transportation equity depends both on how communities and institutions measure equity and on the specifics of the plan itself, particularly the uses of the revenue raised through tolls. Traditional transportation pricing instruments, such as subway fares or bridge and tunnel tolls, advance Litman's idea of horizontal equity. Those utilizing a piece of transportation infrastructure bear the costs associated with building and maintaining that infrastructure.[188] People "get what they pay for and pay for what they get."[189] Congestion pricing also advances horizontal equity by imposing a cost on the externalities inherent to automobile travel through congested areas, such as emissions, noise pollution, and the potential for accidents. When, as in New York, the state directs revenues from congestion pricing towards public transportation, though, congestion pricing additionally functions in a more directly progressive manner, advancing Litman's concept of vertical transportation equity.[190] This directed use of revenues advances vertical transportation equity because the median income of commuters who take public transportation is lower than that of commuters who drive to work on their own,[191] so congestion pricing channels resources away from

185. *Id.*

186. *Id.*

187. *Id.*

188. *Tolling and Pricing Defined*, U.S. DEP'T TRANSP., FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/ipd/tolling_and_pricing/defined/ [https://perma.cc/P332-Z8PU] (last visited Mar. 6, 2020); *see* Emma G. Fitzsimmons, *M.T.A. Is Raising Fares and Tolls; One Subway or Bus Ride Will Cost $2.75*, N.Y. TIMES (Jan. 22, 2015), https://www.nytimes.com/2015/01/23/nyregion/mta-raises-fares-subways-and-buses.html [https://perma.cc/G6BE-SH9C].

189. *See* LITMAN, *supra* note 174, at 4.

190. N.Y. PUB. AUTH. LAW § 553-j (McKinney 2019); Gerrard & McTiernan, *supra* note 84.

191. In the New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area, defined as the five boroughs of New York City plus Dutchess, Nassau, Orange,

relatively high-income individuals towards systems utilized by relatively low-income individuals.[192] If the state were to use congestion pricing revenue in a manner that does not benefit the public, or if the costs of congestion pricing were imposed

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Putnam, Rockland, Suffolk, and Westchester Counties in New York, Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties in New Jersey, and Pike County, Pennsylvania, U.S. Census Bureau, Core Based Statistical Areas (CBSA), Metropolitan Divisions, and Combined Statistical Areas (CSA), April 2018 (2018), https://www2.census.gov/programs-surveys/metromicro/geographies/reference-files/2018/delineation-files/list1.xls [https://perma.cc/76L4-MDY4], the average median income of those who drove to work solo was $51,032 in 2018. U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY (2018) [hereinafter AMERICAN COMMUNITY SURVEY]. The average median income of those who commuted via public transit was $47,387. *Id.* The overall average median income was $47,511. *Id.* In the New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area, defined as the five boroughs of New York City plus Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester Counties in New York, Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties in New Jersey, and Pike County, Pennsylvania, U.S. CENSUS BUREAU, CORE BASED STATISTICAL AREAS (CBSA), METROPOLITAN DIVISIONS APRIL 2018, AND COMBINED STATISTICAL AREAS (CSA) (2018), https://www2.census.gov/programs-surveys/metromicro/geographies/reference-files/2018/delineation-files/list1.xls [https://perma.cc/76L4-MDY4], the average median income of those who drove to work solo was $51,032 in 2018. AMERICAN COMMUNITY SURVEY, *supra* note 191. The average median income of those who commuted via public transit was $47,387. *Id.* The overall average median income was $47,511. *Id.* In the New York State legislative districts with the highest number of commuters into the CBD, all located in Manhattan, drivers are significantly wealthier than public transit users. *Congestion Pricing: An Analysis of New York State Legislative Districts*, TRI-STATE TRANSP. CAMPAIGN, http://www.tstc.org/congestion-pricing-an-analysis-of-new-york-state-legislative-districts/ [https://perma.cc/H6AU-DFWU] (last visited Apr. 2, 2020). This mirrors trends on a national level, where public transportation commuters are disproportionately poorer than drivers in nearly every city with significant public transportation ridership. Mike Maciag, *Public Transportation's Demographic Divide*, GOVERNING (Feb. 25, 2014), https://www.governing.com/topics/transportation-infrastructure/gov-public-transportation-riders-demographic-divide-for-cities.html [https://perma.cc/CG6M-6VWT]. In 2014, commuters driving alone to work reported $4,314 higher earnings than those taking public transportation. *Id.*

192. This fact was a point of controversy during the debate over implementing congestion pricing in New York, when some elected officials, including Mayor de Blasio, erroneously argued that congestion pricing would function as a regressive tax. *See* Gersh Kuntzman, *If Congestion Pricing Fails, Remember These Insane Comments by Assembly Member Rodneyse Bichotte*, STREETSBLOG NYC (Mar. 21, 2019), https://nyc.streetsblog.org/2019/03/21/if-congestion-pricing-fails-remember-these-insane-comments-by-assembly-member-rodneyse-bichotte/ [https://perma.cc/ZA6V-K6U2].

disproportionately on lower-income individuals, this would not be the case.[193]

Whether congestion pricing advances Bullard's conceptualizations of transportation equity also depends on the specifics of the system's implementation. While the state legislature has already established the procedural elements of New York's CBDTP, those tasked with implementing the plan will need to ensure it does not negatively impact geographic or social equity. Doing so will involve designing a tolling structure that disincentivizes driving overall rather than simply shifting traffic congestion and the associated emissions away from Manhattan's CBD into lower-income areas. The TBTA must create a system of toll credits and exemptions that ensures low-income individuals without access to mass transit do not lose access to economic opportunities in lower Manhattan. The MTA must ensure CBDTP revenues are targeted towards communities with the greatest need for public transit improvements, rather than used to subsidize projects disproportionately benefitting high-income neighborhoods.[194] In determining the details of the CBDTP's design and implementation, the TBTA and MTA must ensure the program is executed in a progressive manner and avoid imposing new tolls on residents of economically disadvantaged neighborhoods and communities without providing corresponding benefits in the form of increased investment in public transportation.

B. Determining Which Exemptions Advance Transportation Equity

In determining which exemptions to grant under the CBDTP, the TMRB and TBTA should take care to maintain the benefits of the CBDTP for both horizontal and vertical transportation equity. To maintain horizontal equity, these authorities must ensure exemptions prevent a net increase in negative externalities stemming from congestion and emissions.[195] Exemptions should disincentivize travelers from utilizing transportation options, such as air travel or longer driving routes, that cause greater emissions or congestion as a

193. One can tell a similar story regarding the effects of congestion pricing on vertical equity with regard to mobility need and ability. The degree to which the costs of congestion pricing are directed at individuals with disabilities and the revenues are used to benefit individuals with disabilities can vary substantially based upon implementation decisions.

194. *See generally* Bullard, *supra* note 184, at 1188.

195. *See* LITMAN, *supra* note 174, at 5. Because all people experience the negative effects of emissions but not all people benefit from the vehicles causing the emissions, emissions have an inherently adverse effect on horizontal transportation equity.

result of CBDTP tolls. To maintain vertical equity, the TMRB and TBTA must ensure that exemptions do not act regressively by disproportionately benefitting wealthy individuals and pushing the burden of funding public transportation onto those with lesser means.[196] Exemptions should protect the viability of low-cost transportation options so that the CBDTP does not raise overall transportation costs for low-income individuals. The dual considerations of horizontal and vertical equity yield a two-part test for determining which exemptions should be granted: an exemption should be granted if, and only if, lack thereof will (1) direct affected individuals towards less efficient modes of transportation (i.e. those that cause greater emissions or congestion); or (2) function regressively by causing low-income communities to bear a disproportionately large share of transportation infrastructure costs. This test's application will ensure exemptions serve to advance, rather than undermine, the core objectives of the CBDTP.

Because even limited exemptions will significantly undercut the benefits of the CBDTP,[197] this test presumes exemptions should be limited to instances where they are necessary to preserve the program's objectives of reducing emissions and congestion and of raising revenue for public transportation in the New York City region. The dual-pronged test ignores external political and social concerns that might otherwise weigh in favor of exemptions for particular groups.[198] While the relevant authorities may ultimately determine that these concerns justify creation of exemptions that do not pass the two-part test, these authorities should do so with the knowledge that such exemptions come with environmental and financial costs. Applying the test to the groups currently seeking exemptions will allow the authorities to make equitable and sound policy judgements.

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196. The two exemptions included in the CBDTP's enacting legislation — the exemption for vehicles carrying persons with disabilities and the tax credit for CBD residents making less than $60,000 — both reflect these objectives. The disability exemption furthers Litman's concept of vertical equity with regard to mobility need and ability, while the tax credit helps to preserve vertical equity with regard to income and social class by diverting costs from the CBDTP away from some of the CBD's poorest residents.

197. *See supra* notes 99–108 and accompanying text.

198. For example, the Police Benevolent Association argues that an exemption for first responders would provide benefits for public safety. *See* Lynch, *supra* note 128. The taxi industry and its advocates on the city council argue that lack of an exemption will have a devastating effect on the livelihoods of taxi drivers. *See Cuba*, *supra* note 134; *Our Fight, supra* note 133.

C. Who Should Get an Exemption?

Application of the two-part test shows which exemptions serve to advance the transportation equity benefits of the CBDTP, and which undermine those benefits. Exemptions can advance horizontal transportation equity, fulfilling the first prong of the test, by lowering overall transportation-related emissions and improving travel times. Examples include exemptions that deter toll shopping — the practice of driving a longer distance to minimize toll costs[199] — and exemptions that promote land-based commercial mass transit as a low-emission alternative to air travel and solo car travel.[200] Exemptions can advance vertical transportation equity, fulfilling the second part of the test, by preserving the affordability of inexpensive mass transportation options, such as commercial inter-city bus travel, for low-income individuals.[201]

One broad trend that appears when applying the two-part test is that it disfavors exemptions for single-occupancy vehicles. For almost all drivers of single-occupancy vehicles, the primary reasonable, lower-cost alternatives for entering the CBD are public transportation — in most cases buses, commuter rail, or heavy rail systems — cycling, or walking. All of these options contribute less to traffic congestion and carbon dioxide emissions than single-occupancy vehicles.[202] These options are also cheaper than commuting into the

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199. JONES ET AL., *supra* note 108, at 6.

200. *Climate Change: Should You Fly, Drive or Take the Train?*, BBC NEWS (Aug. 24, 2019), https://www.bbc.com/news/science-environment-49349566 [https://perma.cc/2KCX-T6A4]. Bus travel results in 104g of carbon dioxide emissions per passenger per kilometer traveled. Rail travel results in 41g per passenger per kilometer. Domestic air travel results in 133g per passenger per kilometer plus an additional 121g in secondary effects from high-altitude, non-carbon dioxide emissions. Car travel results in 171g of carbon dioxide emissions per passenger per kilometer, although this number is reduced proportionally if more than one passenger is travelling in a car. *Id.*

201. Commercial bus travel generally serves as the least expensive means of intercity transportation. *See infra* note 214 and accompanying text.

202. A single-occupancy vehicle emits an average of 0.96 pounds of carbon dioxide per passenger mile. TINA HODGES, U.S. DEP'T OF TRANSP., PUBLIC TRANSPORTATION'S ROLE IN RESPONDING TO CLIMATE CHANGE 3 (2010), https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PublicTransportationsRoleInRespondingToClimateChange2010.pdf. [https://perma.cc/A2JU-GYTC]. At average occupancy, buses emit 0.64 pounds per passenger mile, commuter rail emits 0.33 pounds, and heavy rail (such as the New York City subway) emits 0.23 pounds. *Id.* While a four-person carpool reduces a car's emissions to 0.24 pounds of carbon dioxide per passenger mile, full occupancy also lowers the emissions of public transport to 0.18 pounds of carbon dioxide per passenger mile for buses, 0.10 pounds for commuter rail, and 0.11 pounds for heavy rail. *Id.* For a full account of how the New York City region's mass transit services fare against national averages in terms

CBD via single-occupancy vehicle or relying upon single-occupancy vehicles such as taxis or rideshare vehicles to travel within the zone.[203] This means that lack of exemptions for operators of single-occupancy vehicles would, in most cases, not direct individuals towards less efficient modes of transportation and would not function in a regressive manner. Exemptions for police personnel,[204] taxis,[205] rideshares,[206] for-hire vehicles,[207] motorcycles,[208] electric vehicles,[209]

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of carbon dioxide emissions, see *id.* at 11–16. While walking and cycling do result in some carbon dioxide emissions, these emissions pale in comparison to those produced by any other method of transportation, assuming the individual at issue consumes a normal diet. *See* Brian Palmer, *Two Wheels vs. Four*, SLATE (Aug. 9, 2011), https://slate.com/technology/2011/08/how-soon-does-a-bike-pay-back-its-initial-carbon-footprint.html [https://perma.cc/GR3A-NTBK].

203. The American Public Transportation Association estimates that the average New York commuter could save $1247 a month and $14,969 annually by owning and driving one fewer car and instead commuting via public transportation. Press Release, Am. Pub. Transp. Ass'n, June Transit Savings Report: Soaring Gas Prices Take Transit Savings to Highest Level of the Year (June 8, 2018), https://www.apta.com/news-publications/press-releases/releases/june-transit-savings-report-soaring-gas-prices-take-transit-savings-to-highest-level-of-the-year/ [https://perma.cc/798R-K69S]. The fare for a subway or local bus ride in New York City is $2.75. The fare for an express bus ride is $6.75. *Fares & MetroCard*, MTA, http://web.mta.info/metrocard/mcgtreng.htm [https://perma.cc/A3U9-LYQ2] (last visited Apr. 2, 2019). Accounting for New York's existing congestion surcharge, the minimum taxi fare in Manhattan is $5.80 and the minimum Uber cost is $10.75. *See supra* note 125 and accompanying text.

204. This exemption would not function in a regressive manner because police officers earn more than the median income in most New York City neighborhoods. Although the starting salary for NYPD officers is $42,500, compensation reaches $85,292 after five and a half years. After accounting for holiday pay, longevity pay, uniform allowance, night differential, and overtime, officers can take home over $100,000 a year. *Salary and Benefits*, NYPD, https://www1.nyc.gov/site/nypd/careers/police-officers/po-benefits.page [https://perma.cc/7AD4-X2AV] (last visited Apr. 2, 2019). In contrast, the average median income in the New York-Jersey City-White Plains Metropolitan Division is $48,776. AMERICAN COMMUNITY SURVEY, *supra* note 191.

205. *See supra* notes 202–03 and accompanying text.

206. *Id.*

207. *Id.*

208. While motorcycles contribute less to congestion than conventional cars, they emit more pollution. A California Air Resources Board comparison of emissions-compliant vehicles found that the average motorcycle is ten times more polluting per mile than a passenger car, light truck, or SUV. Susan Carpenter, *Motorcycles and Emissions: The Surprising Facts*, L.A. TIMES (Sept. 16, 2014), https://www.latimes.com/news/la-hy-throttle11-2008jun11-story.html [https://perma.cc/7L4Q-DWZE]. Lack of an exemption for motorcycles would not function in a regressive manner because motorcycle owners have higher than average incomes. The 2018 median household income of a motorcycle owner was $62,500. Ron Lieback, *Motorcycle Statistics in America: Demographics Change for 2018*, ULTIMATE MOTORCYCLING (Feb. 7, 2019), https://ultimatemotorcycling.com/2019/02/07/motorcycle-statistics-in-america-demogr

and trucking companies[210] are all inadvisable according to the two-part test. These exemptions would not advance horizontal equity by reducing emissions and congestion, and would not advance vertical equity by preserving low-cost transportation options.

Commercial mass transit receives mixed results under the two-part test. Like single-occupancy vehicles, sightseeing tour buses fare poorly. Because rideshare vehicles and taxis would pay CBDTP charges, consumers avoiding tour buses due to cost would likely gravitate towards public transportation or walking, both of which create less emissions and congestion than buses.[211] Since sightseeing tours are a non-essential luxury expense and are more expensive than the readily available alternative of public transportation,[212] CBDTP charges on these buses would not function regressively, so an exemption is not appropriate.

Long-distance bus lines present a different story. The primary alternatives to long-distance bus travel are rail travel, air travel, and individual car travel. Rail travel results in fewer emissions than bus

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aphics-change-for-2018/ [https://perma.cc/94PH-AQ2X]. The overall median household income in 2018 was $61,937. Gloria Guzman, *U.S. Median Household Income up in 2018 from 2017*, U.S. CENSUS BUREAU (Sept. 26, 2019), https://www.census.gov/library/stories/2019/09/us-median-household-income-up-in-2018-from-2017.html [https://perma.cc/Y3JR-FWKE].

209. Electric vehicles provide no congestion benefits and contribute to pollution. In New York, the average electric vehicle is responsible for 1883 pounds of carbon dioxide-equivalent emissions per year. *Emissions from Hybrid and Plug-In Electric Vehicles*, U.S. DEP'T ENERGY, https://afdc.energy.gov/vehicles/electric_emissions.html [https://perma.cc/HC68-6VYH] (last visited Apr. 2, 2019). The average electric Ford Focus buyer in 2015 had an average household income of $199,000. Chris Woodyard, *Study: Electric Car Buyers Are Younger but Richer*, USA TODAY (May 4, 2015), https://www.usatoday.com/story/money/cars/2015/05/04/truecar-study-electric-cars-richer/26884511/ [https://perma.cc/YZM2-BR4R]. The average household income of buyers of the conventional Focus was $77,000. *Id.*

210. Presumably, consumers within the CBD would bear the extra shipping costs imposed by the CBDTP. Manhattan's median household income of $82,459 between 2014 and 2018 was higher than the citywide figure of $60,762. *QuickFacts: Income & Poverty*, U.S. CENSUS BUREAU (July 2, 2019), https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork,newyorkcountymanhattanboroughnewyork,US/PST045219 [https://perma.cc/26EE-WYST]. The extra costs for CBD residents would therefore be unlikely to function in a regressive manner.

211. *See supra* note 202.

212. A single ride pass on a New York Sightseeing bus costs $19. *Downtown Tour — Single Ride Pass*, N.Y. SIGHTSEEING, https://www.newyorksightseeing.com/double-decker-bus-tours/downtown-tour-single-ride-pass.html [https://perma.cc/7NDQ-665W] (last visited Apr. 2, 2020). The fare for a subway or local bus ride in New York City is $2.75. *Fares & Metrocard*, *supra* note 203.

travel, but air travel and — depending on the number of passengers — individual car travel do not.[213] Lack of an exemption for long-distance bus travel may therefore direct some individuals towards less efficient modes of transportation. Air travel, train travel, and individual car travel are also generally more expensive than long-distance bus travel.[214] Therefore, lack of an exemption for long-distance bus travel may function regressively by disproportionately impacting lower-income individuals without access to rail, air, or car travel. While long-distance bus lines could reduce costs and congestion by simply moving their pick-up points outside of the CBD, these buses still constitute one of the few classes of vehicles for which an exemption is appropriate under the two-part test.

When it comes to exemptions for bridge and tunnel commuters, including New Jersey residents, application of the two-part test is more complicated. The test disfavors exemptions for commuters in single-occupancy vehicles travelling to destinations inside the CBD for the same reasons it disfavors exemptions for single-occupancy vehicles generally.[215] But for commuters travelling *through* the congestion zone, an exemption may be appropriate. This is because without an exemption these commuters may engage in toll shopping and take unnecessarily long routes to avoid CBDTP tolls.[216] For example, a commuter travelling from Secaucus, New Jersey to Long Island City, Queens may, instead of taking the direct 8.5 mile route through the Lincoln and Queens-Midtown Tunnels, opt to take the longer 23.2 mile route over the George Washington Bridge in order

213. *See supra* note 200 and accompanying text.

214. For example, a one-way flight from New York City to Washington D.C. on October 5, 2020, cost $99 as of April 5, 2020. One-Way Flights from N.Y.C. to Washington, D.C. for October 5, 2020, KAYAK, https://www.kayak.com/flights/NYC-WAS/2019-12-09?sort=bestflight_a (search start point field for "New York, NY" and search destination field for "Washington, D.C.") (Apr. 5, 2020, 1:55 PM). The same trip on Amtrak costs $54. *Id.* Via Greyhound bus, the trip costs $14 on the same date. One-Way Trip from N.Y.C. to Washington, D.C. for October 5, 2020, WANDERU, https://www.wanderu.com/en-us/depart/New%20York%2C%20NY%2C%20USA/Washington%2C%20DC%2C%20USA/2020-10-05/?aid=kayak&cur=USD&da=-nycblt3%2C-nycblt11%2C-nycpen%2C-nycwdx1%2C-nycusour7%2C-knggli%7C-dcawdx%2C-svsgli%2C-svsppl%2C-alxamt%2C-usllpgli&dm=bus&dpid=ChIJW-T2Wt7Gt4kRKl2I1CJFUsI&ds=cheapest&opid=ChIJOwg_06VPwokRYv534QaPC8g&tid=Z_89PSMHda4hQiZh%240GMKg (search start point field for "New York, NY" and search destination field for "Washington, D.C.") (Apr. 5, 2020, 1:55 PM). While the cost of travelling by individual car varies depending on the model of the car and fuel prices, use of this mode of transportation requires that the individual have access to a car.

215. *See supra* notes 202–03 and accompanying text.

216. *See supra* note 199 and accompanying text.

to bypass the CBD.[217] In this case, and others like it, lack of an exemption would fail the first prong of the test and impair the CBDTP's benefits for horizontal equity because it would lead to an increase in overall emissions and may also lead to increased traffic congestion at bridges and tunnels that do not empty into the CBD. To combat the problem of toll shopping, which already contributes to existing transportation inequity in the New York region,[218] the TMRB and TBTA, informed by traffic studies, will need to consider various pricing instruments, such as dynamic pricing,[219] two-way tolling,[220] and credits for bridge and tunnel crossings,[221] in order to optimally reduce congestion while collecting sufficient tolls to meet the CBDTP's revenue target. While blanket exemptions provide one method of addressing the CBDTP's impact on transportation equity, there are various alternatives that, in many cases, may be more effective at doing so.

D. Alternatives to Exemptions

Application of the two-part test demonstrates that authorities can grant few classes of vehicles blanket exemptions under the CBDTP without undermining the plan's core emissions reduction, congestion reduction, and revenue generation objectives. Some of the groups seeking exemptions, though, particularly outer-borough and suburban New York and New Jersey residents, do raise legitimate questions about the effects of the CBDTP on transportation equity in the New

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217. Driving Directions from Secaucus, NJ to Long Island City, Queens, NY, GOOGLE MAPS, http://maps.google.com (follow "Directions" hyperlink; then search starting point field for "Secaucus, NJ" and search destination field for "Long Island City, Queens, NY").

218. *See* JONES ET AL., *supra* note 108, at 6–7.

219. By varying the price of CBDTP tolls based on time of day, the TBTA can incentivize certain drivers to shift their travel to low-traffic periods. *Id.* at 9.

220. Two-way tolling, which charges drivers both to enter and exit the CBD, enhances the effectiveness of dynamic pricing by incentivizing drivers to time both their arrivals to and departures from the CBD to low-traffic periods. *Id.* at 8. Infrastructure used for two-way tolling could also be used to identify, and give exemptions to, drivers who pass through the CBD in a short period of time, helping to address the toll shopping problem outlined above.

221. By granting credits for certain bridge and tunnel crossings, the TBTA can equalize the cost of entering the CBD from all access points, helping to address existing toll shopping problems in the region. *Id.* at 15. However, these credits must be limited so as not to jeopardize the CBDTP's ability to meet its revenue goals. *Id.*

York City region.[222] These concerns, however, can be more effectively addressed through actions other than blanket exemptions.

For example, New Jersey officials' argument that the CBDTP unfairly penalizes New Jersey residents[223] points to genuine concern about the CBDTP's effects on horizontal transportation equity. In the current framework for the CBDTP, New Jersey commuters will not "get what they pay for and pay for what they get" under the CBDTP.[224] They will be forced to pay additional tolls or switch to public transit but will receive limited benefits from the revenue raised.[225] However, creating a blanket exemption for New Jersey residents would undermine the core goals of the CBDTP by reducing the program's revenue-generating capacity, as well as its associated reductions in congestion and emissions.

The relevant authorities could more effectively address the concerns of New Jersey residents by designating a portion of revenue generated by the CBDTP for investment in New Jersey public transportation systems, such as PATH or NJ Transit rail and bus operations. This solution would result in less revenue for transportation projects in New York, but would preserve the congestion and emissions benefits of the CBDTP while addressing concerns about horizontal equity for New Jersey commuters.[226] Such an agreement, although politically difficult due to New Jersey politicians' lack of control over the New York State budget process, would ensure that New Jersey commuters receive benefits from the CBDTP that make up for their costs.

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222. *See* Fitzsimmons, *New York Is Adopting Congestion Pricing*, *supra* note 89; Gersh Kuntzman, *Congestion Pricing Opponents Reveal They Are Completely out of Ideas — And Easily Flustered, Too!*, STREETSBLOG NYC (Mar. 24, 2019), https://nyc.streetsblog.org/2019/03/24/congestion-pricing-opponents-reveal-they-are-completely-out-of-ideas-and-easily-flustered-too/ [https://perma.cc/J4TA-MGDJ]. Although congestion pricing does not, on the whole, function as a regressive tax on outer-borough and suburban commuters, *see supra* notes 190–93 and accompanying text, it does create a new financial burden for low-income individuals for whom solo automobile travel into the CBD is unavoidable.

223. *See* Fitzsimmons, *New York Is Adopting Congestion Pricing*, *supra* note 89.

224. *See* LITMAN, *supra* note 174, at 3.

225. Because the legislature designated set portions of CBDTP revenue for the LIRR and Metro-North, the program will help fund transit improvements benefitting commuters throughout Long Island and the lower Hudson Valley, in addition to New York City. *See supra* note 93 and accompanying text. New Jersey commuters, on the other hand, will only benefit from CBDTP revenue to the extent they rely on the New York City subway after entering the CBD.

226. Increased investment in public transit in New Jersey may even increase the congestion and emissions benefits of the CBDTP by making it more convenient for New Jersey auto commuters to switch to public transportation.

In a broader sense, the geographic distribution of revenues from the CBDTP will play a key role in determining the degree to which the program advances transportation equity. Focusing funding for transportation projects on areas of the New York City region poorly served by public transit can help promote horizontal equity by ensuring individuals forced to pay CBDTP tolls due to lack of accessible public transportation options for entering the CBD ultimately benefit from the CBDTP revenue. Public transit investments in economically disadvantaged areas can promote vertical equity by ensuring that low-income communities — which often are disproportionately affected by transportation-related pollution[227] — benefit from increased economic opportunity tied to improved transportation access. A plan for distribution of CBDTP revenue that specifically targets areas poorly served by mass transit and low-income communities would allow for an equitable distribution of the costs and benefits of congestion pricing.

The creation of additional tax credits can also address concerns about the burden of CBDTP tolls on low-income individuals. The legislation enacting the CBDTP already includes a tax credit for residents of the CBD with annual incomes less than $60,000.[228] To address concerns that CBDTP tolls may prevent low-income individuals residing outside the CBD from accessing economic opportunities inside the CBD, the TBTA could expand this tax credit to cover all New York State residents with incomes below $60,000 residing in areas with poor access to public transportation. This tax credit expansion would ensure the CBDTP advances, rather than hinders, transportation equity and does not impair low-income individuals' access to the CBD. The TBTA could also offer tax credits to small businesses whose economic viability is threatened due to CBDTP-related costs.

Targeted revenue allocation and tax credits both serve as more effective tools for addressing concerns about the adverse effects of the CBDTP than blanket exemptions. These measures would allow authorities to distribute the benefits of the CBDTP to the communities with the greatest need and to provide relief from

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227. N.Y.C. ENVTL. JUSTICE ALL., NYC CLIMATE JUSTICE AGENDA 12 (2017), https://www.issuelab.org/resources/27269/27269.pdf. [https://perma.cc/2CAA-JWMQ]; *see* Donovan Richards, *New York City Must End Environmental Racism*, CITY & ST. N.Y. (Jan. 29, 2016), https://www.cityandstateny.com/articles/opinion/new-york-city-must-end-environmental-racism.html [https://perma.cc/Y8SL-DK6T].

228. JONES ET AL., *supra* note 108, at 4.

CBDTP tolls only to those individuals for whom such relief is essential.

CONCLUSION

New York City's CBDTP has the potential to vastly improve transportation equity in the region. The CBDTP can improve horizontal equity by reducing carbon emissions and traffic congestion, minimizing negative externalities from automobile transportation.[229] These reductions will result in cleaner air, more navigable streets, and faster travel times,[230] improving life for all city residents. The CBDTP can improve vertical equity by creating a vast new stream of funding for the MTA.[231] New revenue will allow the MTA to upgrade the decaying infrastructure of the New York City subway, reduce wait times, expand service, and make New York's transportation system more accessible for people with disabilities.[232] By making transportation more affordable and accessible for the communities that rely on it most, the MTA's train and bus systems can serve as an engine for economic growth and a bulwark against socioeconomic inequality.[233]

Excessive provision of exemptions under the CBDTP, however, will undermine the program's ability to achieve these goals.[234] Officials tasked with implementing the program must approach exemptions with a critical eye. Overly broad exemptions will allow more vehicles to enter the CBD without paying a toll, hampering the CBDTP's effectiveness at reducing congestion and emissions.[235] By reducing the number of paying vehicles, excessive exemptions will force the TBTA to charge higher tolls to meet its established revenue targets,[236] impeding access to Manhattan's CBD — and the economic opportunities present within — for individuals without exemptions.

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229. *See* FED. HIGHWAY ADMIN., PRIMER, *supra* note 39.

230. Komanoff, *The Fix NYC*, *supra* note 42.

231. *See supra* note 42 and accompanying text.

232. *See generally* METRO. TRANSP. AUTH., MTA CAPITAL PROGRAM 2020–2024 (2019) [hereinafter CAPITAL PROGRAM], https://new.mta.info/sites/default/files/2019-09/MTA%202020-2024%20Capital%20Program%20-%20Executive%20Summary.pdf [https://perma.cc/566X-PRYN].

233. *See id.*; Gillian B. White, *Stranded: How America's Failing Public Transportation Increases Inequality*, ATLANTIC (May 16, 2015), https://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/ [https://perma.cc/N382-VR4R].

234. *See supra* notes 99–108 and accompanying text.

235. *Id.*

236. Fitzsimmons & Hu, *supra* note 99.

To determine which exemptions advance the CBDTP's overarching goals of revenue generation and congestion reduction, the TMRB and TBTA should examine each requested exemption through the lens of transportation equity. The work of Litman, Bullock, and others, along with the two-part test defined in this Note, offers a framework for officials to establish which exemptions promote an equitable transportation system in which costs and benefits are distributed fairly and progressively, and which exemptions serve to benefit the interests of niche groups while damaging the quality of New York's transportation network overall.

Maintaining a transportation system that is reliable, affordable, and accessible will be integral for ensuring New York remains a vibrant and livable city over the coming decades,[237] and the CBDTP has the potential to serve as a key tool in doing so. Limiting exemptions under the CBDTP to instances where these exemptions are necessary to preserve congestion and emissions reductions and access to transportation for low-income communities — and utilizing other, more targeted measures to address remaining concerns about the CBDTP's adverse effects — will ensure the CBDTP is successful in bringing about a more equitable transportation landscape in the New York City region.

237. *See* CAPITAL PROGRAM, *supra* note 232.