IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ERIE UNIT 2262 and CITIZENS FOR PENNSYLVANIA'S FUTURE,<br><br>Plaintiffs,<br><br>v.<br><br>FEDERAL HIGHWAY ADMINISTRATION, and PENNSYLVANIA DEPARTMENT OF TRANSPORTATION,<br><br>Defendants. | ) | CIVIL ACTION NO. 20-362<br>Judge Susan Paradise Baxter |

**FEDERAL DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

Plaintiffs seek the extraordinary remedy of a preliminary injunction on the theory that the Pennsylvania Department of Transportation's (PennDOT) award of a construction contract for the Bayfront Parkway Project (Project) — bidding for which Plaintiffs acknowledge has not yet even opened yet — *could* irreparably harm them by potentially precluding further environmental review or public participation. Plaintiffs' claimed injury is therefore based on speculation about probable not actual harms. But finding irreparable harm based on a "bureaucratic steamroller" effect or a statistical probability of harm is insufficient. The Supreme Court has rejected that a finding of injury in fact may be based on a statistical probability or a mere possibility. *Winter*, 555 U.S. at 21; see also *Summers v. Earth Island Inst.*, 555 U.S. 488, 497-500 (2009).

Nor are Plaintiffs likely to succeed on the merits of their claims, the critical element of injunctive relief. National Environmental Policy Act (NEPA) claims, as claims brought under the Administrative Procedure Act (APA), are reviewed under a deferential standard to the agency. And here, the Federal Highway Administration (FHWA) properly approved the Project consistent with its regulations after a hard look at the Project's environmental impacts. Finally, the balance of equities and public interest also weigh against a preliminary injunction because such relief would result in a delay of the Project's safety benefits and would lead to substantial additional costs to taxpayers. Plaintiffs therefore failed to meet their heavy burden for a preliminary injunction, and this Court should deny Plaintiffs' motion.

## BACKGROUND

The Bayfront Parkway Project (the Project) proposes to modify three intersections situated in approximately a half-mile stretch of the Bayfront Parkway in Erie, Pennsylvania. Ex. 5, AR-19 at 7. The Pennsylvania Department of Transportation (PennDOT) produced a

feasibility report based on a comprehensive study conducted of the entire parkway and which identified numerous deficiencies on the parkway, including poor traffic operations and safety concerns for vehicles, pedestrians, and cyclists. Ex. 1, AR-1 at 8, 31. Following the study, PennDOT began to develop alternatives at the Parkway's intersection with Sassafras, Holland, and State Streets to improve these issues and address needs identified in the study and eventually initiated the Project at issue here.

After analyzing potential impacts to the project area and resources, considering public comments, and identifying a preferred alternative, PennDOT downscoped the project from an Environmental Assessment (EA) to a categorical exclusion (CE). Ex. 3, AR-13 at 2-6. Following its review of supporting documentation, FHWA determined that the Project was appropriately classified as a CE because the Project did not result in significant impacts in accordance with FHWA regulations. Ex. 4, AR-16 at 2-3. On June 15, 2020, FHWA approved PennDOT's CE classification for the Project, agreeing that the Project would not result in significant impacts. Ex. 5, AR-19 at 364.

On December 15, 2020, Plaintiffs, National Association for the Advancement of Colored People Erie Unit 2262 and Citizens for Pennsylvania's Future, filed this action challenging FHWA's approval of the Project through a CE under NEPA, and FHWA lodged the certified administrative record with the Court on August 19, 2021. Plaintiffs filed their summary judgment motion on September 24, 2021, and Defendants filed their cross-motions for summary judgment and response briefs on November 5, 2021.

During the Parties' summary judgment briefing, counsel for FHWA learned of two typographical errors in the categorical exclusion and a related document. ECF No. 68. After obtaining declarations and conferring with Plaintiffs, FHWA filed a notice of correction of the

administrative record on December 6, 2021 and Plaintiffs filed a response objecting to the correction on December 10, 2021. On January 4, 2022, FHWA determined that two documents were mistakenly left out of the lodged administrative record, identified the two documents, and moved to complete the administrative record with those documents. On January 5, 2022, the Court held a hearing on the notice of correction and asked for additional briefing on record corrections. Pursuant to the Court's order, Plaintiffs filed their brief on record corrections on January 21, 2022 and Defendant filed their briefs on February 11, 2022. Plaintiffs subsequently moved to file a reply brief on record corrections and the Court granted that motion allowing Plaintiffs to file the reply.

## LEGAL STANDARD

### I. A Preliminary Injunction is an Extraordinary Remedy.

As the movant, Plaintiffs bear the burden of demonstrating (1) they are likely to succeed on the merits, (2) that they are likely to suffer irreparable harm absent the preliminary injunction, (3) that the balance of equities tips in their favor, and (4) that the injunction is in the public interest. *Reilly v. City of Harrisburg*, 858 F.3d 173, 178 (3d Cir. 2017) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). A deficiency in any one of the required elements precludes extraordinary relief. *Winter*, 555 U.S. at 24. Because a "preliminary injunction is an extraordinary and drastic remedy," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted), the party seeking an injunction must make a "clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

The first two factors are the threshold, most critical factors. *Id.* For a party to demonstrate that it is likely to prevail on the merits, "[i]t is not enough that the chance of success on the merits be 'better than negligible'" and "more than a mere 'possibility' of relief is

required." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal citation omitted). Only if a party meets the threshold factors does the Court consider the remaining two factors and determine if all factors, taken together, balance in favor of granting the preliminary injunction. *Reilly*, 858 F.3d at 179.

**II. Administrative Procedure Act Review of Agency Action.**

Review on the merits is governed by the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (APA). Under the APA, final agency action is reviewed under 5 U.S.C. § 706(2)(A), and such review is highly deferential and "presume[s] the validity of agency action." *SBS, Inc. v. F.C.C.*, 414 F.3d 486, 496 (3d Cir. 2005) (citing *Sw. Bell Tel. Co. v. F.C.C.*, 168 F.3d 1344, 1352 (D.C. Cir. 1999)). Agency decisions may be overturned only if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency action will be upheld if the agency has considered the relevant factors and a rational connection between the facts and choice made is articulated. *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983). The court may not substitute its judgment for that of the agency. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

**ARGUMENT**

Plaintiffs fail to meet their burden in seeking preliminary injunctive relief. Plaintiffs' claims of irreparable harm from any bureaucratic momentum from PennDOTs' award of contracts is speculative at best and speculative harm is insufficient to meet the Supreme Court's standards for a preliminary injunction. Furthermore, Plaintiffs have not demonstrated that they are *likely* to prevail on the merits, a standard that requires "more than a mere 'possibility' of relief." *Nken*, 556 U.S. at 434. Finally, the balance of equities and public interest favor withholding injunctive relief. Plaintiffs have not demonstrated that they are entitled to

preliminary injunctive relief before PennDOT awards any contracts and their motion for extraordinary relief should be denied.

**I. Plaintiffs Cannot Demonstrate Imminent, Irreparable Harm**.

Plaintiffs claimed irreparable harm from the potential award of a contract is impermissibly premised on speculative injuries. But Plaintiffs bear the burden of showing "a likelihood of irreparable injury" absent the injunction. *Winter*, 555 U.S. at 21. Plaintiffs fail to meet this burden. The mere "possibility" of harm is insufficient. *Id.*

As an initial matter, Plaintiffs cannot show irreparable harm simply because they allege environmental or procedural injuries. *See Amoco Prod. Co. v. Vill. Of Gambell*, 480 U.S. 531, 545-46 (1987). Alleged environmental injuries may be outweighed by other considerations. *See Tribal Vill. of Akutan v. Hodel*, 859 F.2d 662, 663-64 (9th Cir. 1988) (noting harm to the public interest weighed against granting a preliminary injunction). Nor can the Court presume irreparable harm or that an injunction automatically follows if there is a violation of an environmental statute; instead, the Court must apply traditional equitable standard to determine whether an injunction is proper. *Nat. Res. Def. Council v. Texaco Refin. & Mktg., Inc.*, 906 F.2d 934, 936 (3d Cir. 1990).

Plaintiffs present a procedural theory of irreparable injury arising from PennDOT's potential award of a contract for the Bayfront Parkway Project. Plaintiffs argue that if PennDOT awards any construction contract for the Project, a bureaucratic momentum will begin, biasing PennDOT in favor of the approved project, which constitutes irreparable harm. Mem. in Supp. of Pls.' Mot. for Prelim. Inj. 10, ECF No. 90 (Pls.' Mem.). There are two main deficiencies with Plaintiffs' argument. First, a procedural injury alone is insufficient to demonstrate irreparable harm. Second, Plaintiffs' theory of bureaucratic momentum does not support injunctive relief.

Therefore, none of Plaintiffs' alleged harms meet Plaintiffs' burden under *Winter* and Plaintiffs' motion should be denied.

**a. A Procedural Injury Alone is Insufficient to Demonstrate the Irreparable Harm Justifying Injunctive Relief.**

Plaintiffs are not alleging a substantive or physical injury in the motion for preliminary injunction. Pls.' Mem. at 10-13 (citing to alleged procedural injury). They are not alleging that PennDOT is about to break ground near their homes or businesses. Rather, Plaintiffs allege that they will suffer an irreparable procedural injury because once PennDOT awards a contract, PennDOT "will be less likely to seriously consider alternatives to the Project" and therefore any public hearing would be less meaningful. Pls.' Mem. at 14. Plaintiffs thus contend that they suffered irreparable harm due to an alleged procedural injury.[1]

Even assuming Plaintiffs' claimed procedural injuries had merit, procedural injuries do not automatically constitute irreparable harm for the purposes of obtaining injunctive relief. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010) (stating that while Plaintiffs presumed that an injunction was the usual, appropriate remedy in a NEPA challenge, "[n]o such thumb on the scales is warranted"). Instead, Plaintiffs would need to demonstrate irreparable harm under the *Winter* test. *Id.* Given that Plaintiffs fail to establish that they would be substantively, irreparably harmed, "[a] procedural injury alone is insufficient to establish injury-in-fact for standing purposes, much less to demonstrate the irreparable injury required to justify injunctive relief." *Sierra Forest Legacy v. Sherman*, 951 F. Supp. 2d 1100, 1111 (E.D. Cal. 2013) (citations omitted). "[B]road and untethered allegations of harm cannot serve as the

[1] Plaintiffs therefore tether their asserted procedural injury to their allegation that a public hearing is required under NEPA and the Federal-Aid Highway Act (FAHA). Pls.' Mem. at 2, 7-9. Because Plaintiffs have not demonstrated that FHWA violated NEPA, the FAHA, or any other statute, Plaintiffs have not suffered any procedural harm. *See infra* at 9-12.

irreparable injury required to demonstrate the need for injunctive relief." *Id.* at 1111-12.

**b. Bureaucratic Momentum Does Not Support Injunctive Relief**.

Plaintiffs argue that a bureaucratic momentum would occur with PennDOT's award of any contract for the Project such that PennDOT "*could be* prejudiced" by its contractual obligations and that PennDOT would be "*less likely* to seriously consider" Project alternatives. Pls.' Mem at 13-14 (emphases added). Plaintiffs cannot rely on the theory of bureaucratic momentum to demonstrate irreparable harm. As a threshold matter, Plaintiffs fail to demonstrate irreparable harm because they raise only speculative assertions. Both the Supreme Court and Third Circuit require that irreparable harm be likely, not merely speculative. *Winter*, 555 U.S. at 122; *ADP, Inc. v. Levin*, No. 21-2187, 2022 WL 1184202, at *2 (3d Cir. 2022) (citing *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 487-88 & n.12 (3d Cir. 2000)). And the Court retains a broad array of options to take appropriate action relating to the Project's future even after contract award. Even if there is such a thing as a "bureaucratic steamroller," it does not interfere with the remedial powers the Court might deem appropriate after reaching the merits.

The bureaucratic momentum theory was espoused in *Massachusetts v. Watt*, 716 F.2d 946 (1st Cir. 1983). Then-Judge Breyer enjoined a lease sale on the outer continental shelf off the coast of Massachusetts based, in part, on the theory that, if the lease sale were allowed to go forward, it would engender a "bureaucratic commitment" to the lease sale, which he found was a type of irreparable harm. *Id.* at 952-53. Four years later, however, the Supreme Court issued its decision in *Village of Gambell*, in which it refuted the notion that harm to the environment may be presumed and reversed the preliminary injunction of an offshore oil and gas lease sale. *See* 480 U.S. at 544-45. Following that Supreme Court decision, the First Circuit revisited *Watt* in

*Sierra Club v. Marsh*, 872 F.2d 497, 499 (1st Cir. 1989), explaining that it did not mean that procedural harm alone would constitute irreparable harm:

> Rather, the harm at stake is a harm to the *environment*, but the harm consists of the added *risk* to the environment that takes place when governmental decisionmakers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision upon the environment.

*Id.* at 500 (italics in original). Plaintiffs must show a likelihood of irreparable harm to the environment to obtain a preliminary injunction. Bureaucratic momentum alone cannot satisfy their burden of demonstrating irreparable harm. *See id.*; *see also Blanco v. Burton*, No. 06-3813, 2006 WL 2366046, at *18-19 (E.D. La. Aug. 14, 2006) (discussing *Watt*, *Village of Gambell*, and *Marsh* and rejecting the bureaucratic momentum argument). While Plaintiffs rely on non-binding cases from other circuits to support their position, the Third Circuit has not held that bureaucratic momentum in a NEPA case, or any case, constitutes irreparable harm to support issuance of a preliminary injunction, and courts have been critical of and rejected the bureaucratic momentum argument. *See, e.g., N. Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1154-57 (9th Cir. 1988); *Nat'l Park Conservation Ass'n v. Semonite*, 282 F. Supp. 3d 284, 290 (D.D.C. 2017); *Protecting Arizona's Resources & Children v. Fed. Highway Admin.*, No. CV-15-00893-PHX-DJX, 2015 WL 12618411, at *4-5 (D. Az. July 28, 2015).

Furthermore, Plaintiffs' speculative arguments offer no reason why FHWA would be unable to objectively weigh reasonable alternatives in the future because PennDOT awarded a contract and contractors started construction. Courts presume" that agencies "properly discharge [] their official duties" with integrity. *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926); *N. Cheyenne Tribe*, 851 F.2d at 1157 (rejecting "bureaucratic momentum" argument

because, *inter alia*, "[w]e assume the [agency] will comply with the law"). That presumption applies here.

And even if PennDOT might feel some sense of commitment to the Project, this constrains neither the Court's review nor its remedial power. Courts conducting APA review "have done all of the following" upon finding an agency action violates the arbitrary and capricious standard: "(1) reversed and remanded without instructions, (2) reversed and remanded with instructions to vacate, and (3) vacated agency decisions." *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1239 (10th Cir. 2017) (considering BLM coal mining leases). If the Court ultimately determines that an EA is required, it can direct PennDOT and FHWA to ignore the fact that contractors have already begun the Project in considering reasonable alternatives. Thus any protection against "bureaucratic momentum" is already in place in the form of this Court's authority; Plaintiffs cannot rely upon this alleged concern as a basis for proving imminent, irreparable injury, and the Court should deny Plaintiffs' motion.

## II. Plaintiffs are Not Likely to Succeed on the Merits

The lack of merit in Plaintiffs' claims is addressed at length in FHWA's summary judgment memorandum. ECF No. 56. In addressing the likelihood of success on the merits, Plaintiffs argue, as in their previous filings in this case, that (1) FHWA's approval of the Project as a CE violated NEPA; (2) the agencies failed to take a "hard look" at the Project's potential impact; (3) PennDOT failed to hold a public hearing as required by the Federal-Aid Highway Act; and (4) Plaintiffs should prevail because of corrections to the administrative record. Pls.' Mem. at 7-10. None of Plaintiffs' arguments show a likelihood of success on the merits.

**a. FHWA Complied with NEPA's Procedural Requirements.**

Plaintiffs argue that the agency's use of a CE violated NEPA because the Project is not specifically identified as a listed category of action that qualifies for a CE under FHWA regulations. Pls.' Mem. at 7-8. Plaintiffs are incorrect. Actions that qualify for CEs under FHWA regulations are not limited to the categories included in the regulation. Plaintiffs ignore express language in FHWA's regulations. 23 C.F.R. § 771.117(d) explicitly states that "[e]xamples of [documented categorical exclusions] include but are not limited to" the actions listed. While section (d) identifies specific examples of actions that may qualify as documented categorical exclusions, the examples present a nonexclusive list of additional projects that qualify as a CE through documentation. *Delaware Riverkeeper Network v. Pennsylvania Dep't of Transp.*, No. 18-4508, 2020 WL 4937263, at *23 (E.D. Pa. 2020). And as identified in Federal Defendant's memorandum in support of its summary judgment motion, other courts have identified the actions listed in section 771.117(d) as guidance to identify other actions that may be considered CEs. ECF No. 56, 7-8.

**b. The Project's Potential Environmental Impacts Were Properly Assessed.**

Plaintiffs contend that the Project violates NEPA because the agencies failed to take a hard look at the Project's potentially significant impacts, and therefore FHWA's approval was arbitrary and capricious. Pls.' Mem. at 8. NEPA "does not require that certain outcomes be reached as a result of [an agency's] evaluation" however. *Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987). Rather, once satisfied that a proposing "agency has taken a 'hard look' at environmental consequences," the review is at an end. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

Here, the considerations of water resources, air quality, greenhouse gas emissions,

environmental justice efforts, public involvement, and aesthetics demonstrate that the agencies took a "hard look" at the Project's impacts, and that FHWA's determinations of no significant impact and approval of the CE were proper. ECF No. 56, 20-35. Plaintiffs therefore have not shown a likelihood of success on their argument that the agencies failed to take a hard look at the Project's potential environmental impacts.

**c. The Federal-Aid Highway Act Did Not Require a Public Hearing.**

The Federal-Aid Highway Act (FAHA) provides the statutory framework for the Federal-Aid Highway Program that gives financial assistance to states for highway construction and improvement projects. The FAHA, which is administered by FHWA, sets forth the requirements projects must meet for federal funding. If a proposed project is through a city, the statute may require states to certify that they have provided the opportunity for a public hearing, but the public hearing requirement is not mandated for all projects. 23 U.S.C. § 128(a). FHWA regulations implementing Section 128 instruct states to hold a public hearing specifically for any Federal-aid project that "requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which FHWA determines that a public hearing is in the public interest." 23 C.F.R. § 771.111(h)(2)(iii).

Plaintiffs contend that the Project substantially changes the layout of connecting roadways and therefore the FAHA required a public hearing. Pls.' Mem. at 9. But here there was no legal obligation to hold or provide the opportunity to request a public hearing because the Project had no significant environmental impact. *Clement v. LaHood*, No. 1:09-cv-1056, 2010 WL 1779701, * 13 (E.D. Va. Apr. 30, 2010), *aff'd Clement v. LaHood*, 397 Fed. Appx. 859 (4th

Cir. 2010) (*per curiam*) (unpublished) ("By definition, CEs cause no significant impact, so no public hearing was required).

**d. Corrections to the Administrative Record Do Not Demonstrate that FHWA's Decision Was Arbitrary and Capricious or that Plaintiffs Are Likely to Succeed on the Merits.**

Just as Plaintiffs' request for summary judgment based solely on two inadvertent omissions and typographical errors is unwarranted, so too is Plaintiffs' request for a decision that Plaintiffs' are likely to succeed on the merits. Pls.' Mem. at 9-10. Instead, the essential question is whether FHWA's decision was arbitrary and capricious. As discussed in Federal Defendant's summary judgment briefing, it was not and the corrections to the record do not suggest otherwise. The agencies took a hard look at the foreseeable environmental impacts of the Project and, based on expertise, determined that the Project would not result in significant environmental impacts. ECF No. 56, 6-29. The timing and the correction of the two inadvertently omitted documents do not undermine the agency's certification of the documents as a part of the Administrative Record for the Project. ECF No. 77, 12-17. FHWA's decision is supported by the Record, and Plaintiffs have not met their burden of showing that they are likely to succeed on the merits.

## III. The Balance of Equities and Public Interest Do Not Favor a Preliminary Injunction.

The strong public interest supporting the Project's safety goals outweighs Plaintiffs' anticipatory and speculative allegations of irreparable harm. Plaintiffs therefore cannot prove — as they must — that a preliminary injunction would serve the public interest. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

When the government is a party, the analyses of the public interest and balance of equities merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citation

omitted). Absent the necessary showing on the first two elements a court "need not dwell on the final two factors" and, "when considered alongside the [movant's] failure to show irreparable harm, the final two factors do not weigh in favor of a stay." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778-79 (9th Cir. 2018). A federal court must deny a preliminary injunction, even where irreparable injury to the movant exists, if the injunction is contrary to the public interest. *See Winter*, 555 U.S. at 22 (holding that even though plaintiffs showed a "near certainty of irreparable injury" to marine mammals resulting from the Navy's use of sonar, that harm was outweighed by the public interest in facilitating effective naval training exercises). The Third Circuit has been clear that while the first two factors for a preliminary injunction are "gateway" factors, the Court must consider the remaining factors on a motion for injunctive relief, *Reilly*, 858 F.3d at 179, and Plaintiffs still bear the burden of proving the remaining factors.

Plaintiffs' claims of alleged injuries are outweighed by the harm that would be inflicted upon FHWA, PennDOT, and the public interest were even a temporary preliminary injunction to issue. A preliminary injunction would be adverse to the public interest by disrupting the City's plan to make safety improvements at the three intersections involved in the Project, and the FHWA's ability to carry out NEPA evaluations in accordance with the statute and agency regulations. In contrast to Plaintiffs' failed showing of irreparable injury, these harms are real and concrete. Because Plaintiffs cannot meet their burden to show that the balance of equities and the public interest tip in their favor, no injunction should issue.

The balance of equities and public interest tip decisively against granting the injunction. Plaintiffs argue that the balance of equities tips in their favor and injunction would serve the public interest simply because of their procedural injuries and speculative injuries. Pls.' Mem. at

14; 17-18. These arguments lack merit. As discussed above, Plaintiffs' alleged harm is not irreparable harm, and Plaintiffs put forth no additional arguments besides their alleged irreparable harm for why the balance of equities is in their favor or why an injunction serves the public interest. *See* Pls.' Mem. at 14-17. And as described in prior briefing, FHWA complied with NEPA by approving the Project as a categorical exclusion.

There are numerous benefits to the public that will result from the Project, and these benefits must be considered against Plaintiffs' alleged injuries. The purpose of the Project is to reduce crashes on the parkway, to improve traffic operations, and to improve connectivity in the area for pedestrians, bicycles, transit, and vehicles. Ex. 2, AR-11 at 13. As identified in the CE, the Parkway currently lacks multi-modal connectivity along and across the roadway, which creates a barrier between downtown Erie and the Bayfront. Ex. 5, AR-19 at 8-9. Additionally, there have been documented crashes within the project area – with the majority of those crashes occurring at the three intersections. Ex. 5, AR-19 at 43. A delay in project implementation would result in a delay in the public receiving the accessibility, safety, and operational improvements the Project will provide. Additionally, the balance of equities weighs heavily in favor of defendants based on the monetary costs to Pennsylvania taxpayers, as detailed in PennDOT's response. For these reasons, Plaintiffs have failed to satisfy any of the equitable considerations required for preliminary injunctive relieve, let alone all of them. Plaintiffs' motion should be denied.

## CONCLUSION

Plaintiffs have failed to demonstrate that they are likely to succeed on the merits or that they will suffer irreparable harm without extraordinary injunctive relief. The balance of the equities and public interest favor allowing the Project to proceed. The Court should deny Plaintiffs' motion.

Respectfully submitted this 7th day of September 2022,

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