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October 16, 2026

BY CM/ECF

The Honorable Joan M. Azrack
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: Town of Hempstead, et al. v. Triborough Bridge and Tunnel Authority, et al.,
No. 24 Civ. 3263 (E.D.N.Y.) (JMA) (ARL)

Dear Judge Azrack:

We write on behalf of Defendants the Metropolitan Transportation Authority (“MTA”) and Triborough Bridge and Tunnel Authority (“TBTA”; together, the “MTA Defendants”) regarding the Federal Defendants’ Answer filed on October 7, 2026 (ECF 69) (the “Answer”; attached hereto as **Exhibit A**). While the MTA Defendants’ motion to dismiss explains in detail why Plaintiffs’ Complaint fails as a matter of law, as officers of the Court, we believe it is necessary to inform Your Honor now of the Answer’s failure to accurately describe relevant legal authority.¹

First, with respect to Plaintiffs’ three constitutional claims, the Answer ignores the Second Circuit’s decision nearly three months earlier on July 13, 2026, in *County of Rockland v. Triborough Bridge & Tunnel Authority*, 181 F.4th 249, in which the Court of Appeals affirmed the dismissal of “identical” claims raised by Rockland County. ECF 65 at 3; *see* ECF 11-3 (comparing the two complaints). The Federal Defendants were admittedly well aware of *Rockland* when they filed their Answer: they had previously told the Court that the Second Circuit’s decision there would inform the outcome here. ECF 62 at 2 n.2. And even before *Rockland*, the Federal Defendants had recognized that Plaintiffs’ claims were subject to legal challenge and had informed the Court that they intended to move to dismiss. ECF 41 at 1. Yet remarkably, the Federal Defendants proceeded nonetheless to file an Answer that raises no defense to any of Plaintiffs’ claims and pretends *Rockland* does not exist.

The Federal Defendants’ failure to mention—let alone adhere to—binding Second Circuit authority is difficult to reconcile with their duty of candor and duty to follow the law. Counsel

¹ In accordance with Your Honor’s rules, the MTA Defendants’ motion to dismiss was served on opposing counsel on October 7, 2026 and will be filed on the public docket upon completion of briefing.

for the Federal Defendants are obligated to “disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client”; indeed, “legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal.” N.Y. Rules of Prof’l Conduct R. 3.3(a)(1) & cmt. 4; *see also id.* cmt. 3 (“failure to make a disclosure” is sometimes “the equivalent of an affirmative misrepresentation”); 28 U.S.C. § 530B(a); Local Civ. R. 1.5(b)(5). Although the government is entitled to make good-faith arguments that Circuit precedent does not apply to the particular facts of the case, or should be changed, *see Fed. R. Civ. P. 11(b)(2)*, that is not a license to litigate as though that precedent does not exist, *see Stieberger v. Heckler*, 615 F. Supp. 1315, 1357 (S.D.N.Y. 1985) (“The judiciary’s duty and authority, as first established in *Marbury*, ‘to say what the law is’ would be rendered a virtual nullity if coordinate branches of government could effectively and unilaterally strip its pronouncements of any precedential force.”), *prelim. inj. vacated sub nom. Stieberger v. Bowen*, 801 F.2d 29 (2d Cir. 1986); *see also* Letter from Eric H. Holder, Jr., Att’y Gen., to John A. Boehner, Speaker, U.S. House of Representatives, at 5 (Feb. 23, 2011), *Windsor v. United States*, 10 Civ. 8435 (S.D.N.Y.), ECF 10-2 (“As you know, the Department has a longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense, a practice that accords the respect appropriately due to a coequal branch of government.”).

Second, Plaintiffs’ remaining claim is that the Program purportedly violates 23 U.S.C. § 301 because it is not authorized under the federal Value Pricing Pilot Program (“VPPP”) statute, 23 U.S.C. § 149 note. On this point, the Answer at least feigns to acknowledge the existence of relevant legal authority, observing that the district court in *Metropolitan Transportation Authority v. Duffy*, 2026 WL 588117 (S.D.N.Y. Mar. 3, 2026), “rejected the government’s arguments” that the VPPP does not authorize the Program. Answer at 1. Yet the Answer then proceeds to misrepresent the limited scope of those proceedings, stating broadly that the *Duffy* decision is “currently under appeal to the Second Circuit,” *id.*, all while turning a blind eye to the fact that the United States *did not appeal* the statutory interpretation issues. *See* Br. for Defs. at 4 (limiting appeal to Tucker Act jurisdictional issue and unrelated merits issues), *Metro. Transp. Auth. v. Duffy*, No. 26-1213, ECF 30.1 (2d Cir. June 17, 2026). In other words, the S.D.N.Y.’s *Duffy* decision, although not binding on the Court here, is highly persuasive authority as to the meaning of the VPPP, which determination, contrary to what the Federal Defendants would have this Court believe, is *not* the subject of appellate review.

We thank the Court for its attention and are happy to make any further submissions as may be helpful.

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record (via ECF)

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TOWN OF HEMPSTEAD, *et al.*,

Plaintiff,

v.

TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY, *et al.*,

Defendants.

Civil Action No. 1: 24-cv-03263
(JMA) (ARL)

FEDERAL DEFENDANTS' ANSWER

Defendants Federal Highway Administration (“FHWA”), an operating administration of the U.S. Department of Transportation (“DOT”), Sean McMaster in his official capacity as FHWA Administrator,¹ and Richard Marquis in his official capacity as Division Administrator of the New York Division of FHWA (hereinafter “Federal Defendants”), hereby respond to Plaintiffs’ Complaint.

INTRODUCTION

Plaintiffs brought this suit in 2024 to challenge the lawfulness of the cordon pricing program. In early 2025, DOT terminated its approval of the program. While the district court in *Metro. Transp. Auth. v. Duffy*, --- F. Supp. 3d ----, 2026 WL 588117 (S.D.N.Y. 2026), rejected the government’s arguments, that decision is currently under appeal to the Second Circuit.

¹ Under Federal Rule of Civil Procedure 25(d), the current FHWA Administrator, Sean McMaster, is automatically substituted as Defendant.

The United States identified two additional statutory infirmities in a Statement of Interest filed in *Dunne v. MTA*, No. 2:25-cv-18105 (D.N.J.), ECF No. 64.

Thus, while the Federal Defendants are required by the Federal Rules of Civil Procedure to submit this response to the Plaintiffs' Complaint, nothing in this response should be understood as supporting or defending the cordon pricing program generally.

RESPONSES TO NUMBERED PARAGRAPHS OF COMPLAINT

1. Federal Defendants deny knowledge or information sufficient to admit or deny the allegations in Paragraph 1.

2. Federal Defendants admit the allegations in Paragraph 2 as of the date the complaint was filed.

3. Paragraph 3 asserts legal conclusions to which no response is required.

4. Paragraph 4 asserts legal conclusions to which no response is required.

5. Paragraph 5 asserts legal conclusions to which no response is required.

6. Paragraph 6 asserts legal conclusions to which no response is required.

7. Paragraph 7 asserts legal conclusions to which no response is required.

8. Paragraph 8 asserts legal conclusions to which no response is required.

9. Paragraph 9 asserts legal conclusions to which no response is required.

10. Paragraph 10 asserts legal conclusions to which no response is required.

11. Paragraph 11 asserts legal conclusions to which no response is required.

12. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 12.

13. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 13.

14. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 14.

15. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 15.

16. Federal Defendants admit the allegations in Paragraph 16.

17. Federal Defendants admit that Richard Marquis is sued in his official capacity as FHWA's Division Administrator for the New York Division. The remaining allegations of Paragraph 17 are denied.

18. Federal Defendants respectfully refer the Court to the cited New York law, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

19. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in paragraph 19.

20. Federal Defendants respectfully refer the Court to the cited New York law, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

21. Federal Defendants respectfully refer the Court to the cited New York law, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

22. Federal Defendants respectfully refer the Court to the cited New York law, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

23. Federal Defendants respectfully refer the Court to the cited MTA website, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

24. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 24.

25. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 25.

26. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 26.

27. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 27.

28. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 28.

29. Federal Defendants respectfully refer the Court to the cited U.S. Census data, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

30. Federal Defendants respectfully refer the Court to the cited data and reports, which speak for themselves and are the best evidence of their contents, and all allegations concerning the contents inconsistent therewith are denied.

31. Federal Defendants admit the allegations in Paragraph 31, as of the date of the complaint.

32. Federal Defendants admit the allegations in Paragraph 32, as of the date of the complaint.

33. Federal Defendants admit the allegations in Paragraph 33, as of the date of the complaint.

34. Federal Defendants admit the allegations in Paragraph 34, as of the date of the complaint.

35. Federal Defendants admit the allegations in Paragraph 35, as of the date of the complaint.

36. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 36.

37. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 37.

38. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 38.

39. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 39.

40. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 40.

41. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 41.

42. Federal Defendants admit the allegations in Paragraph 42.

43. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 43.

44. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 44.

45. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 45.

46. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 46.

47. Paragraph 47 asserts legal conclusions to which no response is required.

48. Paragraph 48 asserts legal conclusions to which no response is required.

49. Paragraph 49 asserts legal conclusions to which no response is required.

50. Paragraph 50 asserts legal conclusions to which no response is required.

51. Federal Defendants incorporate by reference their response to the allegations in paragraphs 1-50 set forth above as if fully set forth herein.

52. Federal Defendants respectfully refer the Court to the cited statutes and caselaw, which speak for themselves and are the best evidence of their contents, and all allegations concerning the contents inconsistent therewith are denied.

53. Federal Defendants respectfully refer the Court to the cited statute, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

54. Federal Defendants admit the allegations in Paragraph 54.

55. Federal Defendants admit that FHWA made the cited contention during the Biden Administration.

56. Federal Defendants respectfully refer the Court to the cited Finding of No Significant Impact, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

57. Denied. In November 2024, Federal Defendants entered into an agreement with Defendant TBTA, New York State Department of Transportation, and the New York City Department of Transportation to authorize the congestion pricing project. Since then, however, Federal Defendants have made clear that the congestion pricing plan is not authorized under the VPPP Statute.

58. Paragraph 58 asserts legal conclusions to which no response is required.

59. Federal Defendants respectfully refer the Court to the cited Intermodal Surface Transportation Efficiency Act of 1991, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

60. Federal Defendants respectfully refer the Court to the cited section of the Intermodal Surface Transportation Efficiency Act of 1991, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

61. Paragraph 61 asserts legal conclusions to which no response is required.

62. Paragraph 62 asserts legal conclusions to which no response is required.

63. Paragraph 63 asserts legal conclusions to which no response is required.

64. Paragraph 64 asserts legal conclusions to which no response is required.

65. Paragraph 65 asserts legal conclusions to which no response is required.

66. Paragraph 66 asserts legal conclusions to which no response is required.

67. Federal Defendants lack knowledge or information sufficient to admit or deny the allegations in paragraph 67.

68. Paragraph 68 asserts legal conclusions to which no response is required.

69. Paragraph 69 asserts legal conclusions to which no response is required.

70. Paragraph 70 asserts legal conclusions to which no response is required.

71. Federal Defendants respectfully refer the Court to the cited FHWA website, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

72. Paragraph 72 asserts legal conclusions to which no response is required.

73. Paragraph 73 asserts legal conclusions to which no response is required.

74. Federal Defendants respectfully refer the Court to the cited FHWA website, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

75. Paragraph 75 asserts legal conclusions to which no response is required.

76. Federal Defendants respectfully refer the Court to the cited Letter-Petition, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

77. Federal Defendants admit the allegations of Paragraph 77.

78. Paragraph 78 asserts legal conclusions to which no response is required.

79. Paragraph 79 contains Plaintiffs' request for relief, to which no response is required.

80. Paragraph 80 contains Plaintiffs' request for relief, to which no response is required.

81. Federal Defendants incorporate by reference their response to the allegations in paragraphs 1-80 set forth above as if fully set forth herein.

82. Paragraph 82 asserts legal conclusions to which no response is required.

83. Paragraph 83 asserts legal conclusions to which no response is required.

84. Federal Defendants admit the allegations of Paragraph 84.

85. Federal Defendants admit the allegations of Paragraph 85.

86. Federal Defendants admit the allegations of Paragraph 86.
87. Paragraph 87 asserts legal conclusions to which no response is required.
88. Paragraph 88 asserts legal conclusions to which no response is required.
89. Paragraph 89 asserts legal conclusions to which no response is required.
90. Federal Defendants admit the allegations of Paragraph 90.
91. Paragraph 91 asserts legal conclusions to which no response is required.
92. Paragraph 92 asserts legal conclusions to which no response is required.
93. Paragraph 93 asserts legal conclusions to which no response is required.
94. Paragraph 94 asserts legal conclusions to which no response is required.
95. Paragraph 95 asserts legal conclusions to which no response is required.
96. Paragraph 96 asserts legal conclusions to which no response is required.
97. Paragraph 97 contains Plaintiffs' request for relief, to which no response is required.
98. Federal Defendants incorporate by reference their response to the allegations in paragraphs 1-97 set forth above as if fully set forth herein.
99. Paragraph 99 asserts legal conclusions to which no response is required.
100. Paragraph 100 asserts legal conclusions to which no response is required.
101. Paragraph 101 asserts legal conclusions to which no response is required.
102. Paragraph 102 asserts legal conclusions to which no response is required.
103. Federal Defendants respectfully refer the Court to the cited New York State law, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

104. Federal Defendants respectfully refer the Court to the cited New York State Constitution, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

105. Defendants respectfully refer the Court to the cited decision, which speaks for itself and is the best evidence of its contents, and all allegations concerning the contents inconsistent therewith are denied.

106. Defendants respectfully refer the Court to the cited decision and the New York State Constitution, which speak for themselves and are the best evidence of their contents, and all allegations concerning the contents inconsistent therewith are denied.

107. Paragraph 107 asserts legal conclusions to which no response is required.

108. Paragraph 108 asserts legal conclusions to which no response is required.

109. Paragraph 109 asserts legal conclusions to which no response is required.

110. Paragraph 110 asserts legal conclusions to which no response is required.

111. Paragraph 111 asserts legal conclusions to which no response is required.

112. Paragraph 112 asserts legal conclusions to which no response is required.

113. Paragraph 113 asserts legal conclusions to which no response is required.

114. Paragraph 114 asserts legal conclusions to which no response is required.

115. Paragraph 115 asserts legal conclusions to which no response is required.

116. Paragraph 116 contains Plaintiffs' request for relief, to which no response is required.

117. Federal Defendants incorporate by reference their response to the allegations in paragraphs 1-116 set forth above as if fully set forth herein.

118. Paragraph 118 asserts legal conclusions to which no response is required.

- 119. Paragraph 119 asserts legal conclusions to which no response is required.
- 120. Paragraph 120 asserts legal conclusions to which no response is required.
- 121. Paragraph 121 asserts legal conclusions to which no response is required.
- 122. Paragraph 122 asserts legal conclusions to which no response is required.
- 123. Paragraph 123 asserts legal conclusions to which no response is required.
- 124. Paragraph 124 asserts legal conclusions to which no response is required.
- 125. Paragraph 125 contains Plaintiffs' request for relief, to which no response is required.

PRAYER FOR RELIEF

The allegations in paragraphs 1 through 5 following the "WHEREFORE" clause consist of Plaintiffs' request for relief to which no response is required.

Dated: October 7, 2026

Respectfully submitted,

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